QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum il-Hamis 28 ta` Gunju 2018

Kawza Nru. 2
Rikors Nru. 71/2017 JZM

Victor Buttigieg
(K.I. numru 474072M)

kontra

(1) Kummissarju tal-Pulizija
(2) Avukat Generali

Il-Qorti :

I. Preliminari

Rat ir-rikors li kien ipprezentat fit-30 ta` Awissu 2017 li jaqra :-

Illi r-rikorrent gie mixli quddiem il-Qorti tal-Magistrati (Malta) talli nhar l-10 ta` Novembru, 2008 u s-seba` xhur qabel din id-data, f`dawn il-Gzejjer, b`diversi atti maghmulin ukoll jekk fi zminijiet differenti li jkunu jiksru l-istess dispozizzjoni tal-Ligi u jkunu gew maghmula b`risoluzzjoni wahda :

a) *Forna jew ipprokura jew offra li jforni jew li jipprokura d-droga Herojina specifikata fl-Ewwel Skeda tal-Ordinanza dwar il-Medicini Perikoluzi Kap 101 tal-Ligijiet ta` Malta, lill-persuna jew persuni jew ghall-uzu ta` persuna/i minghajr ma kellu licenzja mill-President ta` Malta, minghajr ma kien awtorizzat bir-Regoli tal-1939 ghall-Kontroll Intern tad-Drogi Perikoluzi (GN 292/1939) jew minn xi awtorita` mghotija mill-President ta` Malta li jforni d-droga u minghajr ma kien fil-pussess ta` awtorizazzjoni ghall-importazzjoni jew esportazzjoni mahruga mit-Tabib Principali tal-Gvern, skond id-disposizzjonijiet tas-Sitt Taqsima tal-Ordinanza msemmija, u minghajr ma kellu licenzja jew xort`ohra awtorizzat li jimmanifattura jew iforni d-droga msemmija u minghajr ma kellu licenzja li jipprokura l-istess droga, u dan bi ksur tar-Regoli tal-1939 ghall-Kontroll Intern tad-Drogi Perikoluzi (GN 292/1939) kif susseguentament emendi u bi ksur tal-Ordinanza dwar il-Medicini Perikoluzi Kap 101 tal-Ligijiet ta` Malta;*

b) *Talli fl-istess lok, jum hin u cirkostanzi, kellu fil-pussess tieghu d-droga Herojina specifikata fl-Ewwel Skeda tal-Ordinanza dwar il-Medicini Perikoluzi, tal-Kapitlu 101 tal-Ligijiet ta` Malta, meta ma kienx fil-pussess ta` awtorizzazzjoni ghall-importazzjoni jew ghall-esportazzjoni mahruga mit-Tabib Principali tal-Gvern skond id-disposizzjonijiet tar-4 u s-6 Taqsima tal-Ordinanza u meta ma kienx bil-licenzja jew xort`ohra awtorizzat li qed jimmanifattura, jew li jforni d-droga msemmija, u meta ma kienx b`xi mod iehor bil-licenzja mill-President ta` Malta li jkollu d-droga msemmija fil-pussess tieghu u naqas li jipprova li d-droga msemmija giet fornuta lilu ghall-uzu tieghu skond ir-ricetta kif provdut fir-Regolamenti msemmija, u dan bi ksur tar-Regoli tal-1939 dwar il-Kontroll Intern tad-Drogi Perikoluzi (GN 292/1939) kif susseguentament emendati u bi ksur tal-Ordinanza dwar il-Medicini Perikoluzi Kap 101 tal-Ligijiet ta` Malta, liema droga nstabet f`tali cirkostanzi li juru li ma kienitx ghall-uzu esklussiv tieghu;*

c) *Talli fl-istess lok, jum hin u cirkostanzi, kellu fil-pussess tieghu d-droga methadone specifikata fl-Ewwel Skeda tal-Ordinanza dwar il-Medicini Perikoluzi, tal-Kapitlu 101 tal-Ligijiet ta` Malta, meta ma kienx fil-pussess ta` awtorizzazzjoni ghall-importazzjoni jew ghall-esportazzjoni mahruga mit-Tabib Principali tal-Gvern skond id-disposizzjonijiet tar-4 u s-6 Taqsima tal-Ordinanza u meta ma kienx bil-licenzja jew xort`ohra awtorizzat li qed jimmanifattura, jew li jforni d-droga msemmija, u meta ma kienx b`xi mod iehor bil-licenzja mill-President ta` Malta li jkollu d-droga msemmija fil-pussess tieghu u naqas li jipprova li d-droga msemmija giet fornuta lilu ghall-uzu tieghu skond ir-ricetta kif provdut fir-Regolamenti msemmija, u dan bi ksur tar-Regoli tal-1939 dwar il-Kontroll*

Intern tad-Drogi Perikoluzi (GN 292/1939) kif sussegwentament emendati u bi ksur tal-Ordinanza dwar il-Medicini Perikoluzi Kap 101 tal-Ligijiet ta` Malta;

d) *Talli fl-istess lok, jum, hin u cirkostanzi, irrenda ruhu recidiv b`diversi sentenzi moghtija mill-Qorti tal-Appell kif ukoll mill-Qorti tal-Magistrati (Malta);*

e) *Talli fl-istess lok, jum, hin u cirkostanzi, kiser il-kundizzjonijiet moghtija lilu nhar id-9 ta` Lulju, 2008 mill-Qorti tal-Magistrati (Malta), Magistrat Dr. Jacqueline Padovani Grima LL.D.*

Il-Qorti kienet mitluba li f`kaz ta` htija barra milli tapplika l-piena skond il-ligi tordna lill-imputat ihallas l-ispejjez li ghandhom x`jaqsmu mal-hatra tal-esperti skond l-Artikolu 533 (1) tal-Kap 9 tal-Ligijiet ta` Malta.

Illi b`sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta` Gudikatura Kriminali tal-24 ta` Settembru tas-sena 2014, ir-rikorrenti instab hati tal-akkuzi kollha migjuba kontra tieghu inkluz dik ta` recidiva u ksur ta` Ordni ta` Probation. Konsegwentament, wara li rat il-GN 292/1939; LS 101.02; l-Artikolu 22 tal-Kapitlu 101 tal-Ligijiet ta` Malta; l-Artikolu 22(2)(b) tal-Kapitolu 101 tal-Ligijiet ta` Malta, l-Artikoli 49 u 50 tal-Kapitolu 9 tal-Ligijiet ta` Malta; l-Artikoli 7 u 23 tal-Kapitolu 446 tal-Ligijiet ta` Malta, u wara anke li hadet in konsiderazzjoni r-relazzjoni tal-Perit Valerio Schembri dwar l-aggravju tal-mitt (100) metru, u anke wara li rat il-fedina penali tar-rikorrent, fuq ir-reati tad-droga, l-Onorabbli Qorti kkundannatu ghall-piena karcerarja ta` hames (5) snin, kif ukoll ghal multa ta` hamest elef Ewro (€5,000), ordnat ukoll il-konfiska tal-flejjes misjuba fl-ammont ta` elf tmien mija u hamsin Ewro (€1,850) misjub fuq ir-rikorrent.

Illi dwar il-ksur tal-Ordni tal-Probation, l-Onorabbli Qorti, barra li rat l-Artikoli 7 u 23 tal-Kapitolu 446 tal-Ligijiet ta` Malta, rat ukoll l-Artikoli 325 (c), 95, 338, 17, 49, 50, 31 tal-Kapitolu 9 tal-Ligijiet ta` Malta, u kkundannatu ghall-piena karcerarja ta` sitt (6) xhur. Fl-ahhar nett, l-Onorabbli Qorti rat ukoll l-Artikolu 533 tal-Kapitolu 9 tal-Ligijiet ta` Malta, u kkundannatu ghall-hlas tal-ispejjez peritali ammontati ghal elfejn mitejn u tnejn u tletin Ewro u tlieta u sittin centezmu (€2,232.63).

Illi r-rikorrent appella mill-precitata sentenza permezz ta` rikors ipprezentat fir-registru tal-Qorti nhar l-1 ta` Ottubru tas-sena 2014, li

permezz tieghu talab lill-Qorti tirriforma s-sentenza appellata billi tikkonfermha in kwantu s-sejbien ta` htija izda timponi piena anqas harxa fic-cirkostanzi;

Illi b`sentenza moghtija fit-2 ta` Frar tas-sena 2017 mill-Onorabbli Qorti tal-Appell Kriminali (Appell Numru 369/2014) gie deciz kif gej :

"Ghalhekk wara li ezaminat bir-reqqa l-atti u s-sentenza appellata, minn fejn jemergu ragunijiet ghaliex l-ewwel Qorti wasslet ghal-piena kominata wara li hadet in konsiderazzjoni fejn kien intercettat l-appellant kien f`distanza ta` anqas minn mitt metru mill-Museum tas-Subien u l-Playing Field tan-Naxxar, ma tara ebda raguni ghaliex ghandha dvarja dik il-parti tas-sentenza koncernanti l-piena kominata ;

Ghal dawk il-motivi l-appell qed ikun michud u s-sentenza appellata qed tkun konfermata fl-intier taghha."

*Illi minn ezami tal-process kriminali intrapriz mill-Prosekuzzjoni fil-konfront tar-rikorrent jirrizulta s-segwenti irregolarita serja u lanjanza kostituzzjonali li jammonta ghal vjolazzjoni ta` l-**Artikoli 6(1) u 6(3)** tal-Konvenzjoni Ewropeja u dan kif ser jigi spjegat :*

1. Illi r-rikorrent tressaq b`arrest nhar it-12 ta` Novembru tas-sena 2008 u gie mghoti sentenza mill-Qorti tal-Magistrati (Malta) bhala Qorti ta` Gudikatura Kriminali, biss nhar l-24 ta` Settmebru tas-sena 2014, ossia kwazi sitt snin wara, u ghalhekk b`rizultat ta` dewmien eccessiv tal-proceduri kriminali kontra tieghu, inkiser ir-"reasonable time requirement". [Id-decizjoni tal-Appell Kriminali inghatat nhar it-2 ta` Frar tas-sena 2017, izda l-maggior parti tad-dewmien f`dan ir-rigward kien sforz ta` kundizzjoni medika li kellu l-istess rikorrent li kellu jissottoponi ruhu ghal intervent kirurgiku ta` certu spessur. Ghalhekk ir-rikorrent fir-rigward ta` din il-lanjanza qieghed jaghmel biss referenza ghall-proceduri quddiem il-Qorti tal-Magistrati].

2. Illi fir-rigward tal-lezzjoni taht l-Artikolu 6(3), ir-rikorrent jispjega is-segwenti :

3. Illi kif gia indikat, ir-rikorrent tressaq il-Qorti b`arrest nhar it-12 ta` Novembru tas-sena 2008. Fis-seduta ta` nhar is-17 ta` Mejju tas-sena 2011, (a fol 459), l-Onorabbli Qorti sehqet illi "Il-Kawza qed tigi differita ghas-6 ta` Lulju, 2011 ghall-provi tad-Difiza".

4. Illi fit-tlett snin li ssusegwew kien hemm tmintax-il differiment kif ser jigi indikat:

1. Fis-seduta tas-6 ta` Lulju 2011 (a fol 460), ir-rikorrenti ma kienx notifikat;

2. Fis-seduta tal-21 ta` Ottubru 2011 (a fol 462), l-Ufficjal prosekutur ma deherx u r-rikorrent lanqas u l-kawza giet differita` ghan-notifika tal-istess rikorrent;

3. Fis-seduta tal-24 ta` Novembru 2011 (a fol 463), l-Ufficjal prosekutur ma deherx, izda r-rikorrent kien prezenti;

4. Fis-seduta ta` nhar il-15 ta` Frar 2012 (a fol 464) deher biss l-Avukat difensur, u l-Qorti ordnat "lill-Ufficjal Prosekutur jidher ghas-seduta li jmiss u jassigura n-notifika tal-imputat";

5. Fis-seduta tat-30 ta` Marzu 2012 (a fol 465), ma deher hadd;

6. Fis-seduta tas-17 ta` Marzu 2012 (a fol 466), ma deher hadd;

7. Fis-seduta tas-26 ta` Gunju 2012 (a fol 467) deheru kemm l-Ufficjal prosekutur u kif ukoll ir-rikorrent, izda l-Avukat difensur kien imsiefer;

8. Fis-seduta tat-10 ta` Ottubru 2012 (a fol 469), ma deher hadd;

9. Fis-seduta tat-27 ta` Novembru 2012 (a fol 470), ma deher hadd;

10. Fis-seduta tal-5 ta` April 2013 (a fol 471), ma deher hadd;

11. Fis-seduta tad-19 ta` April 2013 (a fol 472), l-Ufficjal prosekutur kien imsiefer;

12. Fis-seduta tat-23 ta` Mejju 2013 (a fol 473), ma deher hadd;

13. Fis-seduta tas-26 ta` Settembru 2013 (a fol 476), il-kawza giet differita fuq talba tal-prosekuzzjoni;

14. Fis-seduta tal-5 ta` Novembru (a fol 477) ma deher hadd;

15. Fis-seduta tas-16 ta` Jannar 2014 (a fol 478), deher ir-rikoorent assistit mill-Avukat tieghu izda, izda "Supt Stephen Gatt imsejjah ma deherx"

16. Fis-seduta tal-25 ta` Marzu 2014 (a fol 479), deher biss l-Avukat difensur fejn talab kopja tal-process;

17. Fis-seduta tat-30 ta` April 2014 (a fol 480) deheru l-Ufficjal prosekutur flimkien mar-rikorrent li ma kienx assistit, fejn l-Onorabbli Qorti ddiferit il-kawza ghat-trattazzjoni finali;

18. Fis-seduta tal-5 ta` Gunju 2014 (a fol 481) deher l-Ufficjal prosekutur, ir-rikorrent ma deherx u l-Onorabbli Qorti ddiferit il-kawza ghas-sentenza.

5. Illi mis-suespost, jidher car li minn meta l-kawza giet differita ghall-provi difiza, kien hemm tmintax –il seduta, fejn fl-ahhar wahda, l-kawza giet differita ghas-sentenza. Minn dawn it-tmintax –il seduta, fl-ewwel seduta, ir-rikorrent ma kienx notifikat.

6. Illi f`erbatax-il okkazzjoni ohra, (ossia fis-segwenti differimenti hekk kif suespost immarkati: 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 16) ghal xi raguni jew ohra, l-Ufficjal Prosekutur ma kienx prezenti.

7. Illi fis-seba` seduta, deheru kemm l-ufficjal prosekutur u kif ukoll ir-rikorrent, izda l-Avukat difensur kien imsiefer. Finalment, fl-ahhar zewg seduti, ir-rikorrent kien prezenti fis-sbatax –il seduta fejn l-Onorabbli

Qorti ddiferit il-kawza ghat-trattazzjoni finali u t-tmintax –il seduta li r-rikorrent ma kienx prezenti u l-Qorti ddiferiet ghas-sentenza.

8. Illi r-rikorrent jaghmel referenza ghall-verbal tal-udjenza tal-25 ta` Marzu 2014 fejn l-Onorabbli Qorti sahqet illi "Il-Qorti tinnota li l-imputat imsejjah rega` ma deherx. Il-Qorti tinnota li l-imputat kien notifikat fl-Awla. Il-Qorti tordna hrig ta` mandat ta` arrest u tikkundannah ghall-hlas ta` 200 Ewro fuq disprezz". Sussegwentament, il-kawza kienet fiet differita ghat-30 ta` April, 2014 fid-9.00 ta` filghodu ghall-provi tad-Difiza.

9. Illi fis-seduta tat-30 ta` April, 2014, (a fol 480 tal-process) jidher li r-rikorrenti kien prezenti, pero` ma kienx assistit mill-Avukat tal-fiducja tieghu. Sussegwentament, "Il-Qorti tinnota li din il-kawza ilha mhollija ghall-provi tad-Difiza minn 2011, fatt dan li qatt ma vverifika ruhu. Il-kawza differita ghall-5 ta` Gunju, 2014 fid-9.00 a.m. ghat-trattazzjoni finali".

10. Illi fis-seduta tal-5 ta` gunju 2014 (a fol 481 tal-process) jidher li r-rikorrenti ma kienx prezenti, il-Qorti notat li l-Avukat difensur kien ghadu ma gabarx il-kopja tal-process minnu ordnata u sussegwentament "il-kawza differita ghall-24 ta` Settembru, 2014 f`12.00 p.m. ghas-sentenza".

11. Illi nonostante dawn il-verbali, ir-rikorrent umilment jissottometti li ghalkemm l-Onorabbli Qorti attribwit id-dewmien lilu, bhalma gia sui indikat, l-ufficjal prosekutur li kien assenti ghal erbatax –il darba. Ir-rikorrenti umilment jissottolinea li fis-seduta ta` nhar is-16 ta` Jannar 2014, ghalkemm ir-rikorrenti kien prezenti u l-ufficjal prosekutur naqas ghal darba ohra li jkun prezenti, l-Onorabbli Qorti sehqet illi "Il-kontroordni hareg fis-sena 2011. Il-Qorti tinnota li ghal hafna drabi l-imputat ma kienx qed jidher". Bir-rispett dovut lejn l-Onorabbli Qorti, f`okkazzjoni fejn l-ufficjal prosekutur rega` ghal darba ohra naqas milli jkun prezenti, tghat canfira lir-rikorrent li kien prezenti.

12. Illi minn dan kollu jissussegwi li fis-seduta tat-30 ta` April 2014, l-Onorabbli Qorti ddiferit il-kawza ghat-trattazzjoni finali minghajr ma` r-rikorrent kien assistit. Fi tmintax –il seduta, din kienet biss it-tieni darba li l-ufficjal prosekutur kien prezenti ghas-seduta flimkien mar-rikorrenti, (fid-darba ta` qabel, l-Avukat difensur kien imsiefer) u ghalhekk umilment jissottometti li ma kienx hemm dawk ir-ragunijiet validi sabiex l-Onorabbli Qorti tiddiferixxi ghat-trattazzjoni finali.

13. Illi iktar importanti minn hekk, ir-rikorrent umilment jenfasizza li fis-seduta ta` nhar it-30 ta` April 2014, huwa ma kienx fil-pozizzjoni li jipprezenta d-difiza tieghu, u dan ghas-semplici raguni li ma kienx assistit mill-Avukat tal-fiducja tieghu, dritt Konvenzjonali u Kostituzzjonali tieghu.

14. Illi f`dan l-istadju, l-Onorabbli Qorti, minghajr ebda raguni valida ddiferiet il-kawza ghat-trattazzjoni finali u ghalhekk ghalqitlu l-provi tieghu, bil-konsegwenza li pprekludietu milli jipprezenta d-difiza tieghu, dritt sagrosant sancit mill-Artikolu 6(3) tal-Konvenzjoni Ewropea.

15. Illi sussegwentament, fis-seduta ta` nhar il-5 ta` Gunju 2014, l-Onorabbli Qorti ddiferiet il-kawza ghas-sentenza u dan minghajr ma` r-rikorrent kien prezenti sabiex ghalmenu jaghmel is-sottomissjonijiet finali tieghu.

16. Illi finalment ir-rikorrent jikkontendi li dan il-punt gie anke diskuss fis-sottomissjonijiet quddiem il-Qorti tal-Appell Kriminali, izda fis-sentenza taghha, l-istess Onorabbli Qorti ddecidiet li tiskarta kompletament dan il-punt billi ma saret ebda referenza ghalih fis-sentenza finali.

*17. Illi dan kollu premess juri li kemm il-Qorti tal-Magistrati (Malta) kif ukoll il-Qorti tal-Appell Kriminali ma kkonducewx smiegh xieraq tal-kaz, u dan peress li r-rikorrent gie prekluz milli jiddefendi ruhu. Ghalhekk, ir-rikorrent sofra lezzjoni tad-dritt ghal smigh xieraq iggarantit mill-**Artikolu 6(3)** tal-Konvenzjoni Ewropea (Kap 319)*

Ghaldaqstant ir-rikorrent jitlob bir-rispett illi din l-Onorabbli Qorti joghgobha –

1. Taghmel dawk l-ordnijiet, tohrog dawk l-atti u taghti dawk id-direttivi li tqis xierqa sabiex twettaq jew tizgura t-twettiq tad-drittijiet fundamentali tar-rikorrent.

2. Tiddikjara li r-rikorrent sofra vjolazzjoni ta` l-Artikolu 6(3) tal-Konvenzjoni Ewropea billi ma kellux smiegh xieraq.

3. *Thassar is-sentenza karcerarja komplessiva ta` hames snin u sitt xhur, u ghall-multa ta` hamest elef Euro (€5,000) imposta bis-sentenza*

tal-Qorti ta` l-Appell Kriminali fl-ismijiet "Il-Pulizija vs. Victor (Victor Joseph) Buttigieg" (Appell 369/2014).

4. Tiddikjara li kien hemm dewmien eccessiv fil-proceduri kriminali mmexxija kontra tieghu u ghalhekk ir-rikorrent sofra vjolazzjoni ta` l-Artikolu 6(1) tal-Konvenzjoni Ewropea minhabba li nkiser ir-"reasonable time requirement".

5. Tordna l-hlas ta` kumpens xieraq.

Bl-ispejjez kontra l-intimat.

Rat ir-risposta li pprezentaw l-intimati flimkien fit-3 ta` Ottubru 2017 u li taqra hekk :-

Illi fil-kawza odjerna r-rikorrenti qieghed jitlob lil din l-Onorabbli Qorti sabiex tiddikjara li hu sofra lezjoni tad-drittijiet fundamentali tieghu kif protetti bl-Artikolu 6 tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem minhabba dewmien irragjonevoli fil-proceduri fl-ismijiet "Il-Pulizija vs. Victor Buttigieg" decizi mil-Qorti tal-Appell Kriminali fit 2 ta` Frar 2017.

Illi esponenti jirrespingu l-pretensjonijiet kollha tar-rikorrenti bhala nfondati fil-fatt u fid-dritt.

Illi huwa pacifiku kif konstatat anke mill-gurisprudenza lokali kif ukoll dik tal-Qorti Ewropea tad-Drittijiet tal-Bniedem li l-fatturi li principalment ghandhom jittiehdu in konsiderazzjoni sabiex jigi determinat jekk is-smiegh ta` process eccediex il-parametri tas-smiegh fi zmien ragjonevoli huma l-komplessita` tal-kaz, l-agir tal-partijiet fil-kawza u l-agir ta` l-awtorita` jew awtoritajiet relevanti – f`dan il-kaz l-agir ta` awtorita` gudizzjarja. Ghalhekk, skond il-gurisprudenza assodata kemm nostrali kif ukoll dik Ewropeja, sabiex Qorti tasal ghal konkluzjoni dwar jekk kienx hemm ksur tad-dritt ta` smiegh xieraq fi zmien ragonevoli, il-procedura gudizzjarja mertu tal-allegazzjonijiet trid tkun ezaminata fl-assjem taghha u ma jistax ikun ezaminat biss element jew parti wahda minn din il-procedura.

Ma jidhirx li kien hemm xi nuqqas lampanti mill-partijiet involuti li wassal ghal dewmien biex il-kawza tigi deciza u wisq inqas ma` kien hemm nuqqas mill-esponent.

Illi hu accettat illi ma hemm l-ebda `time limit` li Qorti trid bilfors tosserva fil-kors tal-proceduri quddiemha ghax altrimenti l-interessi tal-gudizzja jigu pregudikati minhabba ghaggla zejda u inkonsulta.

Illi sabiex dina l-Onorabbli Qorti tkun tista` tikkonsidra b`mod serju t-talba tar-rikorrenti jrid jigi ppruvat illi mhux biss il-kaz dam pendenti izda li tali dewmien huwa wiehed kapriccuz u ntiz biex jizvantaggahom fit-tgawdija tad-drittijiet taghhom skond il-Ligi.

Illi finalment sabiex jigi determinat jekk kienx hemm dewmien irragjonevoli, kull kaz irid jigi studjat fuq il-mertu tieghu u fil-kumplessivita` tieghu u fil-kaz odjern l-esponent jeccepixxi li mill-assjem tal-proceduri kriminali in dezamina ghalkemm il-kaz ha numru ta` snin sakemm gie finalment deciz ma kienx hemm dewmien irragjonevoli.

Illi minghajr ebda pregudizzju ghall-premess u ghall-gieh tal-argument biss, jekk din l-Onorabbli Qorti ssib li verament kien xi dewmien irragjonevoli u allura tqis li ghandha taghti xi forma ta` rimedju lir-rikorrenti, dan ir-rimedju ghandu jkun biss ta` kumpens bhala danni morali u mhux ta` danni materjali. Fi kwalunkwe kaz zgur li t-talba tar-rikorrenti sabiex din l-Onorabbli Qorti thassar is-sentenza moghtija mil-Qorti tal-Appell Kriminali hija talba irragjonevoli. Ir-rikorrent ma jistghax jippretendi li juza dawn il-proceduri biex jipprova jahrab minn piena li giet imposta b`mod legittimu fil-konfront tieghu.

Ghalhekk u fid-dawl tas-suespost l-allegazzjonijiet u t-talbiet tar-rikorrent ghandhom jigu michuda bl-ispejjez kontra tieghu.

Salvi eccezzjonijiet ulterjuri.

Bl-ispejjez.

Semghet ix-xiehda u rat il-provi l-ohra li tressqu fil-kors tal-kawza.

Rat illi wara digriet taghha tal-5 ta` Dicembru 2017, kienet ordnata l-allegazzjoni tal-process tal-kawza fl-ismijiet : *Il-Pulizija vs Victor Buttigieg* li kienet deciza mill-Qorti tal-Appell Kriminali fit-2 ta` Frar 2017 liema atti l-Qorti rat.

Rat in-noti ta` osservazzjonijiet.

Rat illi l-kawza thalliet ghas-sentenza ghal-lum.

II. Xiehda

Ir-rikorrent xehed illi huwa kien imur il-Qorti ghall-udjenzi tal-kawza tieghu. L-ispettur li kien imexxi l-kaz kien Stephen Gatt ("**Gatt**") – illum Supretendent. Dan ghamel zmien ma jattendix ghall-udjenzi tal-kawza.

Ighid ir-rikorrent illi Gatt kien qallu li *kien ser jirrangah* ghax kien habib ta` l-Ispettur Mario Bonnici.

Skont ir-rikorrent, kien jigi trattat hazin.

Kompla jixhed illi kien hemm diversi okkazjonijiet fejn l-avukat tieghu li kien Dr. Edward Gatt ma kienx jidher ghalih billi ghamel zmien marid.

Qal illi huwa ta l-inkariku lill-Avukati Giglio u Tonna Lowell izda dawn ma attendewx ghall-udjenzi.

Kompla jghid illi l-Magistrat tal-kaz li kienet Dr Miriam Hayman iddifferiet il-kawza tieghu diversi drabi minhabba mard li kellha fil-familja.

Imbaghad beda l-ispettur/prosekutur jitlob li jiddifferixxi s-seduti.

Jixhed illi huwa kien imur jiffirma kuljum l-ghassa tal-pulizija izda qatt ma nghata riferta.

Ighid illi hargu mandati ta` arrest kontra tieghu ntortament.

Fisser illi meta dahal fix-xena Dr Edward Gatt, il-Magistrat Hayman ordnat li hu jhejji d-difiza.

Ighid illi okkazjoni minnhom mar ghas-seduta biex itella` l-provi u l-Magistrat avzatu li l-kawza kienet thalliet ghas-sentenza.

Ighid li baqa` ma xehed qatt.

Lanqas thalla jressaq xhieda.

Xehed illi Qal li meta kellha ssir it-trattazzjoni finali, huwa kellem lill-Av. Gatt. Dan qallu li l-Magistrat kienet avzatha u li ma kien ser isir xejn. Huwa mar xorta minghajr l-avukat, izda l-kawza xorta saret, u thalliet ghas-sentenza.

Qal illi fl-bidu tal-kawza l-ewwel ghall-udjenzi ma bediex jidher l-Ispettur. Imbaghad bdiet tiddifferixxi l-Magistrat. In segwitu ma bediex jidher l-Av. Gatt. Huwa spicca la xehed u lanqas tella` provi. Ghalhekk il-kawza kienet deciza kotra tieghu. Baqa` mistaghgeb b`li kien deciz.

Stqarr li appella mis-sentenza. L-appell kitbu Av. Gatt ghalkemm ittratta Av Abela. Huwa sahaq illi bil-mod kif kien kondott il-kaz tieghu ma saritx gustizzja mieghu. L-appell tieghu mar dezert ghax hu marx ghall-appell billi dak iz-zmien marad b`ghonqu u ghamel operazzjoni kbira.

Insista li l-Ispettur Stephen Gatt kien qallu kemm-il darba li lilu ried 1ipattihielu. Spjega li sa anke ried li l-kaz tieghu jmur quddiem guri izda l-Magistrat Micallef Trigona qal lill-Ispettur li dak ma kienx kaz ta` guri.

Fil-**kontroezami**, xehed illi diversi kienu l-udjenzi fejn kien assenti l-avukat tieghu. Ghalhekk huwa kien qisu m`ghandux avukat. Kien instab hati ta` disprezz lejn l-awtorita` tal-qorti meta hu naqas li jidher ghall-kawza. Meta pprova jispjega li ma kienx mar ghaliex ma kienx nghata referta, il-Magistrat haditha mieghu u wahhlitu multa. Qal lill-avukat biex jikkontesta l-multa izda l-avukat qallu biex ihallasha u hekk sar.

Stqarr illi meta kienu qed ihejju d-difiza tieghu, l-Ispettur Gatt ma kienx qed jattendi u l-Magistrat bdiet tiddifferixxi fit-tul.

Ikkonferma li l-appell tieghu kien dwar il-piena. Huwa dehrlu li kellu jehel inqas billi wehel hames snin u nofs habs u multa ghal tliet grammi droga.

L-Assistent Kummissarju tal-Pulizija Stephen Gatt xehed illi fiz-zmien ta` l-arrest ta` r-rikorrent huwa kien Spettur fit-Taqsima ta` Kontra d-Droga. Huwa mexxa l-kaz tar-rikorrent quddiem il-Qorti tal-Magistrati. Fil-kors tas-smigh tal-kaz, lahaq Supretendent. Meta nghatat is-sentenza, kien diga` Assistent Kummissarju.

Xehed illi fid-9 ta` Novembru 2008 wara nofsinhar, dahlet telefonata li qed isir traffikar ta` droga fiz-zona tat-*trade fair*. Kien fatt maghruf illi dawk l-inhawi kienu qeghdin iservu ghat-traffikar tad-droga billi kien hemm ambjenti mitluqa. Huwa baghat membri tal-korp biex jinvestigaw. Kien arrestat ir-rikorrent.

Stqarr illi l-kawza kienet damet tinstema` u kien hemm drabi fejn huwa ma kienx prezenti ghall-udjenzi. Kien hemm drabi fejn huwa kien imsiefer fuq xoghol peress li huwa l-Head tas-Siren Interpol, Europol u l-PNR u ghalhekk ikollu jmur barra jirrapprezenta l-pajjiz. Kien hemm okkazjonijiet fejn ma kienx jinstab ir-rikorrent biex jattendi l-qorti.

Dwar l-assenzi, ighid li mhux dejjem il-qorti kienet tkun infurmata. Bhala regola pero` huwa kien jattendi ghall-udjenzi. Huwa mexxa l-prosekuzzjoni mill-bidu sat-tmiem. Dwar l-attendenza tar-rikorrent, kien hemm anke okkazzjoni fejn hareg mandat ta` arrest kontra tieghu ghaliex baqa` ma deherx.

Stqarr illi r-rikorrent ma qalx il-verita meta xehed fil-kawza tal-lum. Cahad li qatt semma lill-Ispettur Bonnici mieghu. Cahad li hedded lir-rikorrent. Ir-rikorrent qatt ma dahal fid-dar tieghu. Cahad li qatt kien habib tar-rikorrent. Jista` jkun li rah xi darba fil-festa tan-Naxxar u sellimlu b` rasu, bhal ma jsellem lil kulhadd.

Sahaq illi waqt il-kawza kriminali kienu rispettati d-drittijiet kollha tar-rikorrent. Dan ghamel zmien nieqes u ma ffirmax il-*bail book* ghax

kien l-isptar, fatt li sar jaf bih wara xi zmien. Meta hareg mill-isptar, huwa cempel lir-rikorrent biex jipproduci certifikat mediku sabiex dan jitqieghed mal-*bail book*.

Xehed illi waqt is-seduti, il-Magistrat dejjem tat lir-rikorrent id-data tad-differiment ta` wara. Kien ghalhekk li hareg il-mandat ta` arrest meta ma deherx ghall-kawza u kien anke wehel multa ghal disprezz tal-qorti. Gieli riferta u gieli nghata d-data verbalment. Meta r-rikorrent ma kienx jidher, kien jigi nfurmat meta kien imur l-Ghassa. Ir-rikorrent dejjem obda.

Fisser illi huwa qatt ma kien avzat bil-miktub jew bil-fomm mir-rikorrent li dan ried iressaq xhieda in difesa. Fil-kawza baqa` ma tax ix-xiehda tieghu, ghazla tieghu.

Qal illi kien hemm okkazjoni fejn ir-rikorrent sabu fl-ufficju tieghu u qallu li huwa kien it-tifel barra z-zwieg ta` Tumas Fenech, haga li sar jafha minghand ommu qabel mietet. Qallu li ried ifittex ghal kull ma kellu jedd ghalih. Huwa qal lir-rikorrent sabiex kull ma jirnexxieu jikseb ma jahraqhomx fid-droga. Din kienet l-ahhar darba li kellem lir-rikorrent. Kienu fil-bitha tas-CID.

Fil-**kontroezami** huwa xehed li r-rikorrent huwa maghruf mal-Pulizija.

Jiftakar li waqt il-kawza kien sar access ghall-fini ta` verifika ta` distanzi minn playing field mill-post fejn instabet id-droga. Kien prezenti l-Perit Valerio Schembri.

Huwa cahad li ghamel xi haga min-naha tieghu biex il-kaz tar-rikorrent imur guri. Decizjonijiet bhal dawk jittiehdu mill-Avukat Generali.

Xehed li certa tul sabiex tkun deciza l-kawza kien imputabbli ghal diversi fatturi, mhux biss ghall-assenza tieghu. Ikkonferma li fl-ahhar seduta qabel mal-kawza thalliet ghas-sentenza, ma saritx trattazzjoni da parti tad-difiza.

II. L-*iter* tal-kawza kriminali

Il-kawza kriminali kontra r-rikorrent kienet deciza mill-Qorti tal-Appell Kriminali fit-2 ta` Frar 2017. Kienu esebiti l-atti li ghandhom in-nru 369/14.

Minn dawk l-atti, jirrizulta dan li gej :-

Fit-12 ta` Novembru 2008 ir-rikorrent tressaq b`arrest, mixli *inter alia* b`akkuzi relatati ma` l-pussess u t-traffikar ta` droga u recidiva (fol 1 sa 3 ta` dawk l-atti). Ghall-udjenza, dehru l-ufficjal prosekutur u r-rikorrent li kien assistit mill-Av. Joseph Giglio (fol 7 tal-atti).

Fis-seduta tat-18 ta` Novembru 2008, deher l-ufficjal prosekutur u r-rikorrent li kien assistit mill-Av. Stephen Tonna Lowell. Saret korrezzjoni fl-akkuza. Inqrat l-akkuza kif korretta, u kienet mahlufa mill-gdid. Sar l-ezami mill-gdid tal-imputat. Kienu prezentati xiehda guramentati kif ukoll xehdu persuni viva voce. Il-kaz baqa` ghas-27 ta` Novembru 2008 (fol 22 u 23 tal-atti).

Fis-seduta tas-27 ta` Novembru 2008, deher l-ufficjal prosekutur u l-imputat assistit mill-Av. Joseph Giglio. Xehed Andrew Depasquale. Il-kawza kienet differita ghat-2 ta` Dicembru 2008. (fol 81)

Fis-seduta tat-2 ta` Dicembru 2008, deher l-ufficjal prosekutur u l-imputat assistit mill-Av. Stephen Tonna Lowell. Kien prezentat il-proces verbal u xehdu zewg persuni. Inghata d-digriet tal-*prima facie*. Il-kawza baqghet ghat-13 ta` Jannar 2009. (fol 95)

Fit-18 ta` Novembru 2008, l-imputat b`rikors talab il-helsien mill-arrest (fol 121). Il-Qorti rriservat li tipprovdi wara li tisma` x-xiehda ta` Joseph Bugeja (fol 131).

Fl-udjenza tat-13 ta` Jannar 2009, deher is-Supretendent Stephen gatt ghall-Prosekuzzjoni u l-imputat assistit mill-Av. Stephen Tonna Lowell. Instemghu diversi xhieda. (fol 131)

Fl-udjenza ta` wara dehru s-Supretendent Stephen Gatt u l-imputat assistit minn Dr Stephen Tonna Lowell u minn Dr Joseph Giglio.

Instemghu tlett xhieda. Il-kawza giet differita ghat-23 ta` Jannar 2009. (fol 154)

Fid-9 ta` Jannar 2009, l-imputat ipprezenta rikors iehor ghall-helsien mill-arrest (fol 170).

Fit-23 ta` Jannar 2009, deher is-Supretendent Stephen Gatt u l-imputat assistit minn Dr Stephen Tonna Lowell. Inghata digriet dwar il-helsien mill-arrest. Il-kawza giet differita ghas-6 ta` Marzu 2009. (fol 179)

Ghas-seduta tas-6 ta` Marzu 2009, deher is-Supretendent Stephen Gatt u l-imputat assistit minn Dr Stephen Tonna Lowell. Il-kawza thalliet ghas-17 ta` April 2009. (fol 191)

Mis-17 ta` April 2009, il-kawza baqghet ghad-29 ta` April 2009. (fol 201)

Fis-seduta tad-29 ta` April 2009, deher l-imputat assistit minn Dr Joseph Giglio. Sar il-qari tar-rinviju u l-kawza baqghet differita ghad-9 ta` Gunju 2009. (fol 203)

Fid-9 ta` Gunju 2009, deher l-Ispettur Spiridione Zammit li talab differiment. Il-kawza baqghet differita ghas-26 ta` Gunju 2009. (fol 207)

Fis-26 ta` Gunju 2009, ma deher hadd. Il-kawza giet differita ghat-30 ta` Lulju 2009 ghan-notifika ta` l-imputat. (fol 209)

Fil-11 ta` Awissu 2009, rega` ma deher hadd u l-kawza giet differita ghall-15 ta` Settembru 2009.(fol 213)

L-istess gara fil-15 ta` Settembru 2009, u l-kawza thalliet ghat-30 ta` Settembru 2009. (fol 216)

Gara l-istess fit-30 ta` Settembru 2009, u l-kawza giet differita ghall-11 ta` Novembru 2009. (fol 219)

Fil-11 ta` Novembru 2009, deher is-Supretendent Stephen Gatt u l-imputat assistit minn Dr Giannella Caruana Curran. Xehed Martin Bajada. Il-kawza thalliet ghall-15 ta` Dicembru 2009. L-imputat kien notifikat fl-awla. (fol 223)

Fis-seduta tal-15 ta` Dicembru 2009, ma deher hadd. Il-kawza marret ghall-20 ta` Jannar 2010. Kienet ordnata komunika lis-Supretendent Stephen Gatt. (fol 290)

Minhabba ragunijiet personali tal-Magistrat sedenti, is-seduta ta` l-20 ta` Jannar 2010 thalliet ghat-28 ta` Jannar 2010. (fol 295)

Fis-seduta tat-28 ta` Jannar 2010, deher is-Supretendent Stephen Gatt li pprezenta certifikat mediku ta` l-imputat. Il-kawza thalliet ghat-2 ta` Marzu 2010. (fol 297).

Fit-2 ta` Marzu 2010, deher is-Supretendent Stephen Gatt u l-imputat mhux assistit. Xehed l-Ispizjar Mario Mifsud. Il-kawza kienet differita ghall-gheluq tal-provi tal-prosekuzzjoni ghat-22 ta` Marzu 2010. L-imputat kien notifikat fl-awla. (fol 302)

Fl-24 ta` Marzu 2010, dehru s-Supretendent Gatt u l-imputat. Il-prosekutur informa lill-Qorti li kien sprovvist mir-riferti tax-xhieda. Il-kawza giet differita ghad-29 ta` April 2010. L-imputat kien notifikat fl-awla. (fol 352)

Fid-29 ta` April 2010, is-seduta kienet differita ghat-8 ta` Gunju 2010 minhabba ndisposizzjoni tal-Magistrat sedenti. (fol 356)

Fit-8 ta` Gunju 2010, dehru s-Supretendent Gatt u l-imputat li ma kienx assistit. Insemghu erba` xhieda nkluz is-Supt Gatt innifsu. Il-kawza baqghet ghall-14 ta` Lulju 2010. (fol 359)

Fl-14 ta` Lulju 2010, deher l-Ufficjal Prosekutur u l-imputat mhux assistit. Issejjah Av. Roberto Montaldo ghall-imputat izda ma deherx. Instemghu tliet xhieda tal-Prosekuzzjoni. Il-kawza kienet differita ghall-5 ta` Awissu 2010. L-imputat kien notifikat fl-awla. (fol 400)

Fil-5 ta` Awissu 2010, deher l-Ufficjal Prosekutur u l-imputat mhux assistit. Xehed is-Supt Carmelo Magri. Il-kawza baqghet ghall-15 ta` Settembru 2010. L-imputat kien notifikat fl-awla ghall-udjenza ta` wara. (fol 407)

Fil-15 ta` Settembru 2010, deher l-Ufficjal Prosekutur u l-imputat li ma kienx assistit. Il-kawza giet differita ghas-seduta tal-21 ta` Ottubru 2010. (fol 412)

Fis-seduta tal-21 ta` Ottubru 2010, ma deher hadd. Il-kawza giet differita ghat-30 ta` Novembru 2010. (fol 415)

L-istess gara fl-udjenza tat-30 ta` Novembru 2010 (fol 419) u ta` warajha (fol 428).

Fis-seduta tat-18 ta` Frar 2011, deher l-Ufficjal Prosekutur u l-imputat mhux assistit. Xehed il-Perit Valerio Schembri. L-imputat kien notifikat seduta stante bir-rikors ta` Christine Sacco, bir-risposta tal-Avukat Generali, u bid-digrieti relattivi. Il-kawza marret ghall-1 ta` Marzu 2011. L-imputat kien notifikat fl-awla. (fol 431)

Fl-1 ta` Marzu 2011, ma deher hadd. Il-kawza giet differita ghall-5 ta` April 2011. (fol 450)

Fil-5 ta` April 2011, deher l-Ufficjal Prosekutur u l-imputat mhux assistit. Il-prosekuzzjoni iddikjarat li ma kellhiex aktar provi xi tressaq. Il-kawza baqghet ghas-17 ta` Mejju 2011 (fol 454).

Fis-17 ta` Mejju 2011, deher l-Ufficjal Prosekutur u l-imputat assistit mill-Av. Edward Gatt li ddikjara li kien qieghed jassumi l-patrocinju ta` l-imputat. Il-kawza giet differita ghas-6 ta` Lulju 2011 ghal provi tad-difiza. (fol 459)

Fis-6 ta` Lulju 2011, deher l-Ufficjal Prosekutur li nforma l-Qorti li l-imputat ma kienx instab. Il-kawza giet differita ghall-21 ta` Ottubru 2011. (fol 460)

Fil-21 ta` Ottubru 2011, deher biss Dr Edward Gatt, waqt li l-prosekutur u l-imputat ma dehrux. Il-kawza giet differita ghan-notifika ta` l-imputat ghall-24 ta` Novembru 2011. (fol 462)

Fl-24 ta` Novembru 2011, deher l-imputat assistit minn Dr Edward Gatt. L-ufficjal prosekutur ma deherx. Il-kawza giet differita ghall-15 ta` Frar 2012. (fol 463)

Fil-15 ta` Frar 2012, deher biss Dr Edward Gatt. Il-Qorti ordnat lill-ufficjal prosekutur sabiex jidher ghas-seduta li jmiss u jassigura li l-imputat ikun notifikat. Il-kawza baqghet ghat-30 ta` Marzu 2012. (fol 464)

Fit-30 ta` Marzu 2012, ma deher hadd. Il-kawza giet differita ghas-17 ta` Mejju 2012 (fol 465) fejn gara l-istess (fol 466).

Fis-26 ta` Gunju 2012, deher l-ufficjal prosekutur u l-imputat. Billi d-difensur tal-imputat kien imsiefer, il-kawza thalliet differita ghall-10 ta` Ottubru 2012. L-imputat kien notifikat fl-awla. (fol 467)

Fl-10 ta` Ottubru 2012, ma deher hadd. Il-kawza baqghet differita ghas-27 ta` Novembru 2012 (fol 469) L-istess gara fl-udjenza ta` wara (fol 470) u fl-udjenza ta` wara dik (fol 471).

Fid-19 ta` April 2013, il-Qorti kienet infurmata li l-ufficjal prosekutur kien imsiefer. Ghalhekk il-kawza baqghet ghat-23 ta` Mejju 2013 (fol 472) fejn rega` ma deher hadd (fol 473).

Ghas-seduta tas-26 ta` Settembru 2013, intalab differiment mill-prosekuzzjoni b`rikors illi l-qorti laqghet. Il-kawza kienet differita ghall-5 ta` Novembru 2013 (fol 476) ghal liema udjenza ma deher hadd u ghalhekk il-kawza thalliet ghas-16 ta` Jannar 2014 (fol 477)

Fis-16 ta` Jannar 2014, deher l-imputat assistit minn Dr Edward Gatt waqt li l-ufficjal prosekutur ma deherx. Il-kawza thalliet ghall-25 ta` Marzu 2014. L-imputat kien notifikat fl-awla (fol 478)

Fil-25 ta` Marzu 2014, l-imputat ma deherx. Kien ordnat il-hrug ta` mandat ta` arrest kontra tieghu u kien immultat EUR 200 ghal disprezz. Il-kawza baqghet ghat-30 ta` April 2014 ghall-provi tad-difiza (fol 479)

Fit-30 ta` April 2014, dehru l-ufficjal prosekutur u l-imputat. Dr Edward Gatt ma deherx. Il-Qorti nnotat li l-kawza kienet ilha mhollija ghall-provi tad-difiza sa mill-2011, fatt dan li qatt ma vverifika ruhu. Il-kawza ghalhekk thalliet ghat-trattazzjoni finali ghall-5 ta` Gunju 2014. L-imputat kien notifikat fl-awla. (fol 480)

Fil-5 ta` Gunju 2014, deher il-prosekutur izda l-imputat ma deherx. Il-kawza thalliet ghad-decizjoni ghall-24 ta` Settembru 2014 (fol 481).

Fl-24 ta` Settembru 2014, dehru l-prosekutur u l-imputat. Il-kawza kienet deciza (fol 487). L-imputat talab is-sospensjoni tal-ezekuzzjoni tas-sentenza. Il-Qorti laqghet it-talba (fol 506 u 507).

Fl-1 ta` Ottubru 2014, ir-rikorrent odjern appella mis-sentenza (fol 508 sa 512). L-appell kien dwar il-piena.

L-appell kien appuntat ghad-19 ta` Ottubru 2015 (fol 513). L-appellant ma deherx. Il-Qorti kienet infurmata li l-appellant kien jinsab l-isptar. Is-smigh thalla ghall-25 ta` Jannar 2016 (fol 514).

Fis-seduta tal-25 ta` Jannar 2016, l-appellant ma deherx. Ghall-Avukat Generali deher Dr Kevin Valletta waqt li ghall-appellant deher Dr Alfred Abela li ddikjara li kien qed l-patrocinju tieghu. Dr Abela pprezenta certifikat mediku li juri li l-appellant kien jinsab rikoverat l-isptar, u li ser ikun licenzjat fit-2 ta` Frar 2016. Wara kellu bzonn erba` gimghat ta` konvalexxenza. L-appell thalla ghas-7 ta` April 2016 (fol 524)

Fis-7 ta` April 2016, deher l-appellant assistit minn Dottor Alfred Abela u Dr Kevin Valletta ghall-Avukat Generali. Wara li l-appell kien trattat, thalla ghad-decizjoni ghat-23 ta` Gunju 2016. (fol 521)

Id-decizjoni ma nghatatx fit-23 ta` Gunju 2016 u l-kaz thalla ghat-28 ta` Novembru 2016. (fol 536)

Fit-28 ta` Novembru 2016, l-appellant ma deherx. Billi kienu prezentati certifikat mediku li kien juri l-appellant ma kienx f`qaghda li jattendi l-qorti (fol 539) il-kaz thalla ghad-decizjoni ghall-15 ta` Dicembru 2016 (fol 540).

Fil-15 ta` Dicembru 2016, l-appellant ma deherx u rega` kien prezentat certifikat mediku mill-Av. Alfred Abela. L-appell thalla ghas-sentenza ghad-9 ta` Jannar 2017. (fol 542)

Fid-9 ta` Jannar 2017, l-appellant ma deherx ghalkemm kien debitament notifikat. L-appell kien dikjarat dezert.

Fit-30 ta` Jannar 2017, saret seduta wara rikors bl-urgenza ta` l-appellant. L-appellant ma deherx ghalkemm kien rapprezentat mill-Av. Alfred Abela. Hareg mandat ta` akkumpanjament kontra l-appellant ghas-seduta tat-2 ta` Frar 2017.

Fit-2 ta` Frar 2017, l-appell kien deciz bis-sentenza tal-Ewwel Qorti tkun ikkonfermata.

IV. <u>L-ilmenti tar-rikorrent</u>

Ir-rikorrent ipprezenta din il-kawza aktar minn sena u xahar wara li kien deciz l-appell.

Wara li bl-ewwel talba, jitlob l-intervent tal-Qorti ghall-fini tal-harsien tal-jeddijiet fondamentali tieghu,

ir-rikorrent jilmenta illi fil-kawza kriminali :

(i) garrab ksur tal-Art 6(3) tal-Konvenzjoni Ewropea ghad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali (**<u>il-Konvenzjoni</u>**) bil-vjolazzjoni ghad-dannu tieghu tal-principji ta` l-*equality of arms* u tal-*adversarial proceedings.* Ghalhekk it-tieni u t-tielet talbiet ; u

(ii) garrab ksur ta` l-Art 6(1) tal-Konvenzjoni minhabba dewmien fil-konkluzjoni tal-process kriminali. Ghalhekk ir-raba` u l-hames talbiet.

a) <u>L-Art 6(3) tal-Konvenzjoni</u>
(It-tieni u t-tielet talbiet)

Id-disposizzjoni tghid :-

> *Kull min ikun akkuzat b`reat kriminali ghandu d-drittijiet minimi li gejjin :*
>
> *(a) li jkun infurmat minnufih, b`lingwa li jifhem u bid-dettal, dwar in-natura u r-raguni tal-akkuza kontra tieghu ;*
>
> *(b) li jkollu zmien u facilitajiet xierqa ghall-preparazzjoni tad-difiza tieghu ;*
>
> *(c) li jiddefendi ruhu persunalment jew permezz ta` assistenza legali maghzula minnu stess jew, jekk ma jkollux mezzi bizzejjed li jhallas l-assistenza legali, din ghandha tinghata lilu b`xejn meta l-interessi tal-gustizzja jehtiegu hekk ;*
>
> *(d) li jezamina jew li jara li jigu ezaminati xhieda kontra tieghu u li jottjeni l-attendenza u l-ezami ta` xhieda favur tieghu taht l-istess kundizzjonijiet bhax-xhieda kontra tieghu ;*
>
> *(e) li jkollu assistenza b`xejn ta` interpretu jekk ma jkunx jifhem jew jitkellem il-lingwa uzata fil-qorti.*

i) <u>L-*equality of arms*</u>

Fil-ktieb intitolat **<u>Protecting the right to a fair trial under the European Convention on Human Rights</u>** (Council of Europe Human Rights Handbooks - 2012), l-awturi **<u>Dovydas Vitkauskas u Grigoriy Dikov</u>** ifissru l-principju tal-*equality of arms* kif se jinghad :

> *"Equality of arms" requires that each party be afforded a reasonable opportunity to present its case under the conditions that do not place it at a substantial disadvantage vis-à-vis another party (Brandstetter).*

While "equality of arms" essentially denotes equal procedural ability to state the case, it usually overlaps with the "adversarial" requirement – the latter in accordance with the rather narrow understanding of the Court concerning the access to and knowledge of evidence – and it is not clear on the basis of the Court`s consistent case-law whether these principles in fact have independent existence from each other (but see Yvon v. France, §§29-40). It can safely be said that issues with non-disclosure of evidence to the defence24 may be analysed both from the standpoint of the requirement of adversarial character of the proceedings (ability to know and test the evidence before the judge) and the "equality of arms" guarantee (ability to know and test evidence on equal conditions with the other party).

In some civil cases it would not appear inappropriate to also look at the question of the ability to access and contest evidence as part of the general requirement of "access to a court" (McGinley and Egan v. the United Kingdom). In Varnima Corporation International S.A. v. Greece (§§28-35), for instance, the domestic courts applied two different limitation periods to the respective claims of each party (the applicant company and the state), disallowing the applicant`s claim while admitting the one filed by the authorities).

A minor inequality which does not affect fairness of the proceedings as a whole will not infringe Article 6 (Verdú Verdú v. Spain, §§23-29). At the same time, as a general rule, it is for the parties alone to decide whether observations filed by another participant in the proceedings call for comment, no matter what actual effect the note might have had on the judges (Ferreira Alves (No. 3) v. Portugal, §§35-43).

While there is no exhaustive definition as to what are the minimum requirements of "equality of arms", there must be adequate procedural safeguards appropriate to the nature of the case and corresponding to what is at stake between the parties. These may include opportunities to: a) adduce evidence, b) challenge hostile evidence,

and c) present arguments on the matters at issue (H. v. Belgium, §§49-55).

The opposing party must not be given additional privileges to promote its view, such as the right to be present before a court while the other party is absent (Borgers v. Belgium, §§24-29).

The presence of a prosecutor in civil proceedings opposing two private parties can be justified if the dispute affects also the public interest or if one of the parties belongs to a vulnerable group in need of special protection (Batsanina v. Russia, §§20-28).

The requirement of "equality of arms" enjoys a significant autonomy but is not fully autonomous from the domestic law since Article 6 takes into account the inherent differences of accusatorial systems – for instance, to the extent that it is for the parties to decide in that system which evidence to present or witnesses to call at trial – and inquisitorial systems, where the court decides what type and how much of the evidence is to be presented at trial. An applicant in an inquisitorial system, for instance, cannot rely on the principle of the "equality of arms" or Article 6 §3d in order to call any witness of his choosing to testify at trial (Vidal).

The case-law on the question of experts is rather complicated, because on the one hand they appear to be treated as any other witness (Mirilashvili); on the other, certain additional requirements of neutrality may be levelled at the experts who play a "more substantive procedural role" than a mere witness (Boenisch v. Austria, §§28-35; Brandstetter, §§41-69).26

It may be stated that there is no unqualified right, as such, to appoint an expert of one`s choosing to testify at trial, or the right to appoint a further or alternative expert. Moreover, the Court has traditionally considered that there is no right to demand the neutrality of a court-appointed expert as long as that expert does not enjoy any

procedural privileges which are significantly disadvantageous to the applicant (Brandstetter).

The requirement of neutrality of official experts, however, has been given more emphasis in the Court`s recent case-law, especially where the opinion of the expert plays a determining role in the proceedings (Sara Lind Eggertsdóttir v. Iceland, §§55-41). The right to appoint a counter-expert may appear where the conclusions of the original expert commissioned by the police trigger a criminal prosecution, and there is no other way of challenging that expert report in court (Stoimenov v. "the former Yugoslav Republic of Macedonia", §§38-43).

There could be other exceptional circumstances – such as a sudden and complete change of evidence given by a courtappointed expert in the course of the same hearing – where a problem of fairness and defence rights may arise if the court does not consider calling a further expert to testify (G.B. v. France, §§56-70).

In a criminal trial, the requirement of equality of arms under Article 6 §1 sometimes overlaps with the defence rights under Article 6 §3, such as the right to question witnesses. Hence, alleged violations of these provisions are usually examined in conjunction (Bricmont). »

Fid-decizjoni ta` din il-Qorti kif presjeduta tad-29 ta` April, 2014 fil-kawza fl-ismijiet **Edgar Publio Bonnici Cachia vs Avukat Generali** (li kienet ikkonfermata b`sentenza tal-Qorti Kostituzzjonali tal-5 ta` Dicembru 2014) inghad hekk :-

*Minn Pag 81 sa Pag 267 tar-Raba` Edizzjoni (2011) ta` **A Practitioner`s Guide to the European Convention on Human Rights** (Sweet & Maxwell), il-gurista Karen Reid tittratta dak li hija ssejjah il-"problem areas" tal-"fair trial guarantees". Il-Qorti sejra tislet brani minn din il-kitba li fil-fehma taghha huma rilevanti ghall-mertu tal-kawza tal-lum :-*

Pag 81 :-

The key principle governing Art 6 is fairness … of the proceedings as a whole …

Pag 82 :-

The right to a fair trial is seen as holding so prominent a place in democratic society that the Court has stated that there is not justification for interpreting Art 6 Para 1 restrictively. Whatever the importance of public interest in, for example, fighting organised crime, the fair administration of justice cannot be sacrificed to expedience …
As to fairness, it is perhaps simpler to say what it does not mean.

The Commission frequently stated, and the Court continues to emphasise, that the Convention organs are not courts of appeal from domestic courts and cannot examine complaints that a court has made errors of fact or law or reached the wrong decision or that a person was, for example, wrongly convicted. They will not enter into the merits of decisions. For this reason, complaints concernming miscarriages of justice are unlikely to succeed before them.

Domestic courts are in the best position to assess the evidence before them, to decide what is relevant or admissible. Matters of appreciation of domestic law and the categorisation of claims in domestic law are also primarily for the appreciation of domestic courts …

Pag 83 :-

From the Convention point of view it is not so much the result that is in question but the process of "hearing" …

Equality of arms between the parties, or "a fair balance" must be achieved. This means that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions which do not place him at a substantial disadvantage vis-à- vis his opponent …

Pag 84 :-

The accused, and in civil proceedings the parties, must be able to particicpate effectively in proceedings …

Pag 85 :-

Measures taken in the conduct of a criminal trial must be reconcilable with an adequate and effective exercise of the rights of the defence. The importance of securing defence rights in criminal proceedings has been identified as a principle of democratic society and, in this respect, Art 6 must be interpreted to render them practical and effective rather than theoretical and illusory …

The proceedings are looked at as a whole and one restriction on the defence may be insufficient to render the proceedings as a whole unfair …

Pag 156 :-

The Commission did not exclude that the refusal by a court to order an expert, hear a witness or to accept other types of evidence might in certain circumstances render the proceedings unfair. Since, however, it was for the national courts to decide what was necessary or essential to decide a case, it commented that only in exceptional circumstances would it conclude that a decision of a national court in such a matter violated the right to a fair hearing. It gave the example of where an applicant adduced some evidence which the court rejected outright, refusing to allow verification of it and without giving sufficient reasons for its refusal …

*Where in "**Accardi v. Italy**" (30598/02 – Dec. January 20. 2005 – ECHR 2005-II) the decision of a domestic court not to order a pychologist`s report or to call the expert requested by the defence was based on logical and pertinent arguments and the conclusion that such evidential measures were of no relevance to the proceedings, there was no infringement of the rights of the defence or the fairness principle….*

…Fis-sentenza taghha tas-26 ta` Lulju 2011 fil-kawza "**Huseyn and Others vs Azerbaijan**" il-Qorti ta` Strasbourg qalet hekk :-

*175. More specifically, all of the applicants consistently claimed that neither they nor their counsel had been given sufficient access to the prosecution evidence after the pre-trial investigation had been completed and before the trial commenced, nor had they enjoyed such access after the trial had commenced, despite their repeated complaints to that effect. The Court reiterates that the right to an adversarial trial under Article 6 § 1 of the Convention means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. Various ways are conceivable in which national law may meet this requirement. However, whatever method is chosen, it should ensure that the other party will be aware that observations have been filed and will have a real opportunity to comment on them (see **Brandstetter v. Austria,** 28 August 1991, §§ 66-67, Series A no. 211). Article 6 § 3 (b) guarantees the accused "adequate time and facilities for the preparation of his defence" and therefore implies that the substantive defence activity on his behalf may comprise everything which is "necessary" to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the possibility of putting all relevant defence arguments before the trial court and thus of influencing the outcome of the proceedings (see **Can v. Austria**, no. 9300/81, Commission report of 12 July 1984, § 53, Series A no. 96; **Connolly v. the United Kingdom**, no. 27245/95, Commission decision of 26 June 1996; and **Mayzit v. Russia**, no. 63378/00, § 78, 20 January 2005). The facilities which everyone charged with a criminal offence should enjoy include the opportunity to acquaint himself for the purposes of preparing his defence with the results of investigations carried out throughout the proceedings (see **C.G.P. v. the Netherlands**, no.*

*29835/96, Commission decision of 15 January 1997, and **Foucher v. France**, 18 March 1997, §§ 31-38, Reports 1997-II). The issue of the adequacy of the time and facilities afforded to an accused must be assessed in the light of the circumstances of each particular case.*

…

*188. The Court reiterates that the principle of equality of arms, as one of the fundamental elements of the broader concept of a fair trial, requires each party to be given a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis his opponent (see **Nideröst-Huber v. Switzerland**, 18 February 1997, § 23, Reports 1997-I). That right means, inter alia, the opportunity for the parties to a trial to present their own legal assessment of the case and to comment on the observations made by the other party, with a view to influencing the court`s decision (see, mutatis mutandis, **Lobo Machado v. Portugal**, 20 February 1996, § 31, Reports 1996-I, with further references). The requirement of equality of arms, in the sense of a "fair balance" between the parties, applies in principle to both criminal and civil cases ; in criminal cases a lesser degree of latitude is allowed for any deviations from that requirement (see **Dombo Beheer B.V. v. the Netherlands**, 27 October 1993, §§ 32-33, Series A no. 274).*

…

196. At the outset, the Court notes that the prosecution`s case was based to a large degree on numerous witnesses whose pre-trial statements were produced in court. However, it appears that all of these witnesses were called to testify at the trial and that, in principle, the applicants were given an opportunity to question them. As to the defence witnesses, it is true that the Assize Court allowed the examination of only some of the witnesses requested by the defence, but refused to call all of the persons whom the defence sought to examine. While Article 6 § 3 (d) of the Convention is aimed at ensuring equality in criminal proceedings between the defence and the

*prosecution as regards the calling and examination of witnesses, it does not give an accused person an unlimited right to obtain the attendance of witnesses in court. The domestic law may thus lay down conditions for the admission and examination of witnesses provided that such conditions are identical for witnesses on both sides. Similarly, the domestic court is free, subject to compliance with the terms of the Convention, to refuse to call witnesses proposed by the defence, for instance on the ground that the court considers their evidence unlikely to assist in ascertaining the truth (see **X v. Austria**, no. 4428/70, Commission decision of 1 June 1972). Having regard to the available material, the Court finds that it has not been clearly shown how any of the witnesses whom the Assize Court refused to examine would have been able to assist the applicants` defence against the specific accusations put forward against them.*

...

*200. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence have been respected. It must be examined in particular whether the applicants were given the opportunity to challenge the authenticity of the evidence and to oppose its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see Khan, cited above, §§ 35 and 37, and Allan, cited above, § 43). Where the reliability of evidence is in dispute the existence of fair procedures to examine the admissibility of the evidence takes on an even greater importance (see Allan, cited above, § 47, and **Bykov v. Russia** [GC], no. 4378/02, § 95, ECHR 2009-...)*

*Fil-kawza "**Klimentyev vs Russia**" li kienet deciza mill-Qorti ta` Strasbourg fis-16 ta` Novembru 2006 l-ilment tal-applikant kien illi huwa sofra vjolazzjoni tad-dritt tieghu ghal smigh xieraq ghaliex ma kienx inghata l-opportunita` li jezamina r-rapporti tal-esperti tal-qorti. F`dik il-kawza il-Qorti Ewropea ma kenitx sabet*

vjolazzjoni ghaliex il-ligi domestika kienet taghti l-opportunita` lill-akkuzat li jezamina dawk ir-rapporti u ghalhekk kien nuqqas tal-applikant li ma hax dik l-opportunita`. Il-Qorti qalet hekk :-

'95. The Court recalls that according to the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (see e.g. ***Jespers v. Belgium****, no. 8403/78, Commission decision of 15 October 1980, Decisions and Reports (DR) 27, p. 61;* ***Foucher v. France****, judgment of 18 March 1997, Reports of Judgments and Decisions 1997-II, § 34;* ***Bulut v. Austria****, judgment of 22 February 1996, Reports of Judgments and Decisions 1996-II, p. 380-381, § 47).*

96. On the facts, the Court observes that the case for the prosecution rested, inter alia, on a number of expert reports (technical, medical, graphological and other) ordered by the prosecution during the pre-trial stage of proceedings in 1995 and 1996. Four out of more than sixteen decisions ordering such reports were served on the applicant with delays ranging from two to three and a half months, whilst the remaining twelve decisions were served within a month from the respective dates of their delivery (see paragraphs 34-37 in the summary of facts). The applicant principally argued that the late notification of these decisions had effectively deprived him of the possibility to participate in the rdering of the expert examinations and that the subsequent admission of the respective expert examinations had been in breach of Article 6.

97. Having regard to the circumstances of the case, the relevant domestic law and the parties` submissions, the Court cannot subscribe to the applicant`s argument. To begin with, the Court observes that at the time of service of these sixteen decisions both the applicant and his counsel were officially informed about the procedural rights of the accused, including the right to challenge an

expert, seek the appointment of a particular person as an expert, adduce further questions, be present during the expert examination in person and make any comments and be informed of expert conclusions (see paragraph 37 above). The applicant and his counsel had an unrestricted opportunity to make related requests and motions in writing and, indeed, there is no indication in the case-file that any of the requests of the defence were turned down as belated or otherwise inadmissible. On the contrary, the authorities granted and implemented all of the applicant`s requests in this respect. Moreover, there is nothing in the case-file to suggest, and indeed the applicant has not alleged that he was unable, personally or with the assistance of his defence counsel, to study the impugned expert examinations beforehand, contest them throughout the trial and appeal proceedings or avail himself of his rights under Sections 89 and 290 of the Criminal Procedure Code by requesting the trial court to order additional or repetitive expert examinations.'

…

*Fis-sentenza taghha tat-30 ta` Settembru 2011 fil-kawza "**J.E.M Investments Ltd v. Avukat Generali et**" il-Qorti Kostituzzjonali qalet hekk –*

'id-dritt ghas-smigh xieraq ma jiggarantix il-korrettezza tas-sentenzi fil-meritu izda jiggarantixxi biss l-aderenza ma` certi principji procedurali (indipendenza u imparzjalita` tal-Qorti u tal-gudikant, audi alteram partem u smigh u pronuncjament tas-sentenza fil-pubbliku) li huma konducenti ghall-amministrazzjoni tajba tal-gustizzja.

Il-funzjoni tal-Qorti, fil-gurisdizzjoni Kostituzzjonali taghha, m`hijiex illi tirrevedi s-sentenzi ta` Qrati ohra biex tghid jekk dawn gewx decizi `sewwa` jew le, izda hija limitata ghall-funzjoni li tara jekk dawk is-sentenzi kisrux il-Kostituzzjoni jew il-Konvenzjoni Ewropea.'

Ighidu Harris, O`Boyle & Warbrick fil-ktieb "**Law of the European Convention on Human Rights**" (Tieni Edizzjoni – 2009 - OUP) illi in linea ta` principju the Court (u cioe` l-ECHR) allows States a wide margin of appreciation as to the manner in which national courts operate … A consequence of this is that in certain contexts the provisions of Article 6 are as much obligations of results as of conduct, with national courts being allowed to follow whatever particular rules they choose so long as the end result can be seen to be a fair trial. (enfasi ta` din il-Qorti) [ara pag 202]. U jkomplu li in some contexts a breach of Article 6 will only be found to have occurred upon proof of "actual prejudice" to the applicant … [ara pag 204]

Fil-Pag 251 tal-ktieb "**Law of the European Convention on Human Rights**" (2nd Edition - 2009 - OUP), l-awturi **Harris, O`Boyle & Warbrick** ighidu :

"The right to a fair hearing supposes compliance with the principle of equality of arms. This principle, which applies to civil as well as criminal proceedings requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis- à-vis his opponent. In general terms, the principle incorporates the idea of a fair balance between the parties."

ii) L-*adversarial proceedings*

Fil-ktieb diga` citat **Protecting the right to a fair trial under the European Convention on Human Rights** jinghad hekk :-

The requirement of "adversarial" proceedings under Article 6 entails having an opportunity to know and comment at trial onthe observations filed or evidence adduced by the other party. "Adversarial" essentially means that the relevant material or evidence is made available to both parties (Ruiz-Mateos v. Spain). This rather narrow understanding by the Court of

"adversarial" (adversaire) proceedings derives from the French legal system, and does not require creation of fully adversarial systems (or, in criminal sphere, accusatorial systems) of presenting proof and handling evidence, similar to those existing in common-law countries. While the Court has many times affirmed the ability of adversarial and inquisitorial legal systems to co-exist in compliance with various Article 6 standards, some specifics of inquisitorial systems – for instance, in relation to the limited ability of parties to summon witnesses at trial – have nonetheless given rise to breaches of the principle of "fairness" (Vidal, §§32-35).

While it is for the national law to lay down the rules on admissibility of evidence and it is for the national courts to assess evidence, the nature of the evidence admitted and the way in which it is handled by the domestic courts are relevant under Article 6 (Schenk).

Access to the materials of a nature "vital" to the outcome of the case must be granted (McMichael v. the United Kingdom, §§78-82); access to less important evidence may be restricted.

In a criminal trial, the requirement of "adversarial" proceedings under Article 6 §1 usually overlaps with the defence rights under Article 6 §3, such as the right to question witnesses. Hence, alleged violations of these provisions are usually examined in conjunction (Bricmont v. Belgium, §§76-93).

A more specific requirement of "adversarial" proceedings in a criminal trial requires disclosure to the defence of evidence for or against the accused; however, the right to disclosure is not absolute and may be limited to protect a secret investigative method or the identity of an agent or witness (Edwards v. the United Kingdom, §§33-39).

The use of confidential material may be unavoidable, for instance, where national security or anti-terrorism measures are at stake (Khan,

§§34-40). However, whether or not to disclose materials to the defence cannot be decided by the prosecution alone. To comply with Article 6, the question of nondisclosure must be: a) put before the domestic courts at every level of jurisdiction, b) approved by the domestic courts by way of the balancing exercise between the public interest and the interest of the defence – and only where strictly necessary (Rowe and Davis).

Difficulties caused to the defence by non-disclosure must be sufficiently counterbalanced by the procedures followed by the judicial authorities (Fitt v. the United Kingdom, §45-46). Those procedures may involve the release to the defence of a summary of the undisclosed evidence (Botmeh and Alami v. the United Kingdom, §§42-45).

The "adversarial" requirement within the meaning of Article 6 thus usually entails an analysis of the quality of the domestic procedure – such as the ability for the defence to put arguments against non-disclosure before the courts at both first and appeal instances (Rowe and Davis) and the domestic courts` obligation to carry out a balancing exercise – but not an examination of the appropriateness of the domestic courts` decision on non-disclosure, since the Court itself is not in a position to decide on strict necessity without having sight of the secret material in question (Fitt).

At the same time, the strict necessity test of non-disclosure – coupled with the established restrictions on the use of other forms of secret evidence such as anonymous witnesses (Doorson v. the Netherlands, §§66-83) – suggests that any nondisclosure will only be compatible with the "adversarial" requirement so long as that piece of evidence is not used to a decisive extent to found the conviction (Doorson), or is not a crucial piece of evidence in the case (Georgios Papageorgiou v. Greece, §§35-40).21

Where full disclosure of the material used against the defendant is impossible (for example, where it runs counter a serious public interest such as in

the context of fight against terrorism), the rights of the defence may be counterbalanced by the appointment of a special advocate, enabled to represent the defendant without, however, communicating him the "secret" elements of the material the prosecution wants to withhold. At least some core information about the incriminating material should be made available both to the advocate and the accused.

The more important the secret evidence in founding the conviction, the more likely disclosure of that evidence will be required by Article 6 (Fitt).

Non-disclosure will not be accepted under Article 6 – even if duly reviewed by the domestic courts – where it can prevent defendants from substantiating an affirmative defence they are trying to raise, such as entrapment (Edwards and Lewis v. the United Kingdom, Chamber judgment of 2003, §§49-59).

Fil-Pag 41 ta` **Guide to Article 6 : Right to a fair trial (civil limb)** mahrug mill-Qorti Ewropea ghad-Drittijiet tal-Bniedem u aggornat sal-31 ta` Dicembru 2017 jinghad hekk :-

*"219. … the right to adversarial proceedings means in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court`s decision (**Ruiz-Mateos v. Spain**, § 63; **McMichael v. the United Kingdom**, § 80; **Vermeulen v. Belgium**, § 33; **Lobo Machado v. Portugal**, § 31; **Kress v. France** [GC], § 74). This requirement may also apply before a Constitutional Court (**Milatova v. the Czech Republic**, §§ 63-66; **Gaspari v. Slovenia**, § 53).*

*"The actual effect on the court`s decision is of little consequence (**Nideröst-Huber v. Switzerland**, § 27; **Ziegler v. Switzerland**, § 38); the right to adversarial proceedings must be capable of being exercised in satisfactory conditions: a party to the*

*proceedings must have the possibility to familiarise itself with the evidence before the court, as well as the possibility to comment on its existence, contents and authenticity in an appropriate form and within an appropriate time (**Krčmář and Others v. the Czech Republic**, § 42; **Immeubles Groupe Kosser v. France**, § 26), if necessary by obtaining an adjournment (**Yvon v. France** § 39); the parties should have the opportunity to make known any evidence needed for their claims to succeed (**Clinique des Acacias and Others v. France**, § 37); the court itself must respect the adversarial principle, for example if it rules that the right to appeal on points of law has been forfeited on grounds of inadmissibility which it advances of its own motion (**Clinique des Acacias and Others v. France**, § 38; compare **Andret and Others v. France** (dec); (in this last case the Court of Cassation had informed the parties that new arguments were envisaged and the applicants had had an opportunity to reply before the Court of Cassation pronounced judgment); it is for the parties to a dispute alone to decide whether a document produced by the other party or evidence given by witnesses calls for their comments. Litigants` confidence in the workings of justice is based on the knowledge that they have had the opportunity to express their views on every document in the file (including documents obtained by the court of its own motion: **K.S. v. Finland**, § 22) (**Nideröst-Huber v. Switzerland**, § 29; Pellegrini v. Italy, § 45)."*

iii) Risultanzi

Dan premess, ir-rikorrent jilmenta illi fis-seduta tas-17 ta` Mejju 2011 quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta` Gudikatura Kriminali, il-kawza baqghet differita ghas-6 ta` Lulju 2011 sabiex jitressqu l-provi tad-difiza. Fit-tliet snin ta` wara, kien hemm 18-il differiment li fil-kaz ta` 14 minnhom ghaliex kien assenti l-ufficjal prosekutur.

Ghalkemm huwa minnu li kien hemm numru ta` udjenzi li ghalihom ma kienx prezenti l-ufficjal prosekutur (ara *supra*) kien hemm ukoll numru konsiderevoli ta` udjenzi fejn ma deher hadd, inkluz ir-rikorrent, kif ukoll

numru iehor imdaqqas fejn ma sar xejn ghaliex baqa` ma deherx ir-rikorrent.

Skont ir-rikorrent, ma kienx hemm ragunijiet validi ghall-qorti li thalli l-kawza ghat-trattazzjoni finali bla ma hu jressaq il-provi tieghu. Fit-30 ta` April 2014, ir-rikorrent ma kienx assistit mill-avukat ta` fiducja tieghu u ghalhekk ma kienx fil-pozizzjoni li jipprezenta d-difiza tieghu. Skont ir-rikorrent, il-qorti zammitu milli jipprezenta d-difiza tieghu bla raguni. Inoltre jilmenta li fis-seduta tal-5 ta` Gunju 2014, il-qorti halliet il-kawza ghas-sentenza bla ma kien prezenti sabiex iressaq is-sottomissjonijiet finali tieghu. Il-pregudizzju fl-assjem li garrab kien konsiderevoli, jikkontendi r-rikorrent.

Il-qorti tqis bhala nfondati dawn l-ilmenti.

Tghid illi l-kawza kienet ilha mis-6 ta` Lulju 2011 differita ghall-provi ta` difiza. Diversi kieneu d-differimenti billi ma kienx deher l-ufficjal prosekutur. Tant`iehor ma deherx ghal ghadd ta` seduti r-rikorrent.

Tirrimarka li fl-udjenza tal-25 ta` Marzu 2014, deher Av. Edward Gatt ghar-rikorrent li talab kopja tal-process. Fl-udjenza ta` wara u cioe` dik tat-30 ta` April 2014, Dr Gatt ma deherx u kien ghalhekk li l-kawza thalliet ghat-trattazzjoni finali. Fis-seduta ta` wara u cioe` dik tal-5 ta` Gunju 2014, il-kawza thalliet ghad-decizjoni ghaliex Av Gatt baqa` ma rtirax il-kopja tal-process. Minkejja dan kollu, ir-rikorrent baqa` ma ghamel xejn konkret u tangibbli min-naha tieghu sabiex jassigura li jitressqu l-provi tieghu.

Ir-rikorrent jikkontendi li xi drabi fl-udjenzi ma kienx assistit minn avukat u cio` nonostante il-qorti xorta semghet ix-xiehda tal-prosekuzzjoni. Id-drabi lid an sehh kien fl-udjenzi tat-2 ta` Marzu 2010, 8 ta` Gunju 2010, 14 ta` Gunju 2010, 5 ta` Awissu 2010 u 18 ta` Frar 2011. Eppure jirrizulta li d-dritt ghall-kontroezami baqa` riservat u r-rikorrent qatt ma ha l-briga li jitlob li x-xhieda tal-prosekuzzjoni jitharrku sabiex isir kontroezami taghhom.

Ir-rikorrent jilmenta li fid-drabi li kien prezenti ghall-udjenzi thalla wahdu mill-avukat tieghu. Skont ir-rikorrent, dan il-fatt ikkaguna pregudizzju ghalih ghaliex spicca go pozizzjoni ferm inferjuri minn dik tal-prosekuzzjoni, bi ksur tal-principju ta` l-ugwaljanza bejn il-partijiet. Ir-

rikorrent jikkontendi li hemm il-bilanc mixtieq tal-jedd ta` smigh gust u xieraq kien imxejjen.

Tajjeb jinghad illi l-principju tal-*equality of arms* ma jfissirx li parti tista` l-ewwel tinjora r-regoli ta` procedura u mbaghad tistieden lill-Qorti tmur kontra kull regola.

Il-principju tal-*equality of arms* ifisser illi kull parti ghandha tinghata opportunita` ndaqs il-kaz taghha u r-ragunijiet li jaghmlu l-kaz taghha.

Dan ma jfissirx li parti tista` tagixxi kwazi kwazi b`oltragg tal-procedura u mbaghad tippretendi l-indulgenza tal-qorti biex tressaq il-provi taghha fil-kumdita` taghha, u allura xhin u meta trid hi jew l-avukat taghha.

Id-dritt tas-smigh xieraq ghandu jitqies fil-kuntest tal-ligijiet ta` procedura tal-pajjizi membri tal-Konvenzjoni, u m`ghandu qatt jigi nterpretat li bhala addirittura **sostituttiv** ta` dawk il-ligijiet.

Mhijiex sostenibbli l-iskuzanti tar-rikorrent li baqa` ma uzufruwiex mill-jeddijiet tieghu ghaliex d-difensur tieghu kien impjenjat band`ohra [vide PA [SK] **Anthony Mintoff v. Avukat Generali**, deciza 7 Lulju 2004 u konfermata mill-Qorti Kostituzzjonali fl-14 ta` Marzu 2005.

Il-qorti tghid illi kien jinkombi fuq ir-rikorrent li xhin ra li l-avukat ta` fiducja tieghu l-gdid u cioe` l-Av. Gatt ma setax jaqdi l-bzonnijiet tieghu kienet x`kienet ir-raguni, kien ghal kollox liberu li jaghti l-inkariku tad-difiza tieghu lil avukat iehor. Del resto ir-rikorrent kien jaf ben tajjeb x`kellu jaghmel meta fl-istess kawza bidel id-difensur tieghu tal-bidu mill-ufficcju legali tal-Av. Joseph Giglio ghall-Av. Edward Gatt.

Jidher evidenti li r-rikorrent kien qed jipprova jinqeda bl-assenza ta` l-avukat tieghu sabiex itawwal il-kawza nutilment. Anke l-fatt li huwa naqas li jidher diversi drabi jkompli jikkonferma li l-ghan ewlieni tieghu kien illi l-procedura titwal. Jirrizulta li r-rikorrent ma kienx sajjem ghal dak li jigri fi procedimenti kriminali ghaliex jirrizulta li tressaq diversi drabi dwar kazi ohra u allura kellu esperjenza ta` dak li jigri fi procedimenti ta` dik ix-xorta.

Ghan-nuqqas tar-rikorrent li jassigura li jkun assistit minn avukat li jidher ghalih in difeza m`ghandhiex tkun inkolpata l-qorti li kull ma ghamlet kien li ordnat il-prosegwiment tal-kawza, tenut kont tad-differimenti kollha li kienu koncessi ghall-gbir tal-provi tad-difiza.

Ir-rikorrent jikkontendi illi dwar dawn il-punti huwa ghamel sottomissjonijiet quddiem il-Qorti ta` l-Appell Kriminali izda skont ir-rikorrent dik il-qorti dehrilha li kellha tiskartahom bla ma ghamlet ebda referenza fis-sentenza. Ghalhekk ighid ir-rikorrent illi l-Qorti ta` l-Appell Kriminali cahditu mill-jedd ghal smigh xieraq.

Tajjeb jinghad illi fl-appell tieghu r-rikorrent ma kkontestax is-sejbien tal-htija izda l-piena erogata. Ghalhekk talab ir-riforma tas-sentenza tal-Ewwel Qorti sabiex ma jinghatax piena li fil-fehma tieghu kienet harxa. Imkien fir-rikors tal-appell ma r-rikorrent allega li kien mittiefes id-dritt ghal smigh xieraq mill-Ewwel Qorti. Kien semplicement rimarkat illi l-prosekuzzjoni wkoll kienet damet biex tressaq il-provi taghha u l-qorti ma ghalaqitx il-provi tal-prosekuzzjoni kif ghamlet fil-kaz tal-provi tieghu. Din il-Qorti tishaq illi l-Qorti ta` l-Appell Kriminali ma kellhiex aggravju relatat ma` nuqqas ta` smigh xieraq. Ghalhekk ma kellha xejn x`tiddeciedi dwar dan, imbaghad fil-kuntest ta` decizjoni dwar piena.

Din il-Qorti ma ssibx illi fil-konduzzjoni tal-procediment penali, ir-rikorrent kien ipprivat mill-opportunita` ragonevoli li jiddefendi ruhu mill-akkuzi dedotti kontra tieghu jew tqieghed fi zvantagg fil-konfront tal-kontroparti.

Il-Qorti mhijiex tara *actual prejudice* mgarrab mir-rikorrent fil-mod kif il-qrati ordinarji ta` gurisdizzjoni kriminali ttrattaw mieghu. Fis-sentenza taghha tal-5 ta` Novembru 2013 fil-kawza **The Republic of Malta v. Ana-Maria Beatrice Ciocanel** il-Qorti tal-Appell Kriminali (kolleggjalment komposta) qalet hekk –

> *"it is a well established principle that as a rule questions relating to fair trial are to be addressed upon an assessment of the trial as a whole and that it is only at the conclusion of such trial that a proper assessment of whether there has been a fair trial can be made."*

Din il-Qorti hija tal-fehma illi fil-procediment kollu kriminali, mill-mill-bidu sal-ahhar, kien rispettat bis-shih il-jedd tar-rikorrent ghal smigh xieraq.

Huma nfondati l-ilmenti tar-rikorrent ibbazati fuq l-Art 6(3) tal-Konvenzjoni.

Ghalhekk qeghda tichad it-tieni u t-tielet talbiet.

b) <u>L-Art 6(1) tal-Konvenzjoni</u>
(ir-raba` u l-hames talbiet)

Ilment iehor tar-rikorrent huwa li garrab ksur tad-dritt tieghu ghal smigh xieraq ghar-raguni li kien hemm dewmien eccessiv sabiex il-kawza kriminali kienet deciza finalment.

<u>L-Art 6(1) tal-Konvenzjoni</u> jghid :-

> *Fid-decizjoni tad-drittijiet civili u tal-obbligi tieghu jew ta` xi akkuza kriminali kontra tieghu, kulhadd huwa ntitolat ghal smigh imparzjali u pubbliku fi zmien ragonevoli minn tribunal indipendenti u imparzjali mwaqqaf b`ligi. Is-sentenza ghandha tinghata pubblikament izda l-istampa u l-pubbliku jista` jigi eskluz mill-proceduri kollha jew minn parti minnhom fl-interess talmorali, tal-ordni pubbliku jew tas-sigurtà nazzjonali f`socjetà demokratika, meta l-interessi tal-minuri jew il-protezzjoni tal-hajja privata tal-partijiet hekk tehtieg, jew safejn ikun rigorozament mehtieg fil-fehma tal-qorti f`cirkostanzi specjali meta l-pubblicità tista` tippregudika l-interessi tal-gustizzja.*

i) <u>Gurisprudenza</u>

1. <u>tal-ECHR</u>

Fil-ktieb diga` citat **<u>Protecting the right to a fair trial under the European Convention on Human Rights</u>** hija trattata gurisprudenza tal-ECHR dwar *trial within a reasonable time.* Jinghad hekk :-

> *This right derives both from the wording of Article 6 and from the principles of effectiveness (H. v. France, 1989).*
>
> *Article 6 is fully autonomous from the way the domestic procedure determines the length of procedural actions, with the result that a breach of the domestic time-limit will not necessarily show a breach of Article 6. Unlike in many national systems, under the Court`s case-law there is no fixed time-limit for any particular type of the proceedings, and all situations are examined on a case-by-case basis.*
>
> *The "reasonable time" requirement applies both to civil and to criminal cases, but it must not be confused with the more stringent length of detention test that applies only as long as the person is deprived of his liberty pre-trial (Smirnova v. Russia, §§80-88). Duration of criminal proceedings should not, however, be confused with the length of detention on remand under Article 5 §3. Examination of the latter is usually subjected to more stringent standards (Smirnova, §§56-71).*
>
> *Length cases are the first area where the Court has issued pilot judgments addressing not the circumstances of a particular case but rather the notion of systematic violations in the country concerned (Kudła v. Poland, §§119-131).*
>
> *A positive obligation arises for the state under Article 13 of the Convention to create a remedy within any civil or criminal case to enable speeding up of a protracted procedure for the purpose of Article 6 (Kudła).*
>
> *…*
>
> *What time is "reasonable" is assessed by a cumulative test involving three main criteria (Pretto and others, §§30-37) :*

 nature and complexity of the case;
 conduct of the applicant;
 conduct of the authorities.

While there is no established general guidance on the time allowed by Article 6, it depends primarily on the number of court instances involved. As a rule, more scrutiny will be given to cases that last more than three years at one instance (Guincho v. Portugal, §§29-41), five years at two instances, and six years at three levels of jurisdiction.

Assessment of "reasonable time" varies greatly depending on the circumstances of the case. The shortest time-limit leading to a finding of a violation is 2 years and 4 months at two instances in a case concerning a compensation claim by the applicant infected with HIV (X v. France, 1982), while the longest period resulting in a finding of non-violation may be as long as eight years at two instances.

Examples of a period that was considered in itself to breach the "reasonable time" requirement without a more detailed analysis of any other aspect:

 ten years at one instance in criminal proceedings (Milasi v. Italy), or 13 years including first instance and appeal (Baggetta v. Italy);

 four years of appeal proceedings (Capuano v. Italy).

Nature and complexity of the case

The Court takes into account what is at stake for the applicant in the domestic proceedings. Cases requiring special diligence, where the nature of the case itself requires speeding up the procedure:

 child-care proceedings (H. v. the United Kingdom, 1987);

 compensation claim for blood tainted with HIV (X v. France, 1992);

 action for serious injury in a traffic accident (Martins Moreira).

By contrast, the complexity of a case allows more leeway to the authorities in justifying a longer delay.

Complexity denotes primarily numerous factual elements to be determined, such as in cases involving a vast number of charges to be determined in criminal cases that are joined together (Vaivada v. Lithuania, dec.), or a large number of defendants in a case (Meilus v. Lithuania, §25). Cases concerning tax evasion, company fraud, money laundering, etc., are often complex, but if the pending proceedings preclude a company from operating normally, special diligence is required from the authorities (De Clerk v. Belgium, §§53-73).

Legal complexity, such as uncertainty of the domestic case-law in view of the need to apply recent legislation, can also justify a longer delay (Pretto and others, §§30-37).

Conduct of the parties

The Court takes into account only delays (sometimes called "substantial periods of inactivity") attributable to the authorities. Delays attributable to the applicant, whether caused deliberately or not, will not be taken into account in assessing "reasonable time" (H. v. the United Kingdom). At the same time, the Government cannot excuse the overall length of proceedings by citing the applicant`s appeals, motions, requests, etc., to the extent that these procedural steps were not abusive. The defendant cannot be blamed for taking full advantage of the resources and tools afforded by national law in the defence of his interests (Kolomiyets v. Russia, §§25-31).

Reasonable diligence will be required from the authorities in each procedural step, such as filing evidence and submitting observations, in all

criminal cases and when they are one of the parties in a civil case (Baraona, §§46-57).

Where another private party has caused a delay in a civil case, the court has to take steps to expedite the proceedings and not to extend time-limits at that party`s convenience without good reason (Guincho).

Suspension of proceedings to await the outcome of a related case (Zand, Commission report) or the determination of the constitutionality of a legal act is acceptable in principle, provided that the adjournment is granted only with the aim of causing the least possible delay.

Even in pursuing the interest of the protection of defence rights, such as the need to summon witnesses on behalf of the defence at trial, the authorities may be in breach of the "reasonable time" requirement if not carrying out the task with reasonable diligence (Kuvikas v. Lithuania, §50).

General delays caused occasionally by the courts` case-load may be acceptable as long as they are not prolonged in time, and where reasonable steps are being taken by the authorities to prioritise cases based on their urgency and importance (Zimmerman and Steiner, §§27-32).

At the same time, the Contracting States are required by Article 1 of the Convention to organise their legal systems so as to ensure compliance with Article 6, and no reference to financial or practical difficulties can be permitted to justify a structural problem with excessive length of proceedings (Salesi, §§20-25).

Where a case is repeatedly re-opened or remitted from one court to another (the so-called yo-yo practice), the Court tends to regard it as a serious aggravating circumstance, which may result in a violation being found even if the overall duration of the proceedings does not seem excessive (Svetlana Orlova v. Russia, §§42-52).

2. <u>Il-Qrati taghna</u>

Fis-sentenza li tat fis-27 ta` Mejju 2016 fil-kawza **<u>Raymond Farrugia et vs L-Avukat Generali et</u>**, il-Qorti Kostituzzjonali qalet hekk :-

> *In tema legali ssir referenza ghas-sentenza ta` din il-Qorti fl-ismijiet **<u>Anton Camilleri v. Avukat Generali</u>**, 1 ta` Frar 2016, fejn inghad in materja illi:*
>
> *" ... dwar jekk jezistiex tassew ksur tal-jedd tar-rikorrenti ghal smigh xieraq fi zmien ragjonevoli taht l-Artikolu 6 tal-Konvenzjoni, tenut kont, fost affarijiet ohra, ta` tliet binarji ormai ben assodati fil-gurisprudenza patria u dik Ewropeja, ossia il-komplessita` tal-kaz, l-agir taz-zewg partijiet u `what was at stake for the applicant in a given case.` (ECHR, **<u>Gordeyev vs Russia</u>** (Application no. 40618/04) 5/02/2015)*
>
> *"21. Jinsab ukoll assodat il-fatt li ma tezisti ebda lista komprensiva li tista` twassal lill-Qorti sabiex tiddikjara lezjoni tad-dritt ta` smigh xieraq abbazi ta` dewmien fil-proceduri. Ghalhekk, ghalkemm il-Qorti ghandha tikkunsidra l-fatturi fuq indikati ghandu jitqies kont tac-cirkostanzi partikolari tal-kaz in kwistjoni.*
>
> *"22. Jinsab ritenut illi:*
>
> *"As regards the criteria for assessing whether the General Court has observed the reasonable time principle, it must be borne in mind that the reasonableness of the period for delivering judgment is to be appraised in the light of the circumstances specific to each case, such as the complexity of the case and the conduct of the parties (see, in particular, **<u>Der Grüne Punkt – Duales System Deutschland v Commission</u>**, paragraph 181 and the case-law cited).*
>
> *" .... The Court has held in that regard that the list of relevant criteria is not exhaustive and that the assessment of the reasonableness of a period does not require a systematic examination of the*

circumstances of the case in the light of each of them, where the duration of the proceedings appears justified in the light of one of them. Thus, the complexity of the case or the dilatory conduct of the applicant may be deemed to justify a duration which is prima facie too long (see, in particular, ***Der Grüne Punkt – Duales System Deutschland v Commission****, paragraph 182 and the case-law cited)." (****Grand Chamber, Kendrion NV vs European Commission****, 26/11/2013, C-50/12P para 96-97)*

"23. Dwar it-tifsira tal-kuncett ta` `zmien ragjonevoli`, l-Qrati taghna wkoll esprimew ruhhom u sostnew illi t-terminu fih innifsu ghandu element qawwi ta` diskrezzjonalita` li jhalli f` idejn il-gudikant jiddetermina jekk fic-cirkostanzi partikolari tal-kaz, iz-zmien perkors sakemm il-persuna allegata tkun giet gudikata, kienx ta` tul tali li jeccedi dak li hu jew ghandu jkun normalment accettabbli f` socjeta` demokratika. (Q.Kos.* ***Emanuela Brincat vs L-avukat Generali****, 21/2/1996 [Vol.80]). Dan jfisser illi kull kaz ghandu jigi ezaminat fid-dawl taccirkostanzi specjali tieghu.` Q. Kos. ***Zakkarija Calleja vs L-Avukat Generali****, 15/12/2015).*

24. Issir ukoll referenza ghas-sentenza ta` din il-Qorti datata 22 ta` Frar 2013, fl-ismijiet ***Emanuel Portelli et v. Avukat Generali et****, fejn dwar dewmien ta` seba` snin sabiex tinghata s-sentenza inghad :*

"[28] Tosserva wkoll li ma jirrizultax li kien hemm raguni valida li setghet tiggustifika b`xi mod dan id-dewmien ta` seba` snin ghall-ghoti tas-sentenza, liema dewmien ma jistax jitqies bhala wiehed ragjonevoli, anke kkunsidrat il-komplessita` tal-punt legali involut, u halhekk dan jikkostitwixxi lezjoni tad-dritt kontemplat fl-Artikolu 6 tal-Konvenzjoni fil-konfront tar-rikorrenti li, ghalkemm ma jidhirx mill-atti li pprezentaw rikors f`dan ir-rigward, izda zgur li l-incertezza li sofrew ghal dan it-tul taz-zmien sabiex tigi determinata l-vertenza kienet raguni ta` anzjeta` u frustrazzjoni ….da parti taghhom, u ta` dan, ghandhom jigu kkumpensati.7"

*25. Issir referenza wkoll ghas-sentenza tal-Qorti Ewropea **Richard Anderson v. United Kingdom** deciza fid-9 ta` Frar 2010 8:*

*"As the Court has frequently stated, the State remains responsible for the efficiency of its system; the manner in which it provides for mechanisms to comply with the reasonable time requirement – whether by automatic time-limits and directions or some other method – is for it to decide. If a State allows proceedings to continue beyond the "reasonable time" prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay (**Bhandari v. the United Kingdom**, no. 42341/04, § 22, 2 October 2007, together with further references therein)….*

"39. … it accepts the unreasonable delay in the Court of Session proceedings must have caused the applicant some distress and frustration. As a result he has certainly suffered non-pecuniary damage which is not sufficiently made good by the finding of a violation of the Convention. Ruling on an equitable basis, it awards him EUR 1,500."

Fid-decizjoni li tat fil-11 ta` Awissu 2003 fil-kawza fl-ismijiet **John Bugeja vs L-Avukat Generali et** il-Qorti Kostituzzjonali qalet hekk :-

Jekk id-dewmien tal-proceduri penali ivvjolawx id-dritt fundamentali ta` l-appellant, protett mill-artikolu 6 tal-Konvenzjoni u l-artikolu 39 tal-Kostituzzjoni.

14. Bit-tieni aggravju, l-appellanti qieghdin isostni li l-Ewwel Qorti ghamlet apprezzament hazin tal-fatti konnessi mal-proceduri penali. L-appellanti jikkoncedu l-fatt li dawn il-proceduri damu cirka 19-il sena – zmien li ictu oculi jista` jidher irragonevoli w eccessiv – pero`, l-Ewwel Qorti injorat ghal kollox certi fatti determinati, migjuba a konjizzjoni taghha, li kellhom iwassluha li tiddeciedi li ma kien hemm l-ebda lezjoni ta` l-artikoli citati mill-appellat. L-appellanti sostnew li d-dewmien fil-proceduri kien, fil-parti l-kbira tieghu, jahti ghalih l-

appellat stess. Il-kawza penali kienet tipprezenta certa komplessita` u l-appellat stess baqa` passiv u ma istitwixxa l-ebda att gudizzjarju biex ihaffef l-andament tal-kawza.

15. Inoltre, l-appellanti sostnew li s-sentenza ta` l-Onorabbli Qorti ta` l-Appell Kriminali tat il-konsiderazzjoni mehtiega ghall-fattur tad-dewmien, izda minhabba li l-appellat ma wera ebda impenn li jirriforma ruhu fil-pendenza tal-proceduri, dik il-Qorti iddecidiet li huwa ma kellux igawdi xi agevolazzjoni minhabba d-dewmien billi t-trapass taz-zmien ma jnaqqas xejn mir-responsabilita` kriminali tal-hati.

16. Dwar dana l-aggravju l-appellat irrefera ghaz-zewg noti ta` sottomissjonijiet li kien ipprezenta quddiem l-Ewwel Qorti, u sahaq li l-appellanti qatt ma gabu l-icken prova li d-dewmien lamentat kien ikkagunat mill-appellat.

17. Meta jinstab li kawza damet pendenti ghal zmien twil u damet irragonevolment biex inqaghtet, ikun gudizzju simplicistiku wisq li tintefa` l-htija ghad-dewmien fuq l-imhallef partikolari li jkun sema` l-istess kawza li damet.

Ikun gudizzju x` aktarx immensament ingust li takkuza jew li tinsinwa li dak l-imhallef partikolari ikun tghazzen, tnikker jew generalment ma kienx diligenti f` xogholu. Dan ghaliex, fil-verita`, l-abilita`ta` dak l-imhallef li jiddisponi mill-kawzi fi zmien ragonevoli ma tiddependix biss fuq il-kwalitajiet intrinsici u personali tieghu, izda, fil-parti l-kbira tiddependi fuq l-effikacja o meno ta` l-ambjent li jahdem fih. Fost il-fatturi li jikkondizzjonaw dan l-ambjent, insibu n-numru kbir ta` kawzi "qodma" (backlog) li "jitghabba" bih appena jilhaq imhallef, in-numru sinjifikanti ta` kawzi godda li jigu assenjati lilu regolarment, u dawk li jista` "jiret" meta jirtira xi gudikant, il-kwalita`u l-kumplessita`ta` l-istess kawzi, jekk l-imhallef jinghatax persuni debitament kwalifikati biex jassistuh, jekk jinghatax r-rizorsi necessarji biex jaghmel ir-ricerka tieghu, biex izomm ruhu aggornat fl-istudji tieghu, u biex isib il-hin

necessarju ghad-deliberazzjoni u l-kitba tas-sentenzi.

18. Id-dritt fundamentali ta` l-individwu li jkollu l-kawza tieghu mismugha u finalizzata eghluq iz-zmien ragonevoli, jimponi tassattivament fuq l-istat, li jrid josserva s-Saltna tad-Dritt, l-obbligu li jkollu fis-sehh sistema efficjenti t` amministrazzjoni tal-gustizzja. Il-gudikatura tifforma t-tielet kolonna li fuqha hu mibni l-istat. Fis-sistema taghna, huma z-zewg kolonni l-ohra ta` l-istat, cjoe` l-ezekuttiv u l-legislattiv, li ghandhom obbligu li jipprovdu r-rizorsi, l-istrutturi u l-ghodod l-ohra kollha necessarji biex il-Qrati jkunu f` pozizzjoni li jwettqu l-gustizzja fi zmien ragonevoli.

19. Il-Qorti Ewropeja tad-Drittijiet tal-Bniedem dejjem ghallmet li l-artikolu 6 tal-Konvenzjoni:
*"…. imposes on the Contracting States the duty to organise their juridical system in such a way that the Courts can meet the requirements of this provision **Salesi vs Italy** (26/02/1993). It wishes to reaffirm the importanceof administerting justice without delays which might prejudice its effectiveness and credibility **Katte Klitsche de la Grange vs Italy** (27/10/1994) – (ara **A.P. vs Italy** 28/07/1999 Application 35265/97 – para. 18)."*

*20. Biex wiehed jasal ghal decizjoni jekk kawza inqaghtetx fi zmien ragonevoli jew le, wiehed irid iqis il-fattispecji u ccirkostanzi partikolari tal-kaz, fosthom "the complexity of the case, and …. the conduct of both the applicant and the competent authorities (**Buchholz vs Germany** 06/05/1981 para. 49), kif ukoll "the importance of what was at stake for the applicant in the litigation" (**Gast & Popp vs Germany** 25/02/2000 para. 70).*

(ara wkoll : QK : **Edwin Bartolo vs Avukat Generali** : 28 ta` Dicembru 2001 ; PA : Ref. Kost. **Il-Pulizija vs Silvio Zammit** : 26 ta` April 2018 ; PA/K : 16 ta` Marzu 2018 : **Colin John Morland vs The Advocate General)**

3. Risultanzi

Fl-ewwel premessa tar-rikors promotur, jinghad hekk :-

> *Illi r-rikorrent tressaq b`arrest nhar it-12 ta` Novembru tas-sena 2008 u gie mghoti sentenza mill-Qorti tal-Magistrati (Malta) bhala Qorti ta` Gudikatura Kriminali, biss nhar l-24 ta` Settmebru tas-sena 2014, ossia kwazi sitt snin wara, u ghalhekk b`rizultat ta` dewmien eccessiv tal-proceduri kriminali kontra tieghu, inkiser ir-"reasonable time requirement". [Id-decizjoni tal-Appell Kriminali inghatat nhar it-2 ta` Frar tas-sena 2017, izda l-maggior parti tad-dewmien f`dan ir-rigward kien sforz ta` kundizzjoni medika li kellu l-istess rikorrent li kellu jissottoponi ruhu ghal intervent kirurgiku ta` certu spessur. Ghalhekk ir-rikorrent fir-rigward ta` din il-lanjanza qieghed jaghmel biss referenza ghall-proceduri quddiem il-Qorti tal-Magistrati].*

Cio` nonostante, fin-nota ta` sottomissjonijiet tieghu, ir-rikorrenti ighid diversament u cioe` illi qed jippretendi li d-data tat-2 ta` Frar 2017 jigifieri d-data meta kienet deciza l-kawza mill-Qorti tal-Appell, kellha titqies bhala d-data tat-tmiem tar-*reasonable time,* mentri d-data tat-12 ta` Frar 2008 u cioe` meta huwa tressaq quddiem il-Qorti tal-Magistrati (Malta) Bhala Qorti Istruttorja kellha tkun id-data tal-bidu ghall-fini ta` *reasonable time.*

Ghal din il-Qorti dan ifisser li r-rikorrent bidel l-ilment tieghu fis-sens illi filwaqt li fin-nota ta` sottomissjonijiet tieghu, ighid li l-istanza hadet disa` snin, fl-ewwel premessa tar-rikors promotur, ilmenta li d-dewmien kien limitat ghal kemm damet il-kawza quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta` Gudikatrura Kriminali.

Dan premess u pprecizat, ir-rikorrent jikkontendi li l-kaz ma kienx wiehed kompless, peress li ma kienx hemm dilemma ta` procedura u lanqas sitwazzjoni fejn huwa ma kkoperax mal-prosekuzzjoni. Il-kaz kien dwar sejba ta` 1.94 grammi droga kif ukoll doza ta` methadone. L-akkuzi kienu tlieta : pussess u traffikar ta` droga eroina kif ukoll pussess ta` methadone. Jishaq illi huwa kkopera fil-kors tal-proceduri kollha mhux bhall-ufficjal prosekutur li skont ir-rikorrent naqas li jidher ghal numru konsiderevoli ta` udjenzi.

Fil-fehma ta` l-Qorti, fil-kaz in kwistjoni kienu evidenti dawn in-nuqqasijiet :-

Min-naha tal-prosekuzzjoni.

Skont il-verbali tal-udjenzi, huwa evidenti li kien hemm bosta seduti fejn l-ufficjal prosekutur ma kienx prezenti, fatt li jaghti stampa ta` prosekuzzjoni fqira.

Huwa wkoll manifest mill-istess verbali l-atteggjament ghal kollox passiv tal-prosekuzzjoni matul is-snin kollha meta suppost kienu qeghdin jinstemghu l-provi tar-rikorrent.

Il-prosekuzzjoni kellha d-dmir li tippartecipa b`mod attiv, u fejn hemm bzonn titlob l-intervent tal-qorti.

Hu evidenti li matul dawn is-snin kollha l-prosekuzzjoni bhal donnha hassitha kwazi komda donnha fir-rwol ta` spettatur.

Min-naha tal-imputat.

Dan ostakola l-progress tal-kawza ghal snin shah.

Ir-rikorrent wera nuqqas ta` diligenza fid-difiza tal-interessi tieghu meta kellu kull opportunita` li jiddefendi ruhu. Kienet ghazla libera tar-rikorrent li jittraskura.

Id-dritt fundamentali ghal smigh xieraq mhuwiex intiz biex jaghti protezzjoni lil min jonqos milli jiehu hsieb l-interessi tieghu, u wisq inqas huwa ntiz sabiex jaghti kenn lil min ikun irid jabbuza mill-process gudizzjarju.

Min-naha tal-qorti.

Din uriet certa riluttanza biex tikkontrolla b`mod decisiva l-imgieba tal-prosekuzzjoni u tad-difiza.

Kien biss snin meta s-sitwazzjoni kienet waslet *rock bottom* illi hadet passi decizivi sabiex tara li l-procediment jasal ghat-tmiem tieghu.

Il-Qorti tqis li kien hemm mat-tmintax –il udjenza fejn l-ufficjal prosekutur ma kienx prezenti.

Fl-istess waqt tikkunsidra wkoll illi kien hemm ferm aktar seduti li fihom jew (i) l-imputat ma deherx (17-il seduta) ; jew (ii) deher l-avukat ta` l-imputat minghajr ma deher l-imputat (4 seduti) ; jew (iii) deher l-imputat wahdu minghajr ma kien assistit (11-il seduta). Fit-tliet sitwazzjonijiet ma sar xejn.

Ghalhekk ir-rikorrent ma jistax jilmenta minn dewmien meta kien tort tieghu jew tal-avukat tieghu li ghal numru gholi ta` udjenzi kif rajna ma seta` jsir xejn.

Meta rinfaccjata b`dak l-istat ta` fatt, il-Qorti tal-Magistrati ghamlet il-parti taghha sabiex tiggarantixxi l-jeddijiet tal-prosekuzzjoni u tad-difiza ghal dak li huwa jedd ghas-smigh. Kien biss meta s-sitwazzjoni ta` prokrastinar ma setghetx tibqa` tollerata aktar illi bdiet tkun aktar incisiva.

Il-Qorti hija konxja mid-decizjoni taghha kif presjeduta illi tat fil-31 ta` Mejju 2018 fil-kawza fl-ismijiet "<u>Adrian Abela vs Avukat Generali</u>".

Pero` teskludi minghajr l-icken esitazzjoni illi r-*ratio decidendi* taghha hemm jista` jigi applikat b`ghajnejha maghluqa ghall-kaz tal-lum propju ghaliex il-fattispeci ta` dak il-kaz kienu fis-sostanza diversi u distinti minn dawk ta` dan il-kaz.

Il-Qorti tqis illi fil-kaz tal-lum (diversament mill-kaz l-iehor) in-nuqqasijiet tal-prosekuzzjoni u tad-difiza kienu prattikament jinnewtralizzaw lil xulxin, u ghalhekk ir-rikorrent ma jistax jipponta subghajh lejn in-nuqqas ta` haddiehor bhala pretest biex ighid li garrab dewmien li kiser il-jedd tieghu ghal smigh xieraq meta l-fatti oggettivi tal-kaz tal-lum kif riflessi fl-atti tal-kawza kriminali juru xort`ohra.

Il-Qorti tal-Magistrati jidher li kienet tolleranti wisq, pero` mhux tort taghha, izda unikament tort tal-partijiet. Fil-fatt kienu tnejn l-udjenzi fejn il-Magistrat sedenti ma zammitx l-udjenzi minhabba indisposizzjoni.

Ghar-rigward tal-Qorti tal-Appell Kriminali, ir-rikorrent ilmenta li l-appell tieghu dam tliet snin sabiex ikun determinat. Ghad-dewmien fl-istadju tal-appell wahhal fl-awtorita` gudizzjarja.

Jirrizulta li l-kaz ha z-zmien li ha quddiem il-Qorti tal-Appell Kriminali **unikament** minhabba r-ragunijiet ta` sahha tar-rikorrent. L-atti li jikkostitwixxu prova hekk juru.

Ghaldaqstant huwa nfondat l-ilment tar-rikorrent ibbazat fuq l-Art 6(1) tal-Konvenzjoni.

Il-konsegwenza ta` dan hija li ghandhom jigu michuda ir-raba` u l-hames talbiet.

Respinti mit-tieni sal-hames talba, tigi bla fondament anke l-ewwel talba kif dedotta.

Decide

Ghar-ragunijiet kollha premessi, filwaqt li qeghda tilqa` l-eccezzjonijiet, qeghda tichad it-talbiet tar-rikorrent.

Tordna lir-rikorrent sabiex ihallas l-ispejjez kollha ta` din il-kawza.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur