



**CIVIL COURT FIRST HALL
(CONSTITUTIONAL JURISDICTION)**

**THE HON. MR. JUSTICE
JOSEPH ZAMMIT McKEON**

This day, Monday 15th July 2019

**Case no. 1
Constitutional Reference
No. 6/19 JZM**

The Republic of Malta

vs

Paul Ugochukwu Offor

The Court :

I. The matter

Having seen the decree given by the Criminal Court on the 15th January 2019 which states as follows :-

The Court :

Having seen the request of Paul Ugochukwu Offor as registered during the hearing of the 10 December 2018 for this Court to refer the matter as hereunder explained to the First Hall of the Civil Court in its Constitutional Jurisdiction ;

Having seen the note of the Attorney General of the 14 December, 2018, through which he replied to the above request ;

Having seen the records of the case ;

Considered :

1. That during the hearing of the 10 December 2018, the accused entered the following request in the records of the case :

"Dr. Joseph Mifsud on behalf of the accused Paul Offor due of [to] the fact that the trial of accused has not been set for hearing after a long time the bill of indictment has been presented in the Criminal Court and in view of the fact that the Prosecution has never indicated precisely what is the object of the evidence of the witness mentioned in the application that has been filed before this Honourable Court a few days before the hearing of the trial set to take place, and therefore in view of the unreasonably long time that accused has been waiting for his trial, respectfully asks this Honourable Court to refer this matter on this trial not taking place within a reasonable time, and therefore his fundamental right of hearing within a reasonable time has been breached, to the Civil Court in its Constitutional Jurisdiction for a decision on the matter of unreasonable long time for the setting of a date of the trial, especially in view of the fact that accused is a foreigner and due to his bail conditions he cannot leave the Maltese Islands and join his family in the country of his residence, namely Spain" ;

2. That in his detailed reply as aforesaid, the Attorney General noted that before a date can be set for hearing of this trial, it is necessary to await the outcome of separate criminal proceedings against alleged co-conspirators in this case which alleged co-conspirators remain the co-accused of Paul Ugochukwu Offor.

Following citation of judgements of the Constitutional Court and of the European Court of Human Rights that concluded that such a request is premature and therefore inadmissible in that prior to determining such an issue regard must be had to the whole of the proceedings and that these proceedings have not yet come to an end, the said Attorney General stated that accused's request has no legal basis and is untimely thus rendering it frivolous and vexatious ;

3. Having seen the note of the Attorney General of the 14 December 2018 filed in virtue of a decree delivered by this Court on the 10 December 2018 which note indicates the stage in which the relevant proceedings tied to this case have reached, namely : 1) Republic of Malta vs Kingsley Wilcox, put off to the 13th February 2019 for delivery of a decree regarding an application filed by defendant requesting that a new witness be admitted at appeal stage ; 2) Republic of Malta vs Charles Christopher Majimor, proceedings put off sine die until the case Republic of Malta vs Kingsley Wilcox is concluded ; and 3) Republic of Malta vs Angelo Bilocca and Priscilla Cassar, put off for the 9 January 2019 for the purpose of oral submissions regarding an appeal from the preliminary pleas put forward by the defence in the trial by jury ;

4. The Court examined the judgements referred to by the Attorney General in his reply where it is evident that none of the cited judgements refer to delays in court proceedings but refer to statements released by the accused in the absence of legal assistance, entrapment and other matters which, although are directly related to the fundamental human right for a fair hearing in criminal proceedings, do not directly address the alleged breach of such right in relation to delays in the proceedings ;

*5. Article 39(1) of the Constitution of Malta provides that any person charged with a criminal offence shall be afforded a fair trial within a reasonable time from an independent and impartial court established by law. Article 46(1) then provides that any person who alleges that any one of the provisions from article 33 to 45 (inclusive) of the Constitution has been, is being or is likely to be contravened may ask the First Hall of the Civil Court for redress. Article 6(1) of the European Convention on Human Rights then guarantees a fair hearing within a reasonable time. This Court makes reference to the judgement *Stogmuler vs Austria (ECHR 1969)*, wherein it was stated*

that the criminal process should be "designed to avoid that a person charged should remain too long in a state of uncertainty about his fate."

6. *The accused, Paul Ugochokwu Offor, is alleging a breach of his fundamental human right caused by the delay in his trial occasioned by the insistence of the Attorney General to bring forward witnesses who are themselves subject to criminal proceedings but who can not at this stage testify before the criminal proceedings brought against them are res judicata and this in turn due to the rule established in the criminal code about the testimony of accomplices ;*

7. *This court does not deem the request of the accused to be frivolous or vexatious and considers that it is one which merits a referral in terms of Article 46(3) of the Constitution and article 4 of Chapter 319 of the laws of Malta ;*

8. *This court therefore is hereby referring the following matter to the First Hall of the Civil Court in its Constitutional Jurisdiction, that is :*

Whether the delay in the proceedings occasioned by the upholding of the request of the Attorney General to postpone the trial by jury sine die in order for the Attorney General to be able to include in the list of witnesses, co-accused whose trials are still pending before the Criminal Court is a breach of article 39(1) of the Constitution and article 6 of the ECHR.

Having seen the documents that were attached to the referral.

Having seen the decree of this Court of the 22nd January 2019.

Having seen the reply that was filed by the Attorney General on the 8th February 2019 following the said decree of this Court.

The reply states as follows :-

1). **That** to start with, jurisprudence acknowledges that the unreasonableness of the time factor in lawsuits should not be determined in abstract or by the number of years a process kept ongoing, but should be considered in the light of the particular case at stake;

2). **That** it is likewise accepted that there is no time limit which a Court is obliged to observe the course of the proceedings pending before it because otherwise the interests of justice would be prejudiced due to inadvisable and excess rush;

3). **That** for there to be a breach of the reasonable time requirement, the indicted should prove that the lawsuit was not only pending for a long time but also that the delay was capricious and intended only to put him at a disadvantage in his enjoyment of his rights according to law;

4). **That** indeed in the present case, the adjournment of the trial by jury is perfectly reasonable and necessary in the interests of justice because the trial of the indicted person cannot commence until the separate criminal proceedings directed against his co-conspirators become *res judicata*;

5). **That** the testimony of his co-conspirators is crucial in this case to establish the reality of things. After all, one should not amiss that the scope of criminal proceedings is to shed light on the truth. Alas, it would be indeed a misfortune if the trial by jury were to be hastily appointed before the criminal proceedings proffered against the other co-conspirators come to a close;

6). **That** undeniably in this case, the right of the public to have criminal justice properly administered, adequately counterweighs the right of the accused to enjoy a speedy and public trial,

7). **That** accordingly, in view of these complex and intricate circumstances, he postponement of the trial of the indicated cannot be deemed to be capricious nor unreasonable;

*Therefore for the above stated reasons and for other reasons which might arise during the hearing of the case, respondent humbly requests his Honorable Court to reply to the constitutional reference transmitted by the Criminal Court, that the indicted suffered no violation to his right to a fair hearing within a reasonable time under **article 39 (1) of the Constitution of Malta** and **article 6 of the European Convention of Human Rights**, by the mere fact that the Criminal Court upon the request of the Attorney-General allowed for the adjournment of the trial by jury, pending the conclusion of the criminal proceedings against the co-conspirators, and all this in order for the prosecution to ultimately be allowed to produce such co-conspirators as witnesses in the trial against the indicted.*

The costs relating to this procedure should be borne by the indicted.

Having seen the *notes verbal* of the sittings.

Having heard the evidence.

Having heard the verbal submissions made by claimant and the note of submissions presented by respondent.

Having seen that the matter was adjourned for judgement for today.

Having seen the other acts of the proceedings.

Considers :

II. The testimony of claimant

Paul Ugochukwu Offor testified that he is Nigerian. He came to Malta on the 2nd of October 2012 from Spain where he had been living for 10 years. On his arrival in Malta, he was arrested on the

suspicion that he was carrying drugs in his stomach. He was taken to hospital but no drugs were found on his person. He was then imprisoned where he remained for two years without being granted bail.

He stated that proceedings were instituted against him before the Magistrates Court. When the proceedings were concluded, he was served with a bill of indictment. A trial by jury was set to commence in December 2017. However, the trial was not held because the Attorney General wanted to produce further evidence. The case is still pending before the Criminal Court, and no date was scheduled for the commencement of the trial.

He testified that he has a family living in Spain, namely his former wife and his son who was three years old when he came to Malta. Since he left Spain in 2012 he has not seen his son. Although recently he was allowed to travel to Spain, when he arrived there he did not find his ex-wife and son because she had returned to her country of origin, the Dominican Republic. While in Spain he commenced the legal process to have his son back in Spain.

He stated that he now lives in Bugibba and has a barber shop. He lives in a rented place with a friend. He pays €300 monthly as rent for the shop and €650 monthly as rent for the flat.

When **cross-examined**, he testified that in 2012 was the first time he came to Malta. He had come from Valencia. He intended to remain in Malta for three/four days looking for a job. He was planning to stay at the Tropicana Hotel, although he had not made a booking prior to arrival. He was arrested at the airport. The authorities seized his mobile phone.

Considers :

III. The claimant`s verbal submissions

After a short summary of the facts, claimant (through his counsel) submitted his trial by jury was set for the 25th of September 2017. Three months prior to the date of the trial, the Attorney General filed an application before the Criminal Court requesting an adjournment of the trial *sine die* until the criminal proceedings that had been instituted against Charles Christopher Magimore, Angelo Bilocca, Priscilla Cassar and Kingsley Wilcox were finalized. Prior to this request, the Attorney General did not specify the relevance of those proceedings, and of the persons who were there accused, to his trial, even though they had been included in an unclear fashion in the list of witnesses of the prosecution. The people concerned were never his co-accused because he did not even know who they were.

Claimant asserts that he has and is still enduring a breach of his fundamental human right to a trial with a reasonable time. Should the Court find that a breach did materialize, then not only should he be awarded moral damages, but also that the breach should be redressed at once. He refers to constitutional referral judgements given by the Constitutional Court on the 13th July 2018 in re **II-Pulizija vs Silvio Zammit** and on the 29th March 2019 in re **II-Pulizija vs Robert Agius**.

He dwells on the principles which determine or otherwise a breach : i) the complexity of the case ; ii) the conduct of the party requesting the remedy ; and iii) the part played by the authority for the delay. Applying these principles to his case, claimant states that his case is not complex, his conduct in the proceedings was respectful and did not contribute in any manner for the delay, and the conduct of the prosecution was the principal cause. Claimant refers to the judgement of the Constitutional Court of the 13th February 2017 in the constitutional referral in re **II-Pulizija vs Philip Borg**.

Claimant requested the Court to give an order to the Criminal Court to set the date of the trial within a short and reasonable time, whether or not the Attorney General is in a position to produce as witnesses the persons that had been indicated prior to the date when the trial was first set.

IV. The Attorney General`s written submissions

After giving a summary of the facts, the Attorney General notes that this Court has to decide solely the question that was put in the referral. Reference is made to the decision of the Constitutional Court of the 28th September 2012 in the constitutional reference in re **The Police vs Arias**.

Regarding the alleged violation, it is submitted that the swift conclusion of judicial proceedings forms an integral part of the right to a fair hearing ; excessive procedural delays are the antithesis of the proper administration of justice as they undermine its effectiveness and credibility (ECtHR : **Stogmuller vs Austria** decided on the 10th of November 1969 ; and **H vs. France** decided on the 24th of October 1989).

To establish whether the length of proceedings was reasonable, each and every case must be examined on its merits. Furthermore the proceedings in their entirety are to be properly scrutinized (ECtHR : **Frydlender vs France** : 27th June 2000 ; **Obermeier vs Austria** : 28th June 1990 ; **Comingersoll SA vs. Portugal** : 6th April 2000 ; and **Konig vs. Germany** : 28th June 1978).

The question of unreasonableness of time is not a matter to be debated in the abstract or by arithmetic but is a question that needs to be appraised in the light of the particular case (ECtHR : **X vs Belgium** : 12th March 1962).

A court is not restricted by any time limits as undue haste can be counter-productive and undermine the administration of justice itself (Constitutional Court : **Anthony Camilleri pro et noe vs. Attorney General** : 28th of September 2012)

Regarding the facts of the present case, the Attorney General notes that the adjournment of the trial by jury in question was reasonable and necessary in the interests of justice because the trial could not commence before separate criminal proceedings involving claimant`s accomplices were concluded. Their testimony was crucial for the outcome of the trial. An assertive and informed decision cannot be reached before all relevant witnesses are heard. The prosecution is bound at law to produce all evidence whether in favour or against the

accused. In view of the intricate circumstances of the case, the Attorney General firmly believes that the postponement of the trial was neither capricious nor unreasonable. Therefore, claimant did not sustain any breach.

Considers :

V. The question

The question put by the Criminal Court states as follows :

whether the delay in these proceedings occasioned by the upholding of the request of the Attorney General to postpone the trial by jury sine die in order for the Attorney General to be able to include in the list of witnesses, co-accused whose trials are still pending before the Criminal Court is a breach of Article 39(1) of the Constitution and article 6 of the European Convention on Human Rights.

Considers :

VI. The law

Article 39(1) of the Constitution provides that :

Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law

Article 6(1) of the Convention stipulates that :

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but

the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

Considers :

VII. The judgements

In its judgement of the 29th March 2019 in the constitutional reference in re **Il-Pulizija vs Robert Agius**, the Constitutional Court made the following observations :-

Skont il-gurisprudenza kostanti tal-Qrati Maltin, li tirrifletti dik tal-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem, biex jigi stabbilit il-qies tad-dewmien fil-proceduri, il-Qorti trid tezamina tliet konsiderazzjonijiet, u cioe : 1. Il-komplessita tal-kaz ; 2. L-imgieba ta' min ikun qed iressaq l-ilment ; 3. Is-sehem tal-awtoritajiet awtorijiet koncernati fid-dewmien.

Dan ghaliex "il-fattur taz-zmien m'ghandux jigi determinat fl-astrett imma fid-dawl tac-cirkostanzi partikolari tal-kaz [ara Applik Nru 1103/6 kontra l-Belgju]."

Ghalkemm ma tezisti l-ebda lista komprensiva li tista' twassal lil Qorti sabiex tiddetermina illi rikorrent ikun sofra lezjoni tad-dritt tieghu ghal smiegh xieraq minhabba dewmien irragonevoli, jinsab assodat kemm fil-gurisprudenza tal-Qrati taghna, kif ukoll dik Ewropeja, illi il-komplessita` tal-kaz li kien qed jigi deciz, kif gab ruhu r-rikorrenti fil-kors tal-proceduri li huwa qed jilmenta minnhom, kif imxew il-qrati fil-kors tal- istess process u x'kellu x'jitlef bhala konsegwenza tal-istess proceduri, oltre, ovvjament, kemm effettivamente dam biex il-kaz jigi

deciz b'mod finali huma fatturi krucjali illi ghandhom jigu kkonsidrati mill-Qorti.

Fir-rigward tat-tifsira tal-kuncett "zmien ragonevoli", il-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-kawza waslet ghal gudizzju kienx ta' tul tali, li jeccedi dak li hu jew ghandu jkun normalment accettabbli f'socjeta` demokratika. Dan ifisser illi kull kaz ghandu jigi ezaminat fid-dawl tac-cirkostanzi specjali tieghu.

...

Fil-fehma tal-Qorti, l-argument tal-intimati illi l-Istat m'ghandux x'jahti ghad-dewmien in kwistjoni, u li dan id-dewmien huwa gustifikat, ghaliex Rapinett ghandha dritt li ma tixhedx, u ghandha dritt li tappella mis- sentenza moghtija kontra taghha, filwaqt li l-prosekuzzjoni ma tistghax tigi mistennija li tirrinunzja ghal xhud, li skont hi, huwa indispensabbli, huwa inacettabbli meta wiehed japprezza z-zmien perkors. L-Istat huwa responsabbli ghal dan id-dewmien partikolarment fin-nuqqas ta' nteress u deligenza murija fejn ghaddiet sena shiha qabel xi hadd intebah li r-Referenza Kostituzzjonali ta' Mario Zammit kienet giet deciza u setghu jitkomplu il-proceduri ta' Appell ta' Rapinett.

L-Istat ghandu obbligu li jassikura illi hemm numru adekwat ta' gudikanti sabiex dawn ikunu f'qaghda li jaghmlu haqq mal-partijiet fiz-zmien ragonevoli u dan jinkludi proceduri li jissalvagwardaw d-dritt ta' appell u drittijiet kostituzzjonali u konvenzjonali tac-cittadin Malti.

...

Fil-fehma konsiderata ta' din il-Qorti huwa inaccettabbli fi stat demokratiku illi aktar minn hames snin wara l-arrest tal-imputat, il-prosekuzzjoni ghada m'ghalqitx il-provi taghha ghaliex l-appell ta' Rapinett ghadu ma giex deciz. Huwa inaccettabbli wkoll li l-Istat jargumenta li m'ghandu l-ebda htija ghal dan. L-Istat ghandu l-obbligu li jorganizza s-sistema gudizzjarja tieghu b'mod li din tahdem b'mod efficjenti u ma tikkawzax dewmien inordinat bid-disposizzjoni tal-kawza. F'dan il-kaz partikolari, l-Istat kellu kull possibilita, u kull

interess illi jassigura li l-proceduri kontra Rapinett jigu konkluzi mill-aktar fis possibli. Minkejja dan, aktar minn sena wara li giet deciza r-Referenza Kostituzzjonali ta' Mario Zammit, l-appell ta' Rapinett (li kien gie differit sine die), ma jirrizultax li gie ri-appuntat. Illi ghalhekk erba' snin wara s-sentenza in prim'istanza, l-appell ta' Rapinett ghadu mhux deciz.

In re **Il-Pulizija vs. Silvio Zammit** decided on the 13th July 2018, the Constitutional Court affirmed :-

Fil-kaz odjern, l-ilment tar-rikorrent jittratta specifkament id-dewmien irragonevoli li qed jiehd u l-proceduri kriminali proprju biex jigu konkluzi, u jekk il-Qorti kellha tistenna' sa tmiem il-proceduri sabiex tiddeciedi jekk hemmx vjolazzjoni ta' dan l-aspett tal-jedd, tkun qiegħda tippermetti li tissokta vjolazzjoni ta' jedd fundamentali minflok twaqqaf il- vjolazzjoni li tkun giet riskontrata. Konformament, jingħad illi meta jigi allegat il-ksur tad-dritt fundamentali għal smigh xieraq fi zmien ragonevoli mill-ottika tad-dewmien fil-process gudizzjarju, il-principju citat mill-appellant, cioe` li d-determinazzjoni tal-ezistenza o meno tal- lezjoni lamentata jinnessita ezami tal-procedura gudizzjarja fit-totalita` tagħha u mhux ta' episodji procedurali meqjusa wahedhom, ftit jista' jsib applikazzjoni fil-kaz odjern.

...

Din il-Qorti zzid tghid li l-evalwazzjoni tal-effett kumulattiv tad-dewmien generali fil-proceduri quddiem il-Qorti riferenti huwa ezercizzju necessarjament preordinat għad-determinazzjoni tal-kwezit mertu tar-referenza odjerna, cioe` jekk id-dewmien biex titressaq l-ahhar xhud li qed tirrifjuta li tixhed, jilledix id-dritt tar-rikorrent sancit mill-Artikolu 39 tal-Kostituzzjoni u l-Artikolu 6(1) tal-Konvenzjoni.

Huwa manifest li fil-qafas ta' allegazzjoni dwar il-ksur tad-dritt għal smigh xieraq fi zmien ragonevoli, id-determinazzjoni dwar jekk hemmx dewmien irragonevoli fil-proceduri b'mod kompleksiv, tincidi sostanzjalment fuq il-qies tad-dewmien fil-produzzjoni ta' xhud partikolari. Il-Qorti tqis li huwa inkonceptibbli li l-element tad-dewmien għall-finijiet tal-jedd fundamentali in dizamina jigi spezzettat f'episodji individwali tal-process billi wiehed janalizza l-element tad-dewmien biss mill-ottika tal-produzzjoni tax-xhud in kwistjoni, multo magis

meta din hija l-ahhar xhud li jonqos li tressaq il-prosekuzzjoni.

Ghandu jinghad ukoll li ghalkemm it-talba fir-referenza hija indirizzata limitatament lejn il-ksur tad-drittijiet fundamentali tar-rikorrent minhabba d-dewmien fil-produzzjoni tal-ahhar xhud tal-prosekuzzjoni b'rizultat li l-proceduri ma jistghux jintemmu, huwa inevitabbli li l-ksur lamentat, specifiku kemm hu specifiku, jista' jigi mistharreg b'mod siewi ghall-finijiet tat-twegiba li trid taghti l-qorti, biss jekk jigi meqjus ukoll l- isfond tal-proceduri kollha kompjuti s'issa jew talanqas sal-mument meta jitqanqal l-ilment relattiv. Wara kollox, "iz-zmien" ghall-fini li jigi stabbilit hemmx dewmien leziv ghad-dritt tas-smigh xieraq, jibda jghaddi f'kull kaz minn meta l-persuna jigi akkuzat b'reat kriminali jew, fit-termini iktar wiesa' tal-Konvenzjoni, meta l-persuna tigi arrestata jew investigata in konnessjoni ma' xi reat kriminali.

...

Maghdud il-konsiderazzjonijiet fuq maghmulin, kif ukoll il-konsiderazzjonijiet fis-sentenza appellata rigward id-dewmien generali biex il-prosekuzzjoni tressaq il-provi taghha - li magghom din il-Qorti taqbel pjenament - m'hemmx dubju li z-zmien li lahaq ghadda mill-bidu tal-process kriminali sakemm il-prosekuzzjoni finalment iddecidiet li tara kif ser tressaq l-ahhar xhud taghha, huwa diga` wiehed eccessiv mehud qies tal-fatturi kollha kkunsidrati mill-ewwel Qorti fil-qafas tad-dewmien. Ferm il-premess, din il-Qorti tqis li d-decizjoni fis-sentenza appellata li t- trapass ta' zmien bejn Dicembru 2012 sal-lum biex il-prosekuzzjoni taghlaq il-provi taghha "huwa zmien twil izzejjed u certament mhux ragonevoli sabiex jigu konkluzi dawn il-provi".

Considers :

VIII. The facts

The acts of the Bill of Indictment No. 10/2015 in re **The Republic of Malta vs. Paul Ugochokwo Offor** establish the following facts :-

- The accused was arraigned on the 2nd of October 2012.
- The bill of indictment was issued on the 22nd of May 2015.
- On the 1st of June 2015, applicant requested the Criminal Court to refer his case for trial and decision before the Court of Magistrates (Malta) as a Court of Criminal Judicature.
- On the 3rd of June 2015, the Attorney General objected to the request.
- The Criminal Court appointed the matter for hearing on the 9th of June 2015. On that date, the parties made their submissions.
- On the 15th of July 2015, the Criminal Court gave a decree *in camera* whereby while rejecting the request of applicant decreed that the accused had to be tried by the Criminal Court.
- The case was appointed for the hearing of preliminary pleas before the Criminal Court on the 16th of December 2015. During that sitting, the prosecution requested an adjournment. The Court acceded to the request. The case was adjourned to the 24th of February 2016.
- On the 24th of February 2016, defence renounced to a witness, who was indicated as 2(v) in the note of pleas of the 11th June 2015. The Attorney General declared that it had no further objections with regards to the list of witnesses. The case was put off for the 6th April 2016 for submissions regarding the preliminary pleas entered by the defence.
- On the 6th of April 2016, the parties made oral submissions. The case was adjourned for judgement on the 6th of July 2016.

- The Criminal Court rejected the preliminary pleas by a judgement of the 29th September 2016. The case was adjourned *sine die* pending the outcome of an appeal from this decision. Defence gave notice of appeal.
- As no appeal was filed in the time-limit established at law, on the 24th November 2016, the Criminal Court appointed the case for hearing for the 1st December 2016, to set up an appointment for the trial by jury.
- On the 1st of December 2016, the Criminal Court appointed the trial by jury for the 25th of September 2017.
- On the 8th May 2017, the Attorney General filed a request to adjourn the trial *sine die* due to the fact that proceedings that had been instituted against persons allegedly co-conspirators with applicant were still not concluded, and their testimony as witnesses was required in the trial against applicant.
- On the 12th May 2017, the Court gave a decree whereby the Attorney General was directed to submit a note whereby he would indicate when the proceedings against the other persons would be concluded, and at what stage were the proceedings.
- On the 15th May 2017, the Attorney General presented a note advising the Criminal Court that in the proceedings i) **Republic of Malta vs Kingsley Wilcox** – the trial by jury was concluded on the 8th April 2017, however accused filed an appeal, which was still pending ; ii) **Republic of Malta vs Charles Christopher Majimor** – the proceedings were adjourned *sine die* pending final judgement in the case Republic of Malta vs Kingsley Wilcox ; iii) **Republic of Malta vs Angelo Bilocca & Priscilla Cassar** – proceedings were awaiting a judgement on preliminary pleas.

- On the 17th May 2017, the Criminal Court decreed that the trial of applicant be adjourned *sine die* to be appointed after the proceedings indicated in the application were terminated.
- On the 20th November 2017, claimant filed a request to reduce his obligation to report at the Qawra Police Station. The Attorney General did not object. The Criminal court acceded to the request.
- **On the 10th December 2018, the Criminal Court rejected a request made by applicant for his trial by jury to proceed. At that point, Offor requested a constitutional reference. The Court acceded to the request on the 15th January 2019 by making an order of reference to this Court with a question for this Court to reply.**

Considers :

IX. The considerations of this Court

The role of this Court is determined by Article 46(3) and Article 95(2)(b) of the Constitution, by Legal Notice 279 of 2008, and Article 4(3) of the Convention.

When requested to answer to a question in a constitutional reference, this Court is restricted to the parameters of the question set by the court of referral.

Its function stops with the answer to the submitted by the court of referral.

With reference to applicant`s submissions, this Court notes that the court of referral made no request whatsoever to

this court to liquidate any moral damages in favour of Offor or to give any order that addresses the alleged past and continued breach of his rights.

In simple terms, the function of this Court is simply, after having taken into account all proven facts and circumstances, to answer yes or no to the question put to it by the court of referral.

That being the state of the law, this Court points out that Offor was first arraigned on the 2nd of October 2012. The bill of indictment was issued on the 22nd of May 2015. Evidence was collected over a period of two and a half years. The rest of the proceedings can be described as normal. Following its decision on applicant`s preliminary pleas, the Criminal Court appointed the case for trial by jury on the 25th of September 2017. On the 8th of May 2017, the Attorney General filed a request for the case to be adjourned *sine die* until proceedings against related third parties were concluded.

From the acts of the bill of indictment, this Court notes that the witnesses that the Attorney General intended to produce were already included in the list of witnesses attached to the bill of indictment presented against Offor. Therefore, the Attorney General was well aware that proceedings against third parties, to a large extent, dependent on the complete exercise of his discretion, had to be concluded with celerity, as the trial against the applicant would have been stalled.

This Court finds it difficult to comprehend why the Attorney General did not bring all facts to the attention of the Criminal Court immediately, but opted to wait for two years before making this most relevant issue known to that Court.

This Court has not been made aware whether an attempt was made to produce any of the potential witnesses against Offor, i.e. Kingsley Wilcox, Charles Christopher Magimor, Angelo Bilocca and Priscilla Cassar, or whether any of them was actually produced to testify during the compilation of evidence at the inquiry stage.

This Court is of the considered opinion that in this particular case, the relevant period to be taken into account, with regard to the reference in question, started to run from the 2nd of October 2012, when applicant was arraigned.

In real terms that means that criminal proceedings against applicant have been in place for **six years and six months**.

It can also be said that it was only after **four years and six months** that the Attorney General thought it fit for him to decide to raise the issue of aforesaid witnesses whose criminal proceedings were still pending.

The Attorney General makes the point that a court should not be restricted to a time limit within which proceedings should be concluded. It is argued by the Attorney General that by imposing such a measure the law could prejudice the interest of justice because of inadvisable and excessive haste. It is also submitted that the adjournment of the trial by jury was reasonable and necessary.

This Court does endorse the position that court proceedings, especially criminal proceedings, should take their proper course. However rather than being dealt with haste, court proceedings, especially criminal proceedings, should without reserve be dealt with swiftly in the paramount interest of formal and substantive justice. It is in the interest of society at large, through the application of the rule of law in its essence, that criminal proceedings, in particular, should start and finish within a reasonable time in the true sense of the term.

This Court underlines the fact that the Attorney General was well aware that there were criminal proceedings which had been instituted against persons who he considers as co-conspirators with applicant and who he intended to produce as witnesses against Offer once their cases were finally decided.

This Court considers the State as solely responsible for the delay sustained by applicant in the determination of his case.

That delay is manifestly unreasonable and therefore violates Offor`s right to a fair hearing as protected by the Constitution and the Convention.

It is the considered opinion of this Court that in a democratic society, founded on the rule of law, it is unacceptable that after the lapse of six and a half years from arraignment, criminal charges against an accused remain undecided, because the prosecution insists in its request to produce witnesses, whose criminal trials are still pending, when ultimately the conclusion of those trials depends to a large extent on the prosecution itself.

Judgement

For all the reasons above, this Court is hereby answering the question put to it by the Criminal Court in its decree of the 15th January 2019, by declaring that the delay in the proceedings occasioned by the upholding of the request of the Attorney General to postpone the trial by jury against Paul Ugochukwu Offor *sine die* in order to enable the Attorney General in that case to include in the list of witnesses co-accused whose trials are still pending before the courts of criminal jurisdiction constitutes a breach of Article 39(1) of the Constitution of Malta, and a breach of Article 6 of the European Convention of Human Rights and Fundamental Freedoms.

The Court orders that a copy of this judgement be transmitted to the Criminal Court.

The Court orders that all costs related to this matter are to be borne by the Attorney General.

**The Hon. Mr. Justice
Joseph Zammit McKeon**

**Amanda Cassar
Deputy Registrar**