QORTI KRIMINALI

Onor. Imhallef Dr. Consuelo Scerri Herrera LL.D. Ph.D.

Att t'Akkuza numru 27/2021

Ir-Repubblika ta' Malta

vs

JESMOND (JESMOND MARY) VELLA

Illum 28 ta' Marzu, 2023,

Il-Qorti,

Rat l-Att tal-Akkuza numru 27 tas-sena 2021 migjuba fil-konfront tal-akkuzat Jesmond (Jesmond Mary) Vella, detentur tal-karta tal-identita' bin-numru 443376M fejn l-Avukat Generali **fl-Ewwel u l-uniku Kap ipremetta**:

> Illi fid-19 ta' Gunju, 2008, u matul il-jiem u gimghat qabel din id-data l-akkuzat Jesmond Mary Vella kellu fil-**pussess xjenti** tieghu kwantità kbira ta' raza mehuda mill-pjanta *Cannabis* (hawn aktar l'isfel maghrufa bhala il-"cannabis").

L-akkuzat kien jahdem fl-industrija tal-kostruzzjoni, inkluz xoghol ta' tikhil u tibjid, u ghal xi zmien hadem f'dan il-qasam flimkien ma' certu John sive Ganni Xuereb u certu Paul Spiteri. F'dan ix-xoghol, Ganni Xuereb u l-akkuzat kienu ghamlu habta juzaw trakk (tal-marka Bedford, u li kien igib in-numru tar-registrazzjoni DAO 036), liema trakk kien registrat f'isem Ganni Xuereb, izda li kien jigi misjuq mill-akkuzat u l-akkuzat kien telqu pparkjat vicin ta' garage li jinsab fi Triq in-Naggar, il-Mosta u li kien ukoll jigi wzat mill-istess akkuzat.

F'dawk il-jiem, il-Pulizija bdew jaghmlu stharrig dwar l-akkuzat minhabba li kellhom suspett ragjonevoli li kien involut fil-pussess illegali ta' droga. Il-Pulizija bdew josservaw ic-caqlieq tal-akkuzat u wkoll ghamlu osservazzjoni quddiem dak il-garage li kien juza fi Triq in-Naggar, fil-Mosta. Nhar l-20 ta' Gunju, 2008, il-Pulizija iddecidew li jintervjenu billi jaghmlu tfitxija fil-garage u f'xi vetturi li kien juza l-akkuzat, fosthom fit-trakk Bedford hawn fuq imsemmi. Dak il-hin li bdew isiru dawn it-tiftix, l-akkuzat kien fejn dan il-garage flimkien ma xi nies ohra, tnejn ta' nisel Gharbi u iehor Malti.

Mit-tfitxija li saret fil-garage, instabu zewg speed boats (wahda minnhom bi tliet magni), u saret tfitxija wkoll fil-vetturi tal-marka Volvo u Land Rover, izda hawn ma nstab xejn illegali. S'hawnhekk l-akkuzat ikkopera mal-Pulizija minghajr problemi.

Izda meta l-Pulizija bdiet it-tfitxija fit-trakk Bedford hawn fuq imsemmi, l-akkuzat beda jitbieghed minn dan it-trakk, jopponi u nnega li kellu xi konnessjoni ma dan it-trakk. Izda meta l-Pulizija bdew it-tfitxija f'dan it-trakk, fil-gabina tat-trakk, il-Pulizija sabu zewg pjanci ta' karozza li kienu jappartjenu lill-akkuzat (bin-numri CAR-787), flimkien ma "log book" ta'

karozza tal-marka Fiat, bin-numru tar-registrazzjoni KBG-934 li wkoll kienet tappartjeni lill-akkuzat.

Apparti dawn l-oggetti li kienu jappartjenu lill-akkuzat, mill-kaxxa fejn titghabba t-taghbija tal-istess trakk, il-Pulizija sabet u wara elevat barmil, ossija tank tal-metall, li fil-wicc tieghu kien hemm basket tal-plastik bil-hobz niexef fih jghattilu l-bokka. Meta l-Pulizija nehhiet dan il-basket tal-plastik bil-hobz niexef, f'dan il-barmil ossija tank tal-metall, il-Pulizija sabet basket tal-plastik iehor li fih kien hemm mahzuna ghoxrin blokka ta' raza mehuda mill-pjanta kannabis fil-qiegh ta' dan il-barmil.

Dan il-basket li fih kien hemm dawn l-ghoxrin blokka tar-raza mehuda mill-pjanta cannabis kien gie imqieghed f'dan il-barmil ossija tank tal-metall (fil-kaxxa ta' dan it-trakk) mill-akkuzat stess meta kien jaf li f'dan il-basket kien hemm mahzuna dawn l-ghoxrin blokka tar-raza mehuda mill-pjanta cannabis. Fil-mument li fih l-akkuzat zamm, garr, qieghed fil-barmil, u zamm mahzuna dan il-basket bl-ghoxrin blokka tar-raza tal-cannabis mohbija fit-trakk hawn fuq imsemmi li kien isuq hu u li kien parkeggat hdejn il-garage minnu uzat u taht l-isfera tal-influwenza tieghu, u meta kien jaf li dawk il-blokok kienu jikkonsistu f'raza mehuda mill-pjanta cannabis, huwa jigi li kien qieghed fil-pussess xjenti ta' raza mehuda mill-pjanta cannabis bi ksur tad-disposizzjonijiet tal-Kapitolu 101 tal-Ligijiet ta' Malta.

Dawn l-ghoxrin blokka tar-raza mehuda mill-pjanta cannabis hawn fuq imsemmija, gew elevati minn membri tal-Pulizija u wara li saret l-analizi xjentifika fuqhom minn esperti mahtura mill-Qorti, rrizulta li fil-fatt dawn l-ghoxrin blokka kienu jikkonsistu f'raza mehuda mill-pjanta cannabis u kellhom il-piz ta' erbat elef tminn mija sebgha u ghoxrin punt tlieta grammi (4827.3 gr) b'purita ta' *tetrahydrocannabinol* ta' cirka 8.2% u li

kienet iggib il-valur fis-suq miftuh ta' madwar tletin elf, disa mija tlieta u erbghin euro (€30,943).

L-akkuzat ma kienx awtorizzat jew b'xi mod iehor licenzjat b'xi licenza moghtija mill-Ministru responsabbli ghas-Sahha u ma kienx awtorizzat bir-Regoli tal-1939 ghall-Kontroll Intern fuq id-Drogi Perikoluzi jew b'xi awtorità moghtija mill-Ministru responsabbli ghas-Sahha li jkollu dik id-droga fil-pussess tieghu.

Illi b'sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali fl-ismijiet "Il-Pulizija v. Jesmond Mary Vella" tal-11 ta' Novembru, 2003 l-akkuzat Jesmond Mary Vella instab hati ta' diversi delitti.

Illi b'ghemilu hawn fuq imsemmi, Jesmond Mary Vella sar hati talli kellu fil-pussess tieghu ir-raza mehuda mill-pjanta *Cannabis* jew xi preparazzjonijiet li kellhom bhala bazi din ir-raza li fit-total kien jammonta ghal piz totali komplessiv ta' madwar erbat elef tminn mija sebgha u ghoxrin punt tlieta grammi (4827.3 g) b'purita ta' *tetrahydrocannabinol* ta' cirka 8.2% u li kienet iggib il-valur fis-suq miftuh ta' madwar tletin elf, disa mija tlieta u erbghin euro (€30,943) u dan meta ma kienx fil-pussess ta' awtorizzazzjoni ghall-importazzjoni jew ghall-esportazzjoni mahrug mit-Tabib Principali tal-Gvern skond id-disposizzjonijiet tat-Taqsima VI tal-Ordinanza dwar il-Medicini Perikoluzi, u meta ma kienx bil-licenzja jew xort'ohra awtorizzat li jimmanifattura jew iforni d-droga msemmija, u ma kienx b'xi mod iehor bil-licenzja moghtija mill-Ministru responsabbli ghas-Sahha u ma kienx awtorizzati bir-Regoli tal-1939 ghall-Kontroll Intern fuq id-Drogi Perikoluzi jew b'xi awtorità moghtija mill-Ministru responsabbli ghas-Sahha li jkollu dik id-droga fil-pussess tieghu, u dik id-droga ma gietx fornita lilu ghall-uzu tieghu skond ricetta kif provdut fir-

Regoli msemmija, u b'dan li r-reat sar taht tali cirkostanzi li juru li dak il-pussess ma kienx ghall-uzu esklussiv tieghu; kif ukoll li huwa recidiv.

Ghaldaqstant l-Avukat Generali f'isem ir-Repubblika ta' Malta, in bazi ghall-fatti narrati fil-paragrafi precedenti u ghac-cirkostanzi kollha aktar il-fuq imsemmija, jakkuza lill-imsemmi Jesmond Mary Vella, recidiv f'delitt, bhala li sar hati talli fid-19 ta' Gunju 2008 u matul il-jiem u gimghat qabel din id-data, huwa kellu fil-pussess tieghu ir-raza mehuda mill-pjanta *Cannabis* jew xi preparazzjonijiet li kellhom bhala bazi din ir-raza meta ma kienx fil-pussess ta' awtorizzazzjoni ghall-importazzjoni jew ghall-esportazzjoni mahrug mit-Tabib Principali tal-Gvern skond id-disposizzjonijiet tat-Taqsima VI tal-Ordinanza dwar il-Medicini Perikoluzi, u meta ma kienx bil-licenza jew xort'ohra awtorizzat li jimmanifattura jew iforni d-droga msemmija, u ma kienx b'xi mod iehor bil-licenzja moghtija mill-Ministru responsabbli ghas-Sahha u ma kienx awtorizzati bir-Regoli tal-1939 ghall-Kontroll Intern fuq id-Drogi Perikoluzi jew b'xi awtorità moghtija mill-Ministru responsabbli ghas-Sahha li jkollu dik id-droga fil-pussess tieghu, u dik id-droga ma gietx fornita lilu ghall-uzu tieghu skond ricetta kif provdut fir-Regoli msemmija, u b'dan li r-reat sar taht tali cirkostanzi li juru li dak il-pussess ma kienx ghall-uzu esklussiv tieghu;

u billi b'sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali fl-ismijiet "Il-Pulizija v. Jesmond Mary Vella" tal-11 ta' Novembru, 2003 l-akkuzat Jesmond Mary Vella instab hati ta' diversi delitti, l-Avukat Generali qieghed jaddebita lill-istess akkuzat bir-recidiva; u jitlob ghalhekk illi jinghamel skond il-ligi kontra l-imsemmi akkuzat u illi jigi kkundannat ghal piena ta' prigunerija ghal ghomru flimkien mal-piena tar-rekluzjoni ghal mhux aktar minn tnax il-perjodu u multa ta'

mhux anqas minn elfejn tlett mija u disa u ghoxrin euro u sebgha u tletin centezmi (€2329.37) izda mhux izjed minn mija u sittax il-elf erba' mija u tmienja u sittin euro u sebgha u sittin centezmi (€116,468.67) u l-konfiska favur il-Gvern tal-oggetti kollha li dwarhom sar ir-reat u l-konfiska favur il-Gvern ta' kull flejjes jew proprjetà mobbli u immobbli ohra tal-persuna hekk misjuba hatja, skond dak li hemm u jintqal fl-artikoli 2, 8(a), 9, 10(1), 12, 22(1)(a)(1B)(b)(2)(a)(i)(3A)(a)(b)(c)(d) u 26 tal-Ordinanza dwar il-Medicini Perikoluzi, u r-regolamenti 2, 9 u 16 tar-Regoli tal-1939 ghall-Kontroll Intern fuq id-Drogi Perikoluzi [N.G. 292 tal-1939], u fl-artikoli 17, 23, 31, 49, 50 u 533 tal-Kodici Kriminali jew ghal kull piena ohra li tista' skond il-ligi tinghata ghal-htija tal-imsemmi akkuzat.

Rat illi l-akkuzat ma kienx ipprezenta nota t'eccezzjonijiet preliminari.

Rat l-atti kollha processwali, inkluzi l-atti tal-kumpilazzjoni.

Rat illi permezz ta' digriet datat l-24 ta' Jannar, 2023, il-Qorti laqghet it-talba tal-akkuzat sabiex a tenur il-proviso tal-Artikolu 449(1) tal-Kodici Kriminali iressaq il-quddiem in-nota t'eccezzjonijiet preliminari ulterjuri tieghu skont il-ligi.

Rat illi permezz ta' nota t'eccezzjonijiet preliminari ulterjuri datata il-25 ta' Jannar, 2023, l-akkuzat a tenur l-Artikolu 449(1)(g) tal-Kodici Kriminali ecepixxa l-inammissibilita' u l-konsegwenti sfilz mill-atti processwali ta' kull stqarrija u/jew dikjarazzjoni rilaxxata mill-akkuzat kemm lil Membri tal-Korp tal-Pulizija, lil esperti tal-Qorti u quddiem il-Magistrat li mexxa l-Inkjesta dwar l-in genere u per konsegwenza l-inammissibilita' u l-konsegwenti sfilz ta' kull referenza li saret fl-atti processwali ghal dawn l-istqarrijiet u dikjarazzjonijiet(skritti jew verbali) billi fiz-zmien li gew rilaxxati l-akkuzat ma nghatalux il-jedd li jikkonsulta ma'avukat tal-fiducja tieghu la qabel u wisq inqas matul it-tehid tal-

istqarrijiet u/jew dikjarazzjonijiet u dana bi vjolazzjoni tal-artikolu 6(3)(c) moqri flimkien mal-artikolu 6(1) tal-Konvenzjoni Ewropeja dwar id-Drittijirt tal-Bniedem.

Rat ir-risposta tal-Avukat Generali datata 15 ta' Frar, 2023, fejn brevement stqarr illi l-istqarrija tal-akkuzat tmur lura ghal Gunju tas-sena 2008 fejn din ittiehdet skont il-ligijiet vigenti ta' dak iz-zmien. L-akkuzat inghata d-dritt tas-silenzju, b'dan li ma kienx obbligat li jitkellem jekk ma xtaqx li jitkellem, b'dana li dak li jinghad seta' jingieb bhala prova. Fil-mori tal-proceduri l-akkuzat dejjem kien assistit minn avukat u din il-lanjanza dwar il-mod kif ittiehdet l-istqarrija tieghu qatt ma tqajjmet qabel. L-Avukat Generali sahaq illi meta jittiehed kont tal-process kollu, l-akkuzat dejjem kellu smiegh xieraq. L-Avukat Generali tenna li l-Qorti ta' natura penali m'ghandhomx il-kompetenza li jiddikjaraw stqarrija inammissibli u jordnaw l-isfilz taghha meta l-istess stqarrija mhijiex nieqsa mill-valur probatorju gialadarba ma hemm ebda regola ta' dritt penali li teskludi l-ammissjoni tal-istess. L-istqarrija hija konformi mal-ligijiet penali vigenti fiz-zmien ta' meta ttiehdet. L-Avukat Generali jsostni illi l-akkuzat m' inghatax id-dritt li jkun assistit minn avukat kemm qabel u wara l-interrogazzjoni ghaliex il-ligi vigenti ta' dak iz-zmien ma kienitx tipprovdi dan. Id-difiza qed tibbaza din l-eccezzjoni strettament fuq in-nuqqas t'assistenza legali waqt it-tehid tal-istqarrija u mhux fuq x'irregolarita' ta' xi dritt penali u/jew that xi dispozizzjoni tal-ligi penali. L-Avukat Generali kompla billi qal li minn ***Beuze*** il-quddiem l-fatt wahdu m'ghandux irendi tali stqarrijiet inammissibli b'mod awtomatiku. Galadarba l-process gudizzjarju ghadu ma sehhx fl-intier tieghu, ma jistax f'dan l-istadju jigi stabbilit jekk hemmx vjolazzjoni tad-drittijiet kostituzzjonali tal-akkuzat b'dana li l-istess stqarrija u kwalunkwe prova ohra marbuta maghha ma tistax tigi sfilzata mill-atti f'dan l-istadju. L-Avukat Generali jghid illi f'kazijiet fejn tali stqarrija tista' tkun ta' pregudizzju ghall-akkuzat, jista' jigi dibattut li jkun hemm mitigazzjoni fil-piena f'kaz ta' verdett ta' htija hekk kif jigri meta kaz ma jinqatax fi zmien xieraq u jirrizulta li tali dewmien ma kienx tort tal-akkuzat.

Illi mhux l-istess qed jigri f'certu kazijiet bl-isfilz tal-istqarrijiet fejn ma jkunx inghata d-dritt tal-assistenza legali, fejn b'konsegwenza ta' tali sfilz l-ammisjoni tal-persuna ma jibqala l-ebda valur probatorju bil-konsegwenza li tali persuna tispicca liberata minflok ma jkollha temperament fil-piena. L-Avukat Gnereali jaghmel referenza ghal sentenza kostituzzjonali fl-ismijiet **Charles Steven Muscat kontra Avukat Generali** deciza nhar it-8 t' Ottubru 2012 fejn gie ritenut is-segwenti:

> *'Din il-Qorti ttenni illi l-jedd li jaghtu l-Kostituzjoni u lKonvenzjoni huwa dak ghal smigh xieraq: ma hemm ebda jedd li kull min hu akkuzat b'reat kriminali jigi liberat minn dik l-akkuza, jew li l-akkuzat jinghata l-mezzi biex, hati jew mhux, jinheles mill-akkuza, jew li, minhabba xi irregolarità, tkun xi tkun, min fuq il-fatti ghandu jinstab hati ghandu jithalla jahrab il-konsegwenzi ta' ghemilu.* ***Il-jedd ghal smigh xieraq jinghata kemm biex, wara process fi zmien ragonevoli u bil-garanziji xierqa, min ma huwiex hati ma jehilx bi htija, u biex jinghata l-mezzi kollha mehtiega ghalhekk, u kemm biex min huwa tassew hati ma jahrabx il-konsegwenzi tal-htija tieghu****. Il-jedd ghal smigh xieraq ma jinghatax biex min hu tassew hati jasal biex, b'xi mod jew b'iehor, ma jwegibx tal-htija tieghu. Jekk il-jedd ghal smigh xieraq, kif interpretat u applikat, iwassal ghal hekk, mela hemm xi haga hazina hafna fissistema tal-harsien tad-drittijiet'*

Ghal dawn ir-ragunijiet l-Avukat Generali qieghed jitlob lil din il-Qorti sabiex tirrespingi din l-eccezzjoni tal-akkuzat.

Ikkunsidrat:

L-eccezzjoni ulterjuri hekk kif sollevata mill-akkuzat tirrigwardja l-inammissibilta' tal-istqarrija/iet u/jew dikjarazzjoni/jiet tal-akkuzat, kif ukoll l-

inammissibilita' t' kwalsiasi referenza ghal din l-istqarrija/ijiet u dan ghaliex l-akkuzat ma kienx assistiti minn avukat la qabel u anqas wara l-interrogazzjoni.

Illi l-akkuzat Jesmond Mary Vella rrilaxxa stqarrija nhar l-20 ta' Gunju, 2008 u li tinsab a fol. 19 et seq. tal-process Fil-bidu ta' din l-istqarrija tirrizulta is-segwenti twissija:

> *'Twissija moghtija mill-Ispettur Johann J. Fenech fil-prezenza ta'PS 1086 Johann Micallef:*
> *"M'intix obbligat li titkellem sakemm ma tkunx tixtieq li titkellem, imma dak li tghid jista' jingieb bi prova."'*

Fl-ahhar ta' din l-istess stqarrija nsibu l-kliem:

> *'Din l-istqarrija ghamiltha volontarjament, minghajr theddid, weghdi jew promessi ta' vantaggi. Hija l-verita' u wara li nqrat minni stess ma rrid inzid jew innaqqas jew inbiddel xejn minnha u naghzel li ma niffirmax.'*

Illi jirrizulta li meta l-akkuzat Jesmond Mary Vella rrilaxxa l-istqarrija tieghu, dan ma kellu **l-ebda d-dritt li jikkonsulta ma' Avukat jew Prokuratur legali, la qabel u anqas waqt ir-rilaxx tal-istqarrija**. Illi minkejja li l-ligi kienet tipprovdi ghal dan, dawn id-drittijiet sa qabel l-10 ta' Frar, 2010, ma kienux infurzati.

Din il-Qorti sejra taghmel referenza ghal uhud mis-sentenzi li indirizzaw kwistjonijiet rigwardanti l-ammissibilita' o meno tal-istqarrijiet rilaxxati mill-akkuzat.

Fis-sentenza **il-Pulizija vs. Esron Pullicino**,[1] l-imputat kien irilaxxa stqarrija nhar is-26 ta' Frar, 2006, meta dan ma kienx assistit minn avukat, la qabel u lanqas wara l-interrogazzjoni. In oltre, il-Qorti qalet is-segwenti:

> *'Minn ezami tal-fatti kif jemergu f'dan il-kaz, ghalhekk jirrizulta sufficjentement pruvat li l-Artikolu 6 tal-Konvenzjoni, gie vvjolat kemm fuq bazi oggettiva kemm ukoll mill-aspett ta' "self-incriminating evidence". **Fil-mument li gie interrogat l-appellat u meta rrilaxxja l-istqarrija mal-ufficjal koncernat kienet tipprevali "a systematic restriction of access to a lawyer pursuant to the relevant legal provisions".** (Boz v. Turkey 9.02.2010, u Dayanan v. Turkey 13.10.2009).'*

Il-Qorti Kostituzzjonali kienet ikkonkludiet illi kienu gew lezi d-drittijiet ta' Esron Pullicino ghal smiegh xieraq kif sancit fl-Artikolu 6(3)(c) konguntivament mal-Artikolu 6(1) tal-Konvenzjoni Ewropeja meta dan ma kienx assistit minn Avukat waqt li kien detenut mill-Pulizija Ezekuttiva u rrilaxxja stqarrija. Dan il-kaz sussegwentament tkompla quddiem il-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali u fis-sentenza taghha l-Qorti ghamlet referenza ghall-kawza ohra simili hafna ghal dik ta' Pullicino:

> *Rat id-digriet ta' din il-Qorti moghti illum fis-7 t'Ottubru 2011 fejn iddikjarat illi r-rimedju li ghandu jinghata ghal ksur ta' smiegh xieraq ta' l-imputat: "huwa propju dak li qalet il-Qorti Kostituzzjonali fis-sentenza taghha **Pulizija v. Alvin Privitera** deciza nhar il-11 ta' April 2011, u li kienet titratta kaz prattikament identiku ghal dak odjern. ... ... F'dik is-sentenza, il-Qorti Kostituzzjonali irriteniet li din il-Qorti ghandha "tevalwa l-validita u l-ammissibilita tal-provi migjuba quddiemha" fid-dawl tal-konkluzjonijiet tassentenza tal-Qorti Kostituzzjonali. Fil-fehma ta' din il-Qorti, dan ifisser **li l-atti tal-kawza odjerna ghandhom jibqghu intatti,***

[1] Deciza mill-Qorti Kostituzzjonali nhar it-12 April 2011.

pero meta din il-Qorti tasal biex taghti sentenza ghandha tixtarr il-provi migjuba quddiemha sabiex tassigura li l-htija jew l-innocenza ta' l-imputat tigi esklussivament stabbilita minn provi mhux inkwinati minhabba li jilledu d-dritt ta' smiegh xieraq, u li l-istqarrija de quo ma jkollha l-ebda influwenza, diretta jew indiretta, fuq l-ezitu ta' dawn il-proceduri kriminali."[2]

Din is-sentenza giet ukoll ikkonfermata mill-Qorti tal-Appell nhar is-6 ta' Dicembru, 2013.

Fil-kaz tal-**Pulizija vs Mark Lombardi,**[3] il-Qorti Kostituzzjonali ddecidiet bl-istess mod bhal fil-kaz ta' Pullicino u ghamlet referenza ghall-kaz **Cadder (Appellant) v. Her Majesty's Advocate (Respondent) (Scotland) [2010] UKSC 43** u rriteniet s-segwenti:

'F'dak l-appell il-kwistjoni li kellha quddiemha l-Qorti kienet jekk persuna li kienet mizmuma fl-Iskozja mill-Pulizija fuq suspett li kienet ikkommettiet reat kellhiex dritt ghall-avukat qabel ma tigi interrogata.

Dik il-Qorti bdiet billi ezaminat jekk kellhiex tiehu "into account any decision of the Strasbourg Court" u cjoe` l-kaz Salduz in partikolari. Hi qalet li, "This does not of course mean that these decisions are to be binding in any way upon the UK Courts[4]" imma fl-istess hin kompliet li, "The court should follow any clear and constant jurisprudence of the Strasbourg Court. There are degrees. But when faced with a unanimous decision of the Grand Chamber, this was, in itself, 'a formidable reason' for following it'. Salduz is a decision

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[2] Deciza mill-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali nhar it-2 ta' Novembru, 2011.
[3] Deciza mill-Qorti Kostituzzjonali nhar it-12 t' April, 2011.
[4] Effettivament id-decizjonijiet tal-Qorti ta' Strasbourg jorbtu lill-Gvern mhux lill-Qrati. Izda meta Qorti tkun qed tittratta kawza dwar drittijiet tal-bniedem hi ghandha tinterpreta l-ligi f'dan il-kaz konformement ma' l-artikoli tal-Konvenzjoni.

of the Grand Chamber, now firmly established in the European Court of Human Rights' case law". [48]

Fil-mertu, fil-kaz Cadder gie deciz li:

"The rule in Salduz is based on the right not to incriminate oneself" [33]

"The more one reads on through the judgment, however, the clearer it becomes that the Grand Chamber was determined to tighten up the approach that must be taken to protect a detainee against duress or pressure of any kind that might lead him to incriminate himself". "[49]. "The guarantees otherwise offered by the Scottish legal system (in particular corroboration) are commendable but are beside the point. They do not address the European Court's concern, which is with self-incrimination" [50], [66] & [92]

"A right of access to a lawyer, which is implied in order to protect a right at the heart of the notion of a fair procedure under article 6, must itself lie near that heart. *For this reason, in my view there is not the remotest chance that the European Court would find that, because of the other protections that Scots law provides for accused persons, it is compatible with article 6(1) and (3)(c) for the Scottish system to omit this safeguard – which the Committee for the Prevention of Torture regards as "fundamental" – and for suspects to be routinely questioned without having the right to consult a lawyer first. On this matter Strasbourg has spoken: the courts in this country have no real option but to apply the law which it has laid down". [93]*

Il-Qorti kkonkludiet billi:

Ir-raguni tal-insistenza tal-Qorti Ewropea dwar dan id-dritt ghall-assistenza legali fl-istadju inizjali tal-investigazzjoni hija minhabba l-principju li hadd m'ghandu jinkrimina ruhu (kaz Cadder fuq

surreferit para. 33) kif ukoll biex jinzamm bilanc bejn id-drittijiet tal-akkuzat u dawk tal-prosekuzzjoni. L-argument li altrimenti jkun difficli li l-Pulizija tottjeni 'conviction' mhux fattur li ghandu jittiehed inkonsiderazzjoni fit-thaddim ta' dan il-bilanc. Il-Pulizija ghandha ssib il-mezzi biex issolvi l-kazijiet li jkollha u mhux tiddependi fuq is-soluzzjoni assai facli ta' ammissjoni minn persuna investigata minghajr l-assistenza ta' avukat.

Fil-kawza **il-Pulizija vs Pawlu Grech**[5] il-Qorti sostniet:

Illi fil-kaz li l-Qorti ghandha quddiemha llum, l-imputat ta l-istqarrija tieghu bla ma kellu l-opportunita' li jkellem avukat qabel beda jaghmilha jew f'xi waqt hu u kien mizmum fil-kwartieri generali tal-Pulizija. Ghalkemm dak iz-zmien, fil-Kodici Kriminali kien hemm dispozizzjoni li tipprovdi ghall-jedd ta' parir legali f'cirkostanzi, din ma kinitx disponibbli lill-imputat u lill-ebda persuna li setghet kienet tinsab fl-istess ilma tieghu. Din ic-cahda, fid-dawl ta' dak li ssemma aktar qabel, minnha nnifisha ggib ksur tal-jedd fundamentali tieghu kif imhares bl-artikolu 6(3)(c) tal-Konvenzjoni, marbut mal-artikolu 6(1) tal-istess;

Illi l-Qorti ma tistax tilqa' s-sottomissjoni maghmula mill-Prosekuzzjoni u mill-Avukat Generali li l-imputat kien inghata twissija sa minn qabel ma ta l-istqarrija tieghu dwar il-jedd tieghu li sata' jibqa' fommu sieket u li dik l-istqarrija ghamilha bla theddid u bla ma kien imgieghel. It-twissija ("caution") m'hijiex rimedju kontra l-ksur tal-jedd ghaliex, kif ga ntwera qabel, xorta wahda jsehh ksur tal-artikolu 6 tal-Konvenzjoni jekk il-persuna tinzamm mill-Pulizija bla ma tinghata l-opportunita' li tiehu parir minghand avukat, imqar

[5] Deciza mill-Prim Awla tal-Qorti Civili (Sede Kostituzzjonali) nhar it-3 ta' Novembru, 2011.

jekk dik il-persuna tibqa' b'fommha mehjut il-hin kollu. Minnha nnifisha, lanqas il-fatt li l-istqarrija saret volontarjament ma hija wisq rilevanti ghall-finijiet dwar jekk l-istess stqarrija ttehditx minghajr ma l-persuna li ghamlitha kellha l-ghajnuna ta' avukat tal-fiducja taghha;

Kuntrarjament ghal dak li gie ndikat supra, il-Qorti fil-kaz fl-ismijiet **Geoffrey Galea vs l-Avukat generali et**[6] qalet hekk:

13. Fit-tieni aggravju tieghu l-attur qieghed ighid illi huwa minnu illi hemm cirkostanzi fejn il-jedd ghall-ghajnuna ta' avukat ma huwiex assolut u jista' jigi soggett ghal restrizzjonijiet. Ikompli jghid izda illi l-fatt illi, fiz-zmien relevanti, ma kienx hemm legislazzjoni fis-sehh li tirregola dawn ir-restrizzjonijiet, b'mod illi l-jedd kien effettivament inezistenti u mhux biss soggett ghal restrizzjonijiet, huwa bi ksur tal-jedd ghal smigh xieraq.

14. Huwa minnu illi hemm gurisprudenza tal-Qorti Ewropeja tad-Drittijiet tal-Bniedem, mhux tal-Grand Chamber, li tidher li taghti ragun lill-attur.

15. Din il-gurisprudenza izda tiehu pozizzjoni aktar radikali minn dik li esprimiet l-istess Qorti ewropeja fil-kaz ta' Salduz v. it-Turkija, fejn il-Grand Chamber ma
adottatx l-opinjoni separata tal-Imhallef Bratza meta ried illi

"the Court should have used the opportunity to state in clear terms that the fairness of criminal proceedings under Article 6 requires that, as a rule, a suspect should be granted access to legal advice from the moment he is taken into police custody or pre-trial detention",

[6] Deciza mill-Qorti Kostituzzjonali nhar it-28 ta' Gunju, 2013.

u qalet, minflok, illi:

"Article 6 – especially paragraph 3 <u>– may be relevant before a case is sent for trial if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions."</u>

…

<u>17. Din il-pozizzjoni hija aktar razzjonali, konsistenti u logika, ghax il-jedd moghti mill-art. 6 huwa l-jedd ghal smigh xieraq u mhux il-jedd ghall-ghajnuna ta' avukat qabel ma, jew waqt illi, tittiehed stqarrija. Nuqqas illi ma jwassal ghal ebda pregudizzju effettiv ma ghandux jitqies li huwa bi ksur ta' jedd fondamentali. Wara kollox, f'dan bhal f'kull qasam iehor tal-ligi l-ghan ewlieni hu li tinkixef il-verità, u li ma jigrix illi, minhabba l-uzu ta' pratici abuzivi, tittiehed stqarrija li ma jkollhiex mis-sewwa: ma huwiex, u ma ghandux ikun il-ghan tal-ligi illi persuna tahrab il-konsegwenzi ta' ghemilha minhabba xi nuqqas minghajr ma jintwera illi dan in-nuqqas kellu konsegwenzi pratici. Fil-fehma ta' din il-Qorti jkun kontro-sens li tghid illi jkun hemm ksur ta' jedd – u sahansitra ta' jedd fondamentali – meta ma jkun hemm ebda pregudizzju, ghaliex dan wassal ghal evalwazzjoni fl-astratt minflok ghal apprezzament tas-sitwazzjoni fil-konkret. Interpretazzjoni bhal din tkun biss trivjalizzazzjoni u svalutazzjoni tan-natura "fondamentali" ta' dawn il-jeddijiet.</u>

…

20. Billi ghalhekk in-nuqqas ta' jedd ghall-ghajnuna ta' avukat qabel jew waqt l-istqarrija ma jwassalx, ghalhekk biss u ipso facto, ghal ksur tal-jedd tal-attur, fadal illi naraw, fil-meritu, jekk dak in-nuqqas holoqx pregudizzju hekk illi jwassal, jew x'aktarx iwassal, ghal ksur. Il-fatt illi, kif sewwa ighid l-attur, fiz-zmien relevanti ma kienx hemm ligi pozitiva li tirregola l-jedd ta'

ghajnuna ta' avukat u ccirkostanzi fejn dak il-jedd jista' ma jinghatax ma jzommx lil din il-Qorti milli tara jekk, fic-cirkostanzi tal-kaz, innuqqas ta' ghajnuna ta' avukat kienx ta' pregudizzju ghalih, ghax il-kuncetti u l-istituti tal-ligijiet fondamentali ghandhom tifsira "awtonoma" li ma hijiex limitata b'dak li tghid jew ma tghidx il-ligi oridinarja.

21. Din il-Qorti taqbel mal-ewwel Qorti illi l-attur ma weriex li tassew garrab ksur tal-jedd tieghu ghal smigh xieraq la taht l-art. 39 tal-Kostutuzzjoni u lanqas taht l-artikolu 6 tal-Konvenzjoni. Fil-kaz tal-lum Geoffrey Galea ma allegax illi gie msawwat jew mhedded jew imqarraq biex ghamel l-istqarrija jew kien ibati minn xi vulnerabilità partikolari xort'ohra meta ghamel dik l-istqarrija. Il-prezenza ta' avukat hija garanzija li ma jsirux abbuzi bhal dawn, izda l-attur ma allegax li dan sehh fil-kaz tieghu. Anzi, tant ma hassx ruhu pregudikat illi, ghalkemm l istqarrija ghamilha fl-1 ta' Lulju 2003, stenna sal-11 ta' Mejju 2012 biex jilmenta bi ksur ta' drittijiet u jiftah il-kawza tal-lum, prezumibilment ghax issa sar jaf bl-izviluppi gurisprudenzjali fuq imsemmija u haseb li seta' jinqeda b'mezz gdid ta' difiza. Fil-fatt, izda, lanqas fil-kawza tal-lum ma hu qieghed jilmenta illi l-istqarrija ttiehdet b'abbuz: qieghed jilmenta biss min-nuqqas li ma kellux ghajnuna ta' avukat, jew, ahjar, li ma kellux jedd ghall-ghajnuna ta' avukat.

Ghaldaqstant il-Qorti Kostituzzjonali ddecidiet illi t-ttehid tal-istqarrija, ghalkemm minghajr l-ghajnuna ta' avukat, ma wassal ghal ebda ksur tal-jeddijiet tal-attur imharsa taht l-Artikolu 39 tal-Kostituzzjoni jew l-Artikolu 6 tal-Konvenzjoni.

Sentenza ohra li ddecidiet bl-istess mod hi dik fl-ismjiet **Il-Pulizija vs Alexei Zerafa**,[7] fejn il-Qorti ta' l-Appell Kriminali ppronunciet ruhha kif gej:

[7] Deciza mill-Qorti ta' l-Appell Kriminali nhar il-31 ta' Lulju, 2013.

9. F'dar-rigward din il-Qorti tirreferi ghal dak li ntqal fis-sentenza fl-ismijiet Ir-Repubblika ta' Malta v. Antonio Abdilla et moghtija minn din il-Qorti fil-gurisdizzjoni superjuri taghha fid-9 ta' Mejju 2013 u sejra ssir referenza ghaliha in extenso:

"8. Din il-Qorti tosserva l-ewwel nett illi meta stqarrija tinghata minn suspettat minghajr l-assistenza ta' avukat dan ma jissarrafx awtomatikament fi vjolazzjoni tad-dritt fondamentali ghal smigh xieraq u konsegwentement fl-inammissibilita' awtomatika taghha. Hekk, fis-sentenza moghtija fit-8 ta' Ottubru 2012 mill-Qorti Kostituzzjonali fil-kawza fl-ismijiet Charles Steven Muscat vs Avukat Generali, fejn gie deciz li ma kienx hemm ksur ta' smigh xieraq fic-cirkostanzi ta' dak il-kaz fejn ukoll l-imsemmi Muscat ma kellux assistenza legali, u wara li dik il-Qorti spjegat l-import tas-sentenzi relevanti tal-Qorti ta' Strasbourg, il-Qorti Kostituzzjonali rriteniet kif gej:

"14. Din il-Qorti ttenni illi l-jedd li jaghtu l-Kostituzjoni u l-Konvenzjoni huwa dak ghal smigh xieraq: ma hemm ebda jedd li kull min hu akkuzat b'reat kriminali jigi liberat minn dik l-akkuza, jew li l-akkuzat jinghata l-mezzi biex, hati jew mhux, jinheles mill-akkuza, jew li, minhabba xi irregolarita`, tkun xi tkun, min fuq il-fatti ghandu jinstab hati ghandu jithalla jahrab il-konsegwenzi ta' ghemilu. Il-jedd ghal smigh xieraq jinghata kemm biex, wara process fi zmien ragonevoli u bil-garanziji xierqa, min ma huwiex hati ma jehilx bi htija, u biex jinghata l-mezzi kollha mehtiega ghalhekk, u kemm biex min huwa tassew hati ma jahrabx il-konsegwenzi tal-htija tieghu. Il-jedd ghal smigh xieraq ma jinghatax biex min hu tassew hati jasal biex, b'xi mod jew b'iehor, ma jwegibx tal-htija tieghu. Jekk il-jedd ghal smigh xieraq, kif interpretat u applikat, iwassal ghal hekk, mela hemm xi haga hazina hafna fis-sistema tal-harsien tad-drittijiet"

….

"'25. Partikolarment relevanti huwa dak li jinghad fil-bidu tal-para. 52 [fil-kaz ta' Salduz vs It-Turkija]: "National laws may attach consequences to the attitude of an accused at the initial stages of police interrogation which are decisive for the prospects of the defence in any subsequent criminal proceedings". Ir-referenza hawnhekk hija ghall-konsegwenza ta' inferenza sfavorevoli ("adverse inference") kontra min jaghzel li ma jwegibx ghall-mistoqsijiet li jsirulu. ***Fil-ligi taghna kif kienet fiz-zmien relevanti ghall-kaz tal-lum, qabel ma dahlu fis-sehh l-art. 355AT u 355AU tal-Kodici Kriminali, il-jedd li tibqa' sieket u ma twegibx ghall-mistoqsijiet li jsirulek kien assolut u bla kondizzjonijiet, u ma setghet issir ebda inferenza minn dik l-ghazla.*** *Ghalhekk, il-konsegwenzi li, fil-fehma tal-Qorti Ewropeja, joholqu l-htiega ta' parir legali biex l-interrogat jaghzel iwegibx jew jibqax sieket, ma jezistux fil-kaz tal-lum, ghax, ghalkemm l-attur ma setax jaghzel li jkellem avukat qabel ma jwiegeb, seta' liberament u bla konsegwenzi ta' xejn jaghzel li ma jwegibx. Kien ikun mod iehor li kieku l-ligi kienet tippermetti illi ssir xi inferenza mis-skiet.*

"'26. Relevanti wkoll dak li jinghad fil-para. 54: "This right [to assistance by a lawyer] indeed presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused". Filkaz tal-lum ma saret ebda allegazzjoni ta' theddid, vjolenza jew abbuz.

"'27. Ghandu jinghad ukoll illi l-Qorti Ewropeja wkoll fl-istess kaz ta' Salduz osservat illi l-ghajnuna ta' avukat waqt l-interrogazzjoni twassal ghal ksur tal-jedd ghal smigh xieraq fil-kaz biss li, minhabba f'hekk, il-gustizza tal-process tkun kompromessa: 'Article 6 - especially paragraph 3 – may be relevant before a case is sent for trial if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions.'"

"'28. Naraw issa kif dawn il-principji jolqtu l-kaz tal-lum.

"'29. Fil-kaz tal-lum l-attur kien ragel matur li gà kien qieghed jiskonta sentenza fil-facilità korrettiva meta kien interrogat: l-istqarrija ghamilha fis-7 ta' Awissu 2002 u kien ilu l-habs mill-1994. Kellu esperjenza ta' interrogazzjoni mill-Pulizija u ma kienx xi minorenni jew ibati minn xi forma ohra ta' vulnerabilità hekk li facilment ikun intimidit bl-ambjent fejn issir linterrogazzjoni. Ghalhekk, ma hemmx il-fattur li wassal ghal sejbien ta' ksur tal-jedd ghal smigh xieraq fil-kazijiet ta' Il-Pulizija v. Esron Pullicino, fejn il-persuna interrogata kienet ghadha minorenni, u ta' Il-Pulizija v. Alvin Privitera, fejn il-persuna interrogata kienet ilha biss erba' xhur li ghalqet it-tmintax-il sena.

"'30. F'dan il-kuntest huwa relevanti dak li qalet il-Qorti Ewropeja fil-kaz ta' Paskal v. l-Ukrajna: "the level of the applicant's expertise cannot be discounted in assessing whether his consent to participate in the particular questioning was well informed".

"'31. Relevanti wkoll il-fatt illi l-attur kien mgharraf bil-jedd tieghu li jibqa' sieket u ma jwegibx. Kif rajna, din l-ghazla seta' jaghmilha bla konsegwenzi ta' xejn u ghalhekk ghamilha b'libertà shiha. Ma hemm ebda xiehda u lanqas allegazzjoni li kien mhedded jew imqarraq b'weghdiet ta' xi vantagg. Din il-libertà fl-ghazla jekk iwegibx jew le taghti garanzija kontra kull pregudizzju minhabba awtoinkriminazzjoni.

"'32. Relevanti wkoll il-fatt illi sakemm fetah il-kawza tal-lum fit-2 ta' Dicembru 2010 – wara li kienet maghrufa s-sentenza ta' Salduz – l-attur qatt ma fittex li jiehu lura l-istqarrija li kien ghamel jew li jichad dak li qal fiha. Dan huwa sinjal li l-attur stess ma kienx qieghed ihoss illi tqieghed taht svantagg ingust blistqarrija li, wara kollox, ghamilha liberament.

"'33. Meta tqis ukoll illi l-attur ghad irid ighaddi mill-process penali bil-garanziji procedurali kollha li dan jaghti u fejn jingiebu l-provi kollha, u mhux biss l-istqarrija ta' l-akkuzat; illi matul dan il-process l-attur sejjer ikollu l-ghajnuna ta' avukat; u illi l-imhallef togat sejjer iwissi lill-gurati bil-perikolu illi joqoghdu biss fuq l-istqarrija meta jiddeciedu dwar htija, bla ma jqisu wkoll il-provi l-ohra, u illi l-imhallef sahansitra jista' jwissi lill-gurati biex jiskartaw l-istqarrija jekk tingieb xiehda – li ma tressqitx quddiem din il-Qorti – li l-istqarrija ttiehdet bi vjolenza, b'qerq jew b'theddid, ***din il-Qorti hija tal-fehma illi ma ntwera ebda ksur tal-jedd ghal smigh xieraq bit-tehid tal-istqarrija tal-attur minghajr ma kellu l-ghajnuna ta' avukat.***

F'dan l-istadju din il-Qorti thoss li ghandha tenfasizza illi sa minn l-10 ta' Frar, 2010, sa qabel it-28 ta' Novembru, 2016, suspettat jew akkuzat kellu dritt li jiehu parir ta' avukat jew prokuratur legali biss fil-bidu ta' l-interrogazzjoni ghal hin ta' massimu siegha. Peress li l-Ewwel Qorti, fis-sentenza taghha ghamlet referenza ghal sentenzi fejn akkuzat jew suspettat kellu dan id-dritt, din il-Qorti thoss li ghandha taghmel referenza wkoll ghal xi whud mis-sentenzi li ppronuncew ruhhom fuq l-ammissibbilita' o meno ta' stqarrija meta akkuzat jew suspettat kellhom dan id-dritt limitat.

Sentenza li ghamlet impatt sinifikanti fuq il-gurisprudenza ta' Malta, specjalment fir-rigward ta' l-ammisibilta' ta' stqarrija hija dik tal-Qorti Ewropea tad-Drittijiet tal-Bniedem fl-ismijiet **Borg v. Malta**.[8] F'dik is-sentenza l-Qorti Ewropea tad-Drittijiet tal-Bniedem, fost numru ta' konsiderazzjonijiet, ikkunsidrat li:

'56. Early access to a lawyer is one of the procedural safeguards to which the Court will have particular regard when examining whether a procedure has

[8] Deciza fit-12 ta' Jannar, 2016 u reza finali fit-12 ta' April 2016 (Applikazzjoni numru: 37537/13)

extinguished the very essence of the privilege against self-incrimination. These principles are particularly called for in the case of serious charges, for it is in the face of the heaviest penalties that respect for the right to a fair trial is to be ensured to the highest possible degree by democratic societies (see Salduz v. Turkey [GC], no. 36391/02, § 54, ECHR 2008).

57. The Court reiterates that in order for the right to a fair trial to remain sufficiently "practical and effective" Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction (see Salduz, cited above, § 55).

58. Denying the applicant access to a lawyer because this was provided for on a systematic basis by the relevant legal provisions already falls short of the requirements of Article 6 (ibid., § 56).

(ii) Application to the present case

59. The Court observes that the post-Salduz case-law referred to by the Government (paragraph 53 in fine) does not concern situations where the lack of legal assistance at the pre-trial stage stemmed either from a lack of legal provisions allowing for such assistance or from an explicit ban in domestic law

60. The Court notes that it has found a number of violations of the provisions at issue, in different jurisdictions, arising from the fact that an applicant did not have legal assistance while in police custody because it was not possible under the law then in force (see, for example, Salduz, cited above, § 56; Navone and Others v. Monaco, nos. 62880/11, 62892/11 and 62899/11, §§ 81-85, 24 October 2013; Brusco v. France, no. 1466/07, § 54, 14 October 2010; and Stojkovic v. France and Belgium, no. 25303/08, §§ 51-57, 27 October 2011). A systemic restriction of this kind, based on the relevant statutory provisions, was sufficient in itself for the Court to find a violation of Article 6 (see, for example, Dayanan v. Turkey, no. 7377/03 §§ 31-33, 13 October 2009; Yeşilkaya v. Turkey, no. 59780/00, 8 December 2009; and Fazli Kaya v. Turkey, no. 24820/05, 17 September 2013).

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

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

63. There has accordingly been a violation of Article 6 § 3 (c) taken in conjunction with Article 6 § 1 of the Convention.' (Emfazi u sottolinear mizjud minn din il-Qorti.)

Fis-sentenza fl-ismijiet **'Christopher Bartolo (KI 390981M) vs Avukat Generali u l-Kummissarju tal-Pulizija'**,[9] il-Prim'Awla tal-Qorti Civili (Sede Kostituzzjonali) kienet ikkunsidrat li:

'Fin-nota ta' sottomissjonijiet taghhom, l-intimati jargumentaw illi l-ilment tar-rikorrent fil-meritu huwa nfondat peress illi huwa kien inghata d-dritt li jikkonsulta ma' avukat qabel l-interrogazzjoni, u filfatt kien ezercita dan id-dritt, u illi s-sentenza citati minnu fir-rikors promotur ma huma ta' l-ebda sostenn ghal l-ilment tar-rikorrent peress illi dawn jipprospettaw sitwazzjoni fejn l-interrogat ma thalliex ikellem avukat qabel ma ttehdulu l-istqarrija.

*l-Qorti rat pero illi l-ilment tar-rikorrent fir-rikors promotur tieghu m'huwiex illi ma thalliex jikkonsulta ma' avukat qabel ma ttehdietlu l-istqarrija (hlief fir-rigward tat-tieni wahda), izda proprju illi l-assistent legali tieghu ma kienx prezenti **waqt** it- tehid tal-istqarrija, kif jidher per ezempju minn paragrafu 8 u 13 tar-rikors promotur.*

***M'huwiex ikkontestat illi r-rikorrent ma giex interrogat fil-presenza tal-avukat tieghu, anke ghaliex wara kollox, f'dak iz-zmien il-ligi stess ma kienitx tippermetti dan**.*

*Fis-sentenza fl-ismijiet **Panovits v. Cyprus** deciza mill-Qorti ta' Strasbourg fl-11 ta' Dicembru 2008 intqal illi: "...the Court observes that the concept of fairness enshrined in Article 6 requires that the accused be given the benefit of the assistance of a lawyer already at the initial stages of police*

[9] Deciza mill-Prim'Awla tal-Qorti Civili (Sede Kostituzzjonali) nhar it-23 ta' Novembru, 2017 (Rikors Numru: 92/2016 JPG)

interrogation. ***The lack of legal assistance <u>during an applicant's interrogation</u> would constitute a restriction of his defence rights in the absence of compelling reasons that do not prejudice the overall fairness of the proceedings."***

Fuq l-istess linja ta' hsieb, fis-sentenza fl-ismijiet ***<u>Dayanan v. Turkey</u>*** *deciza mill- Qorti ta' Strasbourg fit-13 ta' Ottubru 2009 u citata fir-rikors promour tar-rikorrent intqal is-segwenti:*

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

Il-fatt illi l-gurisprudenza tal-Qorti ta' Strasbourg evolviet sussegwentement ghas- sentenza ta' ***Salduz*** *b'mod illi l-interpretazzjoni tad-dritt ghal smiegh mill-Qorti bdiet tikkonsidra li huwa necessarju li l-arrestat jithalla jkollu l-assistenza ta' avukat waqt l-interogattorju hija kkonfermata bl-aktar mod car fis-sentenza fl- ismijiet* ***Brusco v. France*** *deciza fl-14 ta' Ottubru 2010, fejn il-Qorti ta' Strasbourg ibbazat il-konkluzjoni taghha mhux biss fuq l-fatt illi Brusco ma thalliex ikellem avukat qabel ma gie interrogat izda anke ghaliex ma kellux access ghal avukat waqt l-ewwel interogazzjoni tieghu u l-*

interogazzjonijiet l-ohra kollha ta' wara dik, u dan a kuntrarju ta' dak li jezigi l-Artikolu 6:

"L'avocat n'a donc été en mesure ni de l'informer sur son droit à garder le silence et de ne pas s'auto-incriminer avant son premier interrogatoire ni de l'assister lors de cette déposition et lors de celles qui suivirent, comme l'exige l'article 6 de la Convention."

Konferma terga aktar cara ta' dan, tinsab fis-sentenza fl-ismijiet ***Navone and others v. Monaco*** *deciza mill-Qorti ta' Strasbourg fl-24 ta' Ottubru 2013, fejn il- Qorti ikkonkludiet illi l-ligi ta' Monaco, li kienet tippermetti biss konsultazzjoni ma' avukat qabel l-interrogatorju, u ma kienitx tippermetti illi l-avukat ikun prezenti waqt l-interogazzjoni,*[10] *kienet leziva tad-dritt ta' smiegh xieraq:*

"Or, en l'espèce, nul ne conteste qu'à l'époque des faits, le droit monégasque ne permettait pas aux personnes gardées à vue de bénéficier d'une assistance d'un avocat pendant les interrogatoires: une telle assistance était donc automatiquement exclue en raison des dispositions légales pertinentes. La Cour relève en effet que le droit interne ne prévoyait qu'une consultation avec un avocat au début de la garde à vue ou de la prolongation de celleci, pendant une heure maximum, l'avocat étant en tout état de cause exclu des interrogatoires dans tous les cas.

(…)

Par conséquent, la Cour ne peut que constater que les requérants ont été automatiquement privés de l'assistance d'un conseil au sens de l'article 6 lors

[10] Bhas-sistema Maltija f'dak iz-zmien. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata tnejn (2) fis-sentenza fl-ismijiet **'Christopher Bartolo (KI 390981M) vs Avukat Generali Kummissarju tal-Pulizija'** deciza mill-Prim'Awla tal-Qorti Cvili (Sede Kostituzzjonali) nhar it-23 ta' Novembru, 2017 (Rikors Numru: 92/2016 JPG).

de leur garde à vue, la loi en vigueur à l'époque pertinente faisant obstacle à leur présence durant les interrogatories."

Il-Qorti rat ukoll illi anke l-Qrati ordinarji Maltin diga bdew jesprimu d-dubji taghhom rigward jekk, il-ligi, kif kienet dak iz-zmien, kienitx tiggarantixxi adegwatament d-dritt ta' smiegh xieraq konsiderat illi ma kienetx tippermetti illi suspettat jkollu assistenza legali waqt l-interrogatorju, u dan kif jidher fis-sentenza tal-Qorti tal-Appell Kriminali deciza fis-6 ta' Ottubru, 2016, **fl-ismijiet Il-Pulizija (Spettur Jesmond J. Borg) vs Jason Cortis** fejn intqal illi:

"...jista' jkun hemm lok ghal-dibattitu dwar kemm il-provvedimenti tal-Kap 9 jirrispekkjaw d-dritt ghall-assistenza legali moghti lill-arrestat tenut kont ukoll illi dan id-dritt, kif ezistenti llum taht il-ligi taghna, huwa ristrett ghal siegha qabel l-interoggatorju u b'hekk jeskludi l-jedd tal-presenza tal-avukat waqt l-istess interrogatorju*. F'dak l-istadju l-arrestat huwa soggett ghal mistoqsijiet diretti u suggestivi bir-risposti taghhom, anke jekk jghazel li ma jwegibx, bit-traskrizzjoni tieghu tkun eventwalment esebita fil-proceduri kontrih fejn ikun meqjus innocenti sakemm pruvat mod iehor."*

*Huwa car ghalhekk illi skont il-gurisprudenza kostanti tal-Qorti ta' Strasbourg, hekk kif zviluppat u evolviet sussegwentement ghas-sentenza ta' Salduz, il- garanzija u protezzjoni ta' smiegh xieraq tirikjedi illi l****-arrestat jinghata l-possibilita li jkollu mieghu avukat tal-fiducja tieghu waqt, u mhux biss qabel, l-interogazzjoni.*** *Ghalhekk jidher illi l-argument tal-intimati illi dan l-ilment tar-rikorrent huwa nfondat ghaliex kienet inghata l-possibilita li jkellem avukat qabel l-ewwel interrogatorju huwa nsostenibbli ghaliex mill-gurisprudenza appena citata, jidher car illi l-arrestat ghandu jinghata l-possibilita' li jkollu avukat prezenti waqt l- interogazzjoni.*

*M'huwiex kontestat, illi fiz-zmien in kwistjoni kien hemm **restrizzjoni sistematika** li kienet timpedixxi lill-arrestat milli jkollu avukat tal-fiducja tieghu prezenti waqt l-interrogazzjoni. M'huwiex ikkontestat ukoll illi r-rikorrent ma thalliex ikollu avukat prezenti waqt l-ewwel interogazzjoni, u illi ma inghatax access ghall-avukat tieghu qabel jew waqt it-tieni interogazzjoni. Dan il-fatt wahdu, skont il-gurisprudenza tal-Qorti ta' Strasbourg, huwa bizzejjed biex tinstab lezjoni tad-dritt ta' smiegh xieraq.*

Il-Qorti pero ma tistghax ma tirrilevax illi dan huwa kaz gravi u partikolari, fejn ir- rikorrent huwa afflitt minn marda serja u terminali, tant li fi zmien tal- interogazzjoni kien ikollu jaghmel sitt sieghat dialysis, fi granet alternattivi u filfatt kien gie arrestat hekk kif kien ghadu hareg minn sitt sieghat dialysis. Il-Qorti tinsab mhassba mmens illi l-Pulizija ma zammew ebda record tal-kondizzjoni ta' sahha tar-rikorrent, b'mod illi ma jistghux jikkonfermaw jekk kienux taw cans lir- rikorrent jiekol u jixrob bejn sitt sieghat dialysis u l-interogazzjoni tieghu jew le, skont kif qed jallega r-rikorrent. Il-Qorti tfakkar illi sakemm ir-rikorrent kien fil- kustodja tal-Pulizija, il-Pulizija kienet responsabbli ghal sahhtu u ghalhekk kellha tara li jkollha informazzjoni sufficjenti dwar il-kondizzjoni medika tar-rikorrent sabiex tigi salvagwardjata sahhtu u li r-rikorrent ma jithalliex bil-guh u bil-ghatx wara sitt sieghat dialysis.

Il-Qorti hija tal-fehma illi mill-provi prodotti rrizulta l-kondizzjoni medika tar- rikorrent, li kienet tikkawzalu ugiegh kbir, ansjeta u depressjoni, dana kollu jirrendi r-rikorrent persuna vulnerabbli, specjalment ikkonsidrat illi l-ewwel interogazzjoni segwit sitt sieghat dialysis. Barra minn hekk, skont it-testimonjanza mhux kontradetta tal-psikologu Nicholas Briffa, a fol 128 – 129, ir-rikorrent huwa persuna suxxettibbli, u reza vulnerabbli minhabba l-kondizzjoni medika u d- depressjoni li minnha kien jbaghti. Di piu' l-fatt illi r-rikorrent ma kellu l-ebda esperjenza ta' interrogatorju, tirrendih aktar vulnerabbli.

Il-Qorti rat ukoll illi l-intimati ma ressqu l-ebda prova li kien hemm xi ragunijiet impellanti - "compelling reasons" - sabiex ir-rikorrent ma jithalliex ikollu avukat prezenti waqt l-interogazzjonijiet tieghu. Ghalhekk, ikkonsidrat li dak iz-zmien kien hemm restrizzjoni sistematika ghad-dritt ta' assistenza legali waqt l-interrogazzjoni, l-effetti ta' liema kienu aggravati f'dan il-kaz minhabba l-vulnerabbilita tar- rikorrent, u galadarba l-intimati ma ressqu l-ebda prova li kien hemm ragunijet serji u mpellenti li jistghu jiggustifikaw ir-restrizzjoni tad-dritt ta' assistenza legali sofferta mir-rikorrent, il-Qorti tikkonkludi illi l-ilment tar-rikorrent illi d-dritt tieghu ghal smiegh xieraq gie lez, huwa fondat.

Ghalhekk, il-Qorti tiddikjara illi r-rikorrent sofra lezjoni tad-dritt tieghu ghal smiegh xieraq minhabba restrizzjoni mhux gustifikata ghad-dritt tieghu ta' access ghal avukat.'

Din is-sentenza giet appellata l-Avukat Generali u l-Kummissarju tal-Pulizija. Il-Qorti Kostituzzjonali fid-decizjoni taghha,[11] fost numru ta' kunsiderazzjonijiet qieset li:

36. Mill-premess jirrizulta manifest li l-istqarrijiet rilaxxjati mir-rikorrent ser ikollhom kif fil-fatt gja` kellhom quddiem il-Qorti Kriminali impatt fil-proceduri kriminali, mhux in kwantu ghall-ammissjonijiet, izda in kwantu l-kontenut taghhom kien ittiehed in konsiderazzjoni fil-quantum tal-piena imposta fuqu mill-Qorti Kriminali, u issa huwa car li anke l-Qorti tal-Appell Kriminali ser tiehu konsiderazzjoni tal-kontenut tal-istqarrijiet f'dan ir-rigward. Ghalhekk, ghalkemm il-proceduri kriminali ghadhom pendenti u ghalhekk ma jistax f'dan l-istadju jigi determinat jekk kienx hemm lezjoni ta' smigh xieraq f'dawk il-proceduri, <u>jekk l-istqarrijiet jithallew fil-process tal-</u>

[11] Sentenza fl-ismijiet 'Christopher Bartolo v. (1) Avukat Generali; u (2) Kummissarju tal-Pulizija' deciza mill-Qorti Kostituzzjonali fil-5 ta' Ottubru, 2018 (Rikors numru 92/16 JPG).

<u>proceduri kriminali, dawn wisq probabbilment ser isir uzu minnhom mill-Qorti tal-Appell Kriminali bi pregudizzju jew vantagg ghall-akkuzat fil-kwantifikazzjoni tal-piena, kemm dik karcerarja kif ukoll ghal dak li tirrigwarda l-multa li tista' tigi imposta.</u>

37. Fid-dawl tal-premess it-tehid tal-istqarrijiet zgur li ser ikollhom impatt fuq l-ezitu tal-process kriminali u, la darba dan isir, x'aktarx ser isir ksur tad-dritt tal-rikorrent ghal smigh xieraq tenut kont tal-fatt li dawn gew rilaxxjati mir-rikorrent fl-assenza ta' avukat li jassistih. Ghalhekk huwa xieraq li, filwaqt li f'dan l-istadju ma jistax jinghad jekk kienx hemm lezjoni ta' dan id-dritt fundamentali tar-rikorrent peress li l-proceduri kriminali ghadhom pendenti, dawn ma jithallewx jibqghu fl-inkartament tal-process kriminali'

Ghar-ragunijiet sucitati il-Qorti Kostituzzjonali ddecidiet sabiex ma jsehhx ksur tad-drittijiet tar-rikorrent ma jsirx aktar uzu miz-zewg stqarrijiet rilaxxati mir-rikorrent fil-proceduri kriminali.

Fis-sentenza fl-ismijiet **<u>'Il-Pulizija (Spettur Malcolm Bondin) kontra Aldo Pistella'</u>** fost numru ta' kunsiderazzjonijiet, gie kkunsidrat li:

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

"Minn hemm hekk komplejna bl-investigazzjonijiet mas-sur Aldo Pistella fejn jien tajtu d-drittijiet tieghu u fejn tajtu d-dritt tal-parir legali fejn xtaq li jkellem avukat u fil-fatt kien tkellem ma` l-avukat tieghu Dr Sarah Sultana personalment, kien tkellem l-ghada filghodu fejn kienet giet tkellmu gewwa l-

kwartieri tal-Pulizija. Wara li ha l-parir legali kont komplejt bl-investigazzjonijiet mieghu...." (ara fol 19 u 20 tal-process kriminali).

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

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

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

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

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

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

L-ispettur xehed hekk a fol 25 :-

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

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

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

L-istess Qorti[12] qieset li:

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

[12] Fis-sentenza fl-ismijiet 'Il-Pulizija (Spettur Malcolm Bondin) kontra Aldo Pistella' deciza mill-Qorti Civili Prim'Awla (Gurisdizzjoni Kostituzzjonali) fis-27 ta' Gunju 2017 (Referenza Kostituzzjonali Numru. 104/16 JZM)

ma kienx assistit minn avukat u in segwitu dawk l-istqarrijiet jintuzaw kontra tieghu.

Issa rrizulta wkoll illi l-kawza kriminali ghadha pendenti.

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

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

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

Il-Qorti Kostituzzjonali[13] ikkonfermat is-sentenza tal-Ewwel Qorti, fejn fost kunsiderazzjonijiet ohra dwar l-appell ipprezentat mill-Avukat Generali u l-Kummissarju tal-Pulizija ikkunsidrat li:

'14. Ghalkemm, bhall-ewwel Qorti, taqbel mal-appellanti illi f'dan l- istadju ghadu ma sehh l-ebda ksur tal-jedd ghal smigh xieraq, madankollu, kif

[13] Fil-kawza fl-ismijiet 'Il-Pulizija (Spettur Malcolm Bondin) v. Aldo Pistella' deciza fl-14 ta' Dicembru, 2018 (Rikors numru: 104/2016/1 JZM).

osservat fil-kaz ta' Malcolm Said,14 il-Qorti xorta hija tal-fehma li ma jkunx ghaqli li l-process kriminali jithalla jitkompla bil-produzzjoni tal-istqarrija tal-akkuzat Pistella la darba din, ghallinqas f'parti minnha, ittiehdet minghajr ma Pistella kellu l-ghajnuna ta' avukat. Ghalhekk, ghalkemm ghadu ma sehh ebda ksur tal-jedd ghal smigh xieraq, <u>fic-cirkostanzi huwa ghaqli illi, kif qalet l-ewwel Qorti, ma jsir ebda uzu mill-istqarrija fil- process kriminali sabiex, meta l-process kriminali jintemm, ma jkunx tnigges b'irregolarità – dik li jkun sar uzu minn stqarrija li ttiehdet minghajr ma l-interrogat kellu l-ghajnuna ta' avukat – li tista' twassal ghal konsegwenzi bhal thassir tal-process kollu.</u>

15. Il-fatt li, kif josservaw l-appellanti, hemm xiehda ohra fil-process barra l-istqarrija li tista' ssahhah il-kaz tal-prosekuzjoni ma huwiex argument kontra din il-konkluzjoni. Ifisser biss li l-kaz tal- prosekuzzjoni ma jiddghajjifx bit-tnehhija tal-istqarrija waqt li jista' jingieb fixxejn jekk l-istqarrija tithalla fil-process u dan possibilment iwassal ghal sejbien, eventwalment, ta' ksur tal-jedd ghal smigh xieraq.'

Il-Qorti taghmel referenza ukoll ghas-sentenza fl-ismijiet **<u>'Ir-Repubblika ta' Malta v. Martino Aiello'</u>**[15] fejn gie kkunsidrat li:

'Illi t-tezi tar-rikorrenti hi semplici u lineari. Meta giet rilaxxata l-istqarrija dik il-persuna ma kellhiex id-dritt tal-prezenza ta' l-avukat. Il-konkluzjoni allura hi li tali stqarrija ghandha tkun inammissibli.

Illi t-tezi tal-Avukat Generali hi daqstant lineari. Ir-rikorrenti gie moghti d-dritt li jikkonsulta avukat ta' fiducja tieghu. Hu rrifjuta tali dritt, ma

[14] 24 ta' Gunju 2016. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata tnejn (2) fis-sentenza fl-ismijiet 'Il-Pulizija (Spettur Malcolm Bondin) v. Aldo Pistella' deciza fl-14 ta' Dicembru, 2018 (Rikors numru: 104/2016/1 JZM).
[15] Sentenza preliminari moghtija mill-Qorti Kriminali nhar id-9 ta' Mejju, 2017 (Att ta' Akkuza numru 13/2015).

kkonsulta lil hadd u liberament u volontarjament irrilaxxa l-istqarrija hawn fuq imsemmija.

Illi din il-Qorti josserva li s-sentenza Borg v. Malta (hawn fuq citata) ma kinitx biss jitkellem fuq id-dritt li wiehed ikollu l-jedd li jikkonsulta ma avukat qabel tigi rilaxxat stqarrija. Dik is-sentenza tghid illi f'kull stadju ta' l-investigazzjoni l-persuna susspettata jew akkuzata jrid ikollha d-dritt ta' l-avukat. Kien ghalhekk li gie promulgat l-Att numru LI ta' l-2016.

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

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

Dik is-sentenza kienet giet appellata u l-Qorti tal-Appell Kriminali[16] ma kinietx ikkonfermat is-sentenza tal-Qorti Kriminali izda kienet ikkunsidrat:

'19. Illi gjaldarba l-kwistjoni imqanqla la hija wahda frivola u lanqas vessatorja, din il-Qorti, wara li rat l-artikolu 46(3) tal-Kostituzzjoni u l-

[16] Deciza fit-9 ta' April, 2018 (Att ta' Akkuza Numru 13/2015).

artikolu 4(3) tal- Kapitolu 319 tal-Ligijiet ta' Malta, qed tibghat lil-Prim'Awla tal-Qorti Civili, l-kwistjoni dwar jekk bl-uzu fil-guri kontra l-akkuzat appellat Martino Aiello tal- istqarrija rilaxxjata minnu lill-Pulizija fid-19 ta' Ottubru 2014 jigix lez id-dritt tal-istess Martino Aiello ghal smigh xieraq sancit bl-artikolu 39(1)(3) tal-Kostituzzjoni u l-artikolu 6(1)(3) tal-Konvenzjoni ghall-Protezzjoni tad- Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali.

20. Tiddiferixxi dan l-appell sine die sakemm tigi deciza definittivament il-kwistjoni fuq riferita.'

Sussegwentement, il-Prim'Awla tal-Qorti Civili (Sede Kostituzzjonali)[17] iddeciediet ir-referenza Kostituzzjonali billi iddikjarat li fic-cirkostanzi tal-kaz mhux ser ikun jirrizulta ebda lezjoni tad-dritt fundamentali tal-akkuzat Martino Aiello ghal smiegh xieraq kif sancit fl-Artikolu 39 tal-Kostituzzjoni ta' Malta u l-Artikolu 6 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fundamentali jekk isir uzu fil-guri kontra tieghu mill-istqarrija li huwa rrilaxxja lil Pulizija fid- 19 ta' Ottubru, 2014. Il-Qorti f'dik is-sentenza fost kunsiderazzjonijiet ohra, qieset li:

'*Qabel xejn, din il-Qorti tghid illi ma jirrizultax li kien hemm ragunijiet tajbin li jzommu lill-akkuzat milli jkollu avukat prezenti waqt l-interrogazzjoni u waqt li kien qieghed jaghti listqarrija. L-uniku raguni li Martino Aiello ma setax ikun mghejjun minn avukat kienet li, dak iz-zmien, il-ligi ma kienitx tippermetti li l-akkuzat ikun hekk mghejjun f'dak l-istadju imma seta' jikkonsulta ma' avukat biss qabel l-interrogazzjoni, xi haga li mhux kontestat li Martino Aiello rrifjuta li jaghmel.*

[17]Fl-ismijiet 'Ir-Repubblika ta' Malta vs Martino Aiello' fis-17 ta' Ottubru, 2019 (Referenza Kostituzzjonali Numru: 38/2018 AF).

Madanakollu, il-posizzjoni gurisprudenzjali kurrenti turi li m'ghadux il-kaz li l-fatt wahdu li l-ligi ma kienitx tippermetti l-assistenza ta' avukat qabel jew waqt l-interrogazzjoni, awtomatikament iwassal sabiex jinstab li kien hemm ksur tad-dritt ghal smigh xieraq, kif qieghed jippretendi l-akkuzat, imma din il-Qorti ghandha tqis diversi fatturi qabel tasal ghall-konkluzjoni taghha.

Kif digà ntqal, dan il-kaz huwa kemmxejn differenti mill-kaz ta' Aldo Pistella in kwantu li Martino Aiello kien fil-fatt irrinunzja ghad-dritt tieghu li jikkonsulta ma' avukat qabel ma gie interrogat mill-Pulizija u assolutament ma giex muri li huwa xtaq li jkollu avukat prezenti waqt l-interogazzjoni jew waqt li kien qieghed jirrilaxxja l-istqarrija.

Proprju dwar ir-rinunzja, fil-kaz ta' ***Paskal vs Ukraine****, tal-15 ta' Settembru 2011, il-Qorti Ewropea qalet hekk:*

"neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial, as long as a waiver of the right is given in an unequivocal manner and was attended by the minimum safeguards commensurate to its importance."

L-akkuzat naqas milli juri wkoll li huwa ghandu jitqies bhala persuna vulnerabbli. Fil-fatt, meta xehed quddiem din il-Qorti, tista' tghid li ma semma xejn dwar ic-cirkostanzi tal-arrest tieghu flimkien ma' martu mal wasla taghhom hawn Malta. Martino Aiello la kien minorenni u lanqas kien ibati minn xi forma ohra ta' vulnerabilità fiz-zmien in kwistjoni. Lanqas jirrizulta xi prova fis-sens li c-cirkostanzi li fihom ittiehdet l-istqarrija kienu ghalih intimidanti. L-istqarrija nghatat volontarjament, minghajr theddid, weghdi jew promessi ta' vantaggi u wara li nghata d-debita twissija skont il-ligi, u cioè li ma kienx obbligat jitkellem sakemm ma kienx hekk jixtieq, izda li dak li kien ser jghid seta' jingieb bhala prova kontrih. Lanqas ma gie muri

li l-akkuzat ma kienx qieghed jifhem l-import tac-cirkostanzi li kien jinsab fihom. Il-Qorti tinnota wkoll illi Martino Aiello ma qajjem l-ebda lment dwar listqarrija li kien irrilaxxja qabel ma gie deciz il-kaz ta' Borg vs Malta imma huwa talab lill-Qorti Kriminali sabiex ikun jista' jressaq eccezzjoni dwar l-inammissibilità tal-istqarrija biss minhabba dak deciz mill-Qorti Ewropea fl-imsemmija kaz. Imma kif rajna, din il-gurisprudenza m'ghadhiex applikabbli inkondizzjonatament safejn l-akkuzat qieghed jippretendi li l-istqarrija tieghu mhijiex ammissibbli bhala prova abbazi tal-fatt wahdu li dak iz-zmien ma setax ikun assistit minn avukat waqt l-interrogazzjoni u waqt li kien qieghed jirrilaxxja l-istqarrija. Anzi, ghandhom jittiehdu in konsiderazzjoni diversi fatturi li flimkien jaghmlu c-cirkostanzi tal-kaz.

Martino Aiello fl-ebda stadju ma kkontesta l-awtenticità tal-prova li gabet il-Prosekuzzjoni kontrih, liema prova mhijiex limitata ghall-istqarrija in kwistjoni. Lanqas ma oppona ghall-prezentata ta' dik l-evidenza. L-assjem tal-provi ser ikun evalwat minn Imhallef u ghalhekk, minn persuna b'gharfien gholi tal-procedura legali u l-ligi Maltija.

Finalment, il-Qorti tqis illi huwa indubbjament fl-interess pubbliku li jigi investigat u imressaq sabiex jigi gudikat mill-Qrati ta' gurisdizzjoni kriminali l-akkuzat li nqabad in flagrante jittraffika d-droga f'Malta.

Ghaldaqstant, il-Qorti ssib li l-akkuzat Martino Aiello ma rnexxilux juri li tassew ser igarrab ksur tad-dritt tieghu ghal smigh xieraq bl-uzu fil-guri kontra tieghu tal-istqarrija li rrilaxxja fid-19 ta' Ottubru 2014.'

Dik is-sentenza giet appellata u l-Qorti Kostituzzjonali fis-sentenza fl-ismijiet **'Ir-Repubblika ta' Malta v. Martino Aiello'**[18] cahdet l-appell u fost kunsiderazzjonijiet ohra qieset li:

[18] Deciza mill-Qorti Kostituzzjonali fis-27 ta' Marzu, 2020 (Rikors numru: 38/18 AF).

'24. L-istqarrija ma ttiehditx bi ksur ta' xi dispozizzjoni ta' ligi u kien certament fl-interess pubbliku li kaz dwar traffikar ta' drogi f'Malta, ikun investigat u jittiehdu proceduri kriminali dwaru.

25. M'hemm l-ebda indizju li l-appellant gie mgieghel jaghmel dik l-istqarrija. Fl-ebda stadju m'allega xi theddid jew weghda biex ghamilha.

26. Fir-rigward ta' paragrafu (g) m'hemmx dubju li l-prosekuzzjoni trid li dik l- istqarrija tintuza bhala prova importanti tal-guri li ghad irid isir, u dan b'riferenza ghal dak li gara f'Mejju u Gunju, 2014 peress li fl-istqarrija Aiello ammetta li kien hemm darbtejn ohra f'dawk ix-xhur meta kien diga` importa droga f'Malta. Fatt li saret riferenza espressa ghalih fl-att tal-akkuza. Ghalkemm il-guri ghadu ma sarx, hu evidenti li dik l-ammissjoni f-listqarrija ghandha importanza fil-process kriminali tant li saret riferenza ghaliha fl-att tal-akkuza.

27. Inoltre, dwar dan il-kaz ghad irid isir il-guri. Ghalhekk huma l-gurati li ser jiddeciedu jekk l-appellant huwiex hati tal-akkuzi li hemm kontrih. Madankollu, ser ikun l-imhallef li fl-indirizz li jrid jaghmel lill-gurati ser jigbor ix-xiehda tax- xhieda u l-provi li jkunu marbutin maghhom, kif ukoll ifisser ix-xorta u l-elementi tar-reati rilevanti ghall-kaz. Hu l-imhallef li jaghmel ".... kull osservazzjoni ohra li tiswa biex triegi u turi lill-guri kif ghandu jaqdi sewwa d-dmirijiet tieghu" (Artikolu 465 tal-Kap. 9).

28. Li hu zgur hu li f'dan il-kaz l-appellant inghata l-opportunita' li jitkellem ma' avukat, bit-telefon jew wicc imb'wicc, izda irrifjuta. B'dak il-mod l-appellant cahhad lilu nnifsu mill-opportunita' li jkollu parir ta' avukat sabiex jipprepara ruhu ghall-interrogazzjoni u sabiex jinghata taghrif dwar il-vantaggi u zvantaggi li jitkellem jew jaghzel is-silenzju waqt linterrogazzjoni. Dan meta kien jaf li waqt l-interrogazzjoni ma kienx ser

ikollu l-assitenza ta' avukat prezenti. Dan apparti li kien infurmat b'mod car bil-jedd li jibqa' sieket u ma jwegibx izda xorta aghzel li jwiegeb liberament. Madankollu xorta aghzel li jwiegeb ghad-domandi li sarulu.'

Il-Qorti tal-Appell Kriminali (Sede Superjuri), f'sentenza li nghatat ricentament, fl-ismijiet **'Ir-Repubblika ta' Malta vs Martino Aiello'**[19] il-Qorti qieset:

'12. Illi d-difiza madanakollu xorta wahda ghadha qed tinsisti fuq l-eccezzjoni minnha ventilata dwar l-inammissibilita' ta' l-istqarrija tal-akkuzat billi tishaq illi din il-Qorti ta' kompetenza penali trid thares lejn il-kwistjoni taht ottika differenti minn dik tal-Qorti Kostituzzjonali, ukoll ghaliex fl-istadju tac-celebrazzjoni tal-guri ma ghandux jigi rimess ghal gudizzju tal-gurija popolari jekk il-kriterji mfassla fid-decizjoni Beuze vs il-Belgju deciza mill-Qorti Ewropea dwar id-Drittijiet tal-Bniedem ma gewx osservati. Jishaq illi ghalkemm l-appellat inqabad f'okkazjoni wahda in flagrante jdahhal id-droga gewwa Malta, madanakollu fl-istqarrija rilaxxata minnu lil Pulizija huwa jammetti ghal zewg okkazjonijiet ohra ta'importazzjoni liema fatt allura johrog biss minn din l-istqarrija u minn ebda prova ohra. Fil-fehma tad-difiza hija din il-Qorti f'dan l-istadju tal-proceduri li ghandha tara jekk il-kriterji imfassal fid-decizjoni Beuze jirrizultaw u jekk humiex ser iwasslu sabiex jivvizjaw listqarrija rilaxxata mill-appellat.

13. Illi l-Qorti ma tistax taqbel ma din il-linja difenzjonali u dan ghaliex kif diversi drabi affermat mill-qrati fir-rigward tal-principju regolatur dwar l-ammissibilita' ta' prova fil-process penali, hija prassi adottata mill-gurisprudenza illi prova ma titqiesx li hija inammissibbli sakemm ma jkunx hemm xi dispozizzjoni espressa tal-ligi li tipprekludi l-ammissjoni ta' dik il-prova. Illi ghalkemm l-appellat jistieden lil din il-Qorti tqies l- ilment minnu ventilat mill-ottika tal-process gudizzjarju penali u mhux minn dak ta'

[19] Deciza fis-27 ta' Jannar, 2021 (Att ta' Akkuza numru: 13/2015).

natura kostituzzjonali, madanakollu imbaghad ma jinvoka ebda regola tal-ligi penali li teskludi l-producibilita' tal-istess stqarrija, izda jishaq unikament illi l-istqarrija hija nieqsa mill-valur probatorju taghha ghaliex meta interrogat huwa ma kellux avukat prezenti mieghu sabiex jassistieh u allura qieghed issejjes din il-lanjanza fuq lezjoni potenzjali tal-jedd tieghu ghal smigh xieraq, kwistjoni li issa giet determinat finalment mill-Qorti Kostituzzjonali li sabet li ma kien hemm ebda lezjoni f'dan is-sens. (...)'

Fl-istess sentenza, fost kunsiderazzjonijiet ohra gie meqjus li:

'*16. Maghmula dawn il-konsiderazzjonijiet u billi d-difiza qed issejjes l-eccezzjoni taghha dwar l-inammissibilita' ta' l-istqarrija ta' l-akkuzat mhux fuq xi regola penali tal- evidenza li teskludi dik il-prova, peress li l-istess stqarrija kienet konformi mal-ligi penali vigenti dak iz- zmien, izda fuq l-allegata lezjoni potenzjali tal-jedd tieghu ghal smigh xieraq taht l-artikolu 6 tal-Konvenzjoni Ewropea jekk isir uzu minn dik l- istqarrija fil-guri, u peress ukoll illi mill-pronunzjament tal-Qorti Kostituzzjonali tali lezjoni ma tirrizultax, f'dan l-istadju tal-proceduri l-imsemmija prova m'ghandhiex tigi skartata billi mhuwiex nieqes il-valur probatorju taghha galadarba ma hemm ebda regola li qed teskludi l-ammissjoni ta'l-istess.*'

Sentenza ta' certu importanza hija dik moghtija mill-Grand Chamber tal-Qorti Ewropea tad-Drittijiet tal-Bniedem fis-sentenza **'Bueze vs Belgium'**[20] fejn ghamlet emfazi fuq il-fatt li l-proceduri iridu jigu evalwati fl-intier taghhom sabiex jigi determinat jekk kien hemm vjolazzjoni tad-dritt ghal smiegh xieraq. F'dik is-sentenza gie meqjus li:

[20] Deciza mill-Grand Chamber tal-QEDB fid-9 ta' Novembru, 2018 (Applikazzjoni numru: 71409/10)

'150. When examining the proceedings as a whole in order to assess the impact of procedural failings at the pre-trial stage on the overall fairness of the criminal proceedings, the following non-exhaustive list of factors, drawn from the Court's case-law, should, where appropriate, be taken into account (see Ibrahim and Others, cited above, § 274, and Simeonovi, cited above, § 120):

*(a) whether the applicant was particularly **vulnerable**, for example by reason of **age** or **mental capacity**;*

*(b) the **legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with** – where an exclusionary rule applied, it is particularly unlikely that the proceedings as a whole would be considered unfair;*

*(c) whether the applicant had the **opportunity to challenge the authenticity of the evidence** and oppose its use;*

*(d) the **quality of the evidence** and whether the circumstances in which it was obtained cast doubt on its **reliability or accuracy**, taking into account the **degree and nature of any compulsion**;*

*(e) where evidence was obtained unlawfully, the **unlawfulness** in question and, where it stems from a violation of another Convention Article, the nature of the violation found;*

*(f) in the case of a statement, **the nature of the statement** and whether it was promptly retracted or modified;*

*(g) the **use to which the evidence was put,** and in particular whether the evidence formed an integral or significant part of the probative evidence upon*

which the conviction was based, and the strength of the other evidence in the case;

(h) whether the ***assessment of guilt was performed by professional judges or lay magistrates, or by lay jurors****, and the content of any directions or guidance given to the latter;*

(i) the ***weight of the public interest*** *in the investigation and* ***punishment*** *of the particular offence in issue; and*

(j) other relevant ***procedural safeguards afforded by domestic law and practice.***'

Fl-istess sentenza gie kkunsidrat li:

'193. In conclusion, re-emphasising the very strict scrutiny that must be applied where there are no compelling reasons to justify the restriction on the right of access to a lawyer, the Court finds that the criminal proceedings brought against the applicant, when considered as a whole, did not cure the procedural defects occurring at the pre-trial stage, among which the following can be regarded as particularly significant:

(a) The restrictions on the applicant's right of access to a lawyer were particularly extensive. He was questioned while in police custody without having been able to consult with a lawyer beforehand or to secure the presence of a lawyer, and in the course of the subsequent judicial investigation no lawyer attended his interviews or other investigative acts.

(b) In those circumstances, and without having received sufficiently clear prior information as to his right to remain silent, the applicant gave detailed statements while in police custody. He subsequently presented different

versions of the facts and made statements which, even though they were not self-incriminating stricto sensu, substantially affected his position as regards, in particular, the charge of the attempted murder of C.L.

(c) All of the statements in question were admitted in evidence by the Assize Court without conducting an appropriate examination of the circumstances in which the statements had been given, or of the impact of the absence of a lawyer.

(d) While the Court of Cassation examined the admissibility of the prosecution case, also seeking to ascertain whether the right to a fair trial had been respected, it focused on the absence of a lawyer during the period in police custody without assessing the consequences for the applicant's defence rights of the lawyer's absence during his police interviews, examinations by the investigating judge and other acts performed in the course of the subsequent judicial investigation.

(e) The statements given by the applicant played an important role in the indictment and, as regards the count of the attempted murder of C.L., constituted an integral part of the evidence on which the applicant's conviction was based.

(f) In the trial before the Assize Court, the jurors did not receive any directions or guidance as to how the applicant's statements and their evidential value should be assessed.

194. The Court finds it important to emphasise, as it has done in other cases under Article 6 § 1 of the Convention in which an assessment of the overall fairness of the proceedings was at issue, that it is not for the Court to act as a court of fourth instance (see Schatschaschwili, cited above, § 124). In carrying out such an assessment, as required by Article 6 § 1, it must nevertheless

carefully look at how the domestic proceedings were conducted, and very strict scrutiny is called for where the restriction on the right of access to a lawyer is not based on any compelling reasons. In the present case, it is the combination of the various abovementioned factors, and not each one taken separately, which rendered the proceedings unfair as a whole.
(iv) General conclusion

195. Accordingly, there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.'

Ghalhekk skond din is-sentenza, ir-restrizzjoni ghal access ghal Avukat waqt l-interrogatorju ma jfissirx awtomatikament li kien hemm lezjoni tad-dritt ghal smiegh xieraq izda l-Qorti trid tqis ukoll l-'overall fairness' tal-proceduri sabiex tiddetermina jekk kienx hemm lezjoni o meno. F'dan ir-rigward, il-Qorti tal-Appell Kriminali fis-sentenza fl-ismijiet **'Il-Pulizija vs Maximilian Ciantar'**[21] wara li ghamlet referenza ghas-sentenza fl-ismijiet **'Bueze vs Belgium'**[22] qieset:

'Illi ghalkemm illum kif inghad il-ligi regghet giet emendata u dan sabiex jigi fis-sehh fil-ligi domestika d-dritt komunitarju fir-rigward u sabiex ukoll ir-restrizzjoni sistematika dwar id-dritt ghall-avukat jigi regolat, madanakollu fiz-zmien meta giet rilaxxjata l-istqarrija tal-appellant kien hemm dritt, ghalkemm wiehed iktar ristrett, tal-persuna suspettata biex tikkonferixxi mal-avukat tal-fiducja taghha fil-hin precedenti l-interrogatorju mill-Pulizija. Illi allura din il-Qorti fid-dawl tal- pronunzjament surriferit tal-Qorti Ewropeja tad-Drittijiet tal-Bniedem ma tistax a priori tiskarta stqarrija ta' persuna li tkun inghatat l-jedd tikkonsulta ma' avukat qabel ma tigi interrogata, izda fejn l-avukat taghha ma kienx prezenti filwaqt tal-interogazzjoni, u dan ghaliex allegatament jista' jkun hemm lezjoni tad-dritt taghha ghal smigh xieraq, billi kif mistqarr f'dan il-pronunzjament kull kaz irid jitqies ghalih u

[21] Deciza mill-Qorti tal-Appell Kriminali fis-27 ta' Frar, 2019 (Appell Numru: 514/2017).
[22] Deciza mill-Grand Chamber tal-QEDB fid-9 ta' Novembru, 2018 (Numru: 71409/10).

cioe' allura billi jigi mistharreg f'kull kaz individwalment jekk bil-fatt illi l-persuna akkuzata ma kellhiex l-avukat prezenti waqt it-tehid tal-istqarrija dan setax impinga fuq issmigh xieraq iktar 'il quddiem tul il-proceduri penali istitwiti kontra taghha.

Din il-Qorti ma ghandhiex funzjonijiet kostituzzjonali u allura ma ghandhiex il-poter tistharreg jekk ikunx sehh lezjoni tad-dritt ta' smigh xieraq jew jekk potenzjalment dan jistax isehh u dan f'kaz fejn xi forma ta' assistenza legali tkun giet moghtija. Ma tistax il-Qorti ta' kompetenza penali tiddeciedi a priori illi bil-fatt wahdu illi fiz-zmien li l-persuna akkuzata tkun giet interrogata ma kellhiex il-jedd ikollha l-avukat prezenti maghha dan awtomatikament kien vjolattiv tal-jedd taghha ghal smigh xieraq meta l-Qorti Ewropeja issa qed tidderigi il-qrati domestici jindagaw jekk il- proceduri fl-intier taghhom kenux gusti filkonfront tal-akkuzat bit-test allura li irid jigi segwiet fuq zewg binarji u cioe':

i. *the existence of compelling reasons for the right to be witheld*
ii. *the overall fairness of the proceedings.*

Jinghad biss f'dan il-kaz illi l-appellant kien abbilment assistit tul dawn il-proceduri kriminali istitwiti kontra tieghu. Fl-ebda mument tul il-proceduri ma jqanqal il- kwistjoni dwar il-valur probatorju tal-istqarrija minnu rilaxxjata biex b'hekk il-Qorti ghandha quddiemha prova li qatt ma giet ikkontestata. Illi maghdud dan madanakollu l-Qorti tosserva li l-appellant kien ikkonsulta mal-avukat tal-fiducja tieghu qabel ma gie interrogat. F'dak iz-zmien huwa kellu sitta u ghoxrin sena u diga` kellu irregistrati kontra tieghu hdax-il kundanna biex b'hekk ma jistax jitqies li kien bniedem vulnerabbli. L-appellant qatt ma jikkontendi illi hu jew l-avukat tieghu ma gewx mgharrfa mill-Pulizija dwar in-natura tal-akkuzi migjuba fil-konfront tieghu jew tal-provi li l-Pulizija kellhom f'idejhom. Fuq kollox dak mistqarr mill- appellant fl-istqarrija minnu rilaxxjata huwa biss korroborazzjoni ta'

dak li jikkontendu l-vittmi billi dawn kienu x-xhieda ewlenija f'dan il-kaz meta jistqarru li gharfu lill-appellant bhala wiehed mill-hallelin.

Illi finalment ghalkemm il-ligi f'dak iz-zmien ma kenitx tippermetti lill-avukat li jkun prezenti waqt it-tehid tal-istqarrija, madanakollu ghandu jinghad illi l-ligi kif inhi illum ma tantx toffri dik l-assistenza effettiva bil-fatt illi l-avukat ikun prezenti mal- persuna suspettata waqt li din tkun qed tigi interrogata bil-proviso ghall-artikolu 355AUA (8)(c) tal-Kodici Kriminali jiddisponi hekk:

"Id-dritt tal-avukat li jippartecipa b'mod effettiv ma ghandux jinftiehem bhala dritt tal-avukat li jostakola l-interrogazzjoni jew li jissuggerixxi twegibiet jew reazzjonijiet ohra ghall-interrogazzjoni u kull mistoqsija jew rimarka ohra mill-avukat ghandha, hlief f'cirkostanzi eccezzjonali, issir wara li l-Pulizija Ezekuttiva jew awtorità ohra investigattiva jew awtorità gudizzjarja jkunu ddikjaraw li ma ghandhomx aktar mistoqsijiet."

Fil-fatt minn qari tad-Direttiva tal-Unjoni Ewropeja dwar id-Dritt tal-assistenza legali, ghalkemm din giet tramandata kwazi kelma b'kelma fil-ligi taghna, madanakollu dana l-proviso ma jirriaffigura imkien fl-artikolu 3 tad-Direttiva, li gie trasportat fl-artikolu 355AUA tal-Kodici Kriminali.

Maghmula dawn il-konsiderazzjonijiet ghalhekk din il-Qorti ma issib l-ebda mottiv li jista' igieghlha titbieghed mill-fehma milhuqa mill-Ewwel Qorti li strahet fuq ix- xiehda tal-vittmi f'dan il-kaz abbinata mal-istqarrija rilaxxjata mill-appellant u dan sabiex sejset is-sejbien ta' htija fil-konfront tieghu.'

Din il-Qorti sejra taghmel referenza ghal *joint concurring opinion* **tal-Imhallfin Yudkivska, Vučinić, Turković u Hüseynov** ghas-sentenza fl-ismijiet **'Beuze v. Belgium'**[23] fejn fost affarijiet ohra ikkunsidraw li:

'22. *In sum, we believe that it is vital to make a distinction between the systematic defects and the particular defects which are found in individual cases as a result of targeted and context-specific restrictions (e.g. in terrorism cases) or as a result of mistakes and shortcomings in individual cases.* ***It is not correct for the Court to consider the overall fairness of an individual applicant's case when a systematic ban exists, affecting every other individual in the applicant's position and in the absence of any assessment by the relevant national authorities.***

23. The formulation of the exception is extremely clear: any derogation must be justified by compelling reasons pertaining to an urgent need to avert danger for the life or physical integrity of one or more people. In addition, any derogation must comply with the principle of proportionality, which implies that the competent authority must always choose the alternative that least restricts the right of access to a lawyer and must limit the duration of the restriction as much as possible. In accordance with the Court's case-law, no derogation may be based exclusively on the type or seriousness of the offence and any decision to derogate requires a case-by-case assessment by the competent authority. Finally, derogations may only be authorised by a reasoned decision of a judicial authority.

24. The Court must apply a strict approach to a blanket prohibition on the right to legal assistance; otherwise we will end up in conflict with the overall direction of both the case-law of the Court and EU law.'

[23] Deciza mill-Grand Chamber tal-QEDB fid-9 ta' Novembru, 2018 (Applikazzjoni numru: 71409/10).

Fis-sentenza fl-ismijiet **'Paul Anthony Caruana v. Avukat Generali, Kummissarju tal-Pulizija, Registratur tal-Qrati u Tribunali Kriminali'**[24] il-Qorti Kostituzzjonali ghamlet referenza ghas-sentenza sucitata fl-ismijiet **'Beuze vs Belgium'** u kkunsidrat li:

> *'18. Din hija interpretazzjoni li hija eqreb mal-posizzjoni li kienet hadet din il-Qorti qabel is-sentenza ta' Borg milli mal-interpretazzjoni moghtija mir-Raba' Sezzjoni f'Borg u effettivament tfisser li kellha raguni il-Qorti Kostituzzjonali ta' Malta fil-posizzjoni li kienet hadet fil-kaz ta' Muscat u fis-sentenzi li segwew, qabel ma kienet kostretta tbiddel dik l-interpretazzjoni fid-dawl ta' Borg.*
>
> *19. Uhud mill-imhallfin membri tal-Qorti li tat is-sentenza ta' Beuze, f'opinjoni ghalihom, ikkritikaw is-sentenza fejn qalet illi, f'kull kaz, trid tqis il-process fit-totalità tieghu u mhux biss in-nuqqas ta' ghajnuna ta' avukat, ghax dehrilhom illi, izjed milli precizazzjoni tal-interpretazzjoni ta' Salduz fid-dawl ta' Ibrahim, is-sentenza ta' Beuze hija kapovolgiment ta' dik il-gurisprudenza. Hu x'inhu, hijiex precizazzjoni, elaborazzjoni, evoluzzjoni jew kapovolgiment, din hija sa issa l-ahhar kelma, u taghti ragun lill-Qorti Kostituzzjonali ta' Malta fil-guris-prudenza li segwiet is-sentenza ta' Muscat.*
>
> *20. Fid-dawl ta' dawn il-konsiderazzjoniet, l-aggravju tal-attur – sa fejn ighid illi "l-fatt wahdu illi persuna li tkun instabet hatja ma tkunx thalliet tikkonsulta ma' avukat tal-fiducja taghha fil-mument tal-investigazzjoni u l-ghotja ta' stqarrija lill-Pulizija, minhabba restrizzjoni sistematika fil- ligi maltija, awtomatikament ikun ifisser illi saret vjolazzjoni tad-dritt fundamentali tas-smigh xieraq ta' dik l-istess persuna taht l-artikolu 6 tal-Konvenzjoni Ewropea" – huwa hazin u huwa michud.'*

[24] Deciza mill-Qorti Kostituzzjonali fil-31 ta' Mejju, 2019 (Rikors Kostituzzjonali numru: 64/2014 JRM).

F'dik il-kawza, l-akkuzat kien irilaxxja l-istqarrija tieghu fis-7 t' April, 2006, u ghalhekk fi zmien meta suspettati ma kellhomx dritt li jikkonsultaw mal-avukat taghhom, la qabel ir-rilaxx tal-istqarrija u wisq aktar waqt l-interrogazzjoni. Fl-istess sentenza, il-Qorti qieset li kien hemm raguni tajba ghala l-attur ma thalliex ikellem avukat qabel jew waqt l-ewwel interrogazzjoni u dan sabiex issir *controlled delivery* lil terza persuna li kienet tipprovdi lill-attur bid-droga. Il-Qorti kkunsidrat ukoll illi ma saret ebda allegazzjoni li l-istqarrija saret fic-cirkostanzi msemmija fl-Artikolu 658 tal-Kodici Kriminali ghalkemm issa jghid li kien xurban u fis-sakra meta ghamel l-istqarrija. In oltre' kkunsidrat li l-istqarrija ma kinitx ir-raguni li wasslet ghal kundanna tal-attur izda li l-attur ammetta l-htija. Din l-ammissjoni saret fil-prezenza tal-Avukat wara konsulta mieghu u quddiem Magistrat li wissieh bil-konsegwenzi tal-ammissjoni u tah l-opportunita' li jiehodha lura. Il-Qorti kkonfermat li ma kien hemm ebda ksur tal-jedd tal-attur ghal smigh xieraq.

Din il-Qorti taghmel referenza ukoll ghas-sentenza fl-ismijiet **'Stephen Pirotta v. L-Avukat Generali u l-Kummissarju tal-Pulizija'**[25] li fost affarijiet ohra kienet tirrigwarda l-fatt li l-akkuzat ma nghatax il-jedd li jkellem avukat qabel ma ttiehditlu l-istqarrija. Il-Qorti wara li qieset gurisprudenza tal-Qorti Ewropeja fis-Sezzjonijiet Maghquda (Grand Chamber), ikkunsidrat li:

> '*14. Effettivament, dan ifisser illi – kontra dak li qalet l-ewwel Qorti fis-silta migjuba fuq – il-fatt wahdu li ma tkunx thalliet tinghata l-ghajnuna ta' avukat waqt l-interrogazzjoni, ukoll jekk ma kienx hemm ragunijiet impellenti ghal dan in-nuqqas, u dik l-istqarrija ntuzat fil-process, ma huwiex bizzejjed biex, ipso facto, jinsab ksur tal-jedd ghal smigh xieraq: trid tqis il-*

[25] Deciza mill-Qorti Kostituzzjonali fis-27 ta' Settembru, 2019 (Rikors Kostituzzjonali numru: 13/2016 JRM).

process fit-totalità tieghu ("having regard to the development of the proceedings as a whole").'

Il-Qorti qieset li l-attur ma garrab ebda ksur tal-jedd tieghu taht l-Artikolu 39 tal-Kostituzzjoni jew l-Artikolu 6 tal-Konvenzjoni Ewropea. Ikkunsidrat li:

> '*23. Fil-kaz tal-lum ma jista' jkun hemm ebda dell ta' dubju li l-attur kien hati tal-imputazzjonijiet imressqa kontra tieghu, kif wara kollox gharfet l-ewwel Qorti stess. L-ewwel Qorti gharfet ukoll illi l-qrati ta' gurisdizzjoni kriminali waslu ghall-konkluzjoni tal-htija tal-attur bis-sahha ta' xiehda ohra barra l-istqarrija tieghu. Meqjus il-process kriminali fl-intier tieghu, ma jistax jinghad illi l-attur ma nghatax smigh xieraq: kellu gharfien tal- provi kollha mressqa kontrih u ma ntweriex li nzamm mistur xi taghrif li kellha l-Pulizija; kellu ghajnuna ta' avukat waqt il-process quddiem il- Qorti; kellu fakoltà jressaq xhieda u jaghmel konto-ezami tax-xhieda tal-prosekuzzjoni; instab hati bis-sahha ta' xiehda oggettiva li, ukoll jekk ma tqisx l-ammissjoni tieghu, rabtitu mal-incident u ma setghetx thalli dubju dwar il-htija tieghu.*'

Fis-sentenza moghtija mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fl-ismijiet **'<u>Farrugia vs. Malta</u>'**,[26] gie kkunsidrat li:

> '*98. Prior to the recent Beuze judgment, in a number of cases, the Court found that systematic restrictions on the right of access to a lawyer had led, ab initio, to a violation of the Convention (see, in particular, **<u>Dayanan v. Turkey</u>**, no. 7377/03, § 33, 13 October 2009 and **<u>Boz v. Turkey,</u>** no. 2039/04, § 35, 9 February 2010). That same approach was followed by the Court in relation to the Maltese context in Borg (no.37537/13, 12 January 2016).*

[26] Deciza mill-QEDB fl-4 ta' Gunju, 2019 u reza finali fis-7 ta' Ottubru, 2019 (Applikazzjoni numru: 63041/13).

99. Subsequently, being confronted with a certain divergence in the approach to be followed in cases dealing with the right of access to a lawyer, the Court had occasion to further examine the matter in ***Ibrahim and Others****,* ***Simeonovi*** *and more recently in* ***Beuze****, all cited above, where the Court departed from the principle set out in the preceding paragraph. In Beuze, the most recent authority on the matter, the Grand Chamber gave prominence to the examination of the overall fairness approach and confirmed the applicability of a two stage test, namely whether there are compelling reasons to justify the restriction as well as the examination of the overall fairness and provided further clarification as to each of those stages and the relationship between them, as explained below.*

(i) Concept of compelling reasons

100. The criterion of "compelling reasons" is a stringent one: having regard to the fundamental nature and importance of early access to legal advice, in particular at the suspect's first police interview, restrictions on access to a lawyer are permitted only in exceptional circumstances, must be of a temporary nature and must be based on an individual assessment of the particular circumstances of the case. A finding of compelling reasons cannot stem from the mere existence of legislation precluding the presence of a lawyer. The fact that there is a general and mandatory restriction on the right of access to a lawyer, having a statutory basis, does not remove the need for the national authorities to ascertain, through an individual and case-specific assessment, whether there are any compelling reasons. Where a respondent Government have convincingly demonstrated the existence of an urgent need to avert serious adverse consequences for life, liberty or physical integrity in a given case, this can amount to a compelling reason to restrict access to legal advice for the purposes of Article 6 of the Convention (see Beuze, cited above, §§ 142-143).

(ii) The fairness of the proceedings as a whole and the relationship between the two stages of the test

101. Where there are no compelling reasons, the Court must apply very strict scrutiny to its fairness assessment. The absence of such reasons weighs heavily in the balance when assessing the overall fairness of the criminal proceedings and may tip the balance towards finding a violation. The onus will then be on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the criminal proceedings was not irretrievably prejudiced by the restriction on access to a lawyer (see Beuze, cited above, § 145).

102. The Court further emphasises that where access to a lawyer was delayed, and where the suspect was not notified of the right to legal assistance, the privilege against self-incrimination or the right to remain silent, it will be even more difficult for the Government to show that the proceedings as a whole were fair (ibid., § 146).

103. As the Court has already observed, subject to respect for the overall fairness of the proceedings, the conditions for the application of Article 6 §§ 1 and 3 (c) during police custody and the pre-trial proceedings will depend on the specific nature of those two phases and on the circumstances of the case (ibid., § 149).

(iii) Relevant factors for the overall fairness assessment

104. When examining the proceedings as a whole in order to assess the impact of procedural failings at the pre-trial stage on the overall fairness of the criminal proceedings, the following non-exhaustive list of factors, drawn from the Court's case-law, should, where appropriate, be taken into account:

(a) whether the applicant was particularly vulnerable, for example by reason of age or mental capacity;

(b) the legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with – where an exclusionary rule applied, it is particularly unlikely that the proceedings as a whole would be considered unfair;

(c) whether the applicant had the opportunity to challenge the authenticity of the evidence and oppose its use;

(d) the quality of the evidence and whether the circumstances in which it was obtained cast doubt on its reliability or accuracy, taking into account the degree and nature of any compulsion;

(e) where evidence was obtained unlawfully, the unlawfulness in question and, where it stems from a violation of another Convention Article, the nature of the violation found;

(f) in the case of a statement, the nature of the statement and whether it was promptly retracted or modified;

(g) the use to which the evidence was put, and in particular whether the evidence formed an integral or significant part of the probative evidence upon which the conviction was based, and the strength of the other evidence in the case;

(h) whether the assessment of guilt was performed by professional judges or lay magistrates, or by lay jurors, and the content of any directions or guidance given to the latter;

(i) the weight of the public interest in the investigation and punishment of the particular offence in issue; and

(j) other relevant procedural safeguards afforded by domestic law and practice (ibid., § 150).'

Fl-istess sentenza gie kkunsidrat ukoll li:

'118. However, the nature of the statements and their use is of particular relevance in the present case. The Court notes that they did not contain any confessions nor was their content self-incriminating. However, the privilege against self-incrimination is not confined to actual confessions or to remarks which are directly incriminating; for statements to be regarded as self-incriminating it is sufficient for them to have substantially affected the accused's position (see, for example, ***Schmid-Laffer v. Switzerland****, no. 41269/08, § 37, 16 June 2015). Indeed, the statements given by the applicant, at pre-trial stage in the absence of a lawyer, were relied on by the Court of Criminal Appeal in connection with the applicant's credibility. In particular, in its judgment the Court of Criminal Appeal had noted certain inconsistencies in his statements of 1 and 2 February 2002 (see paragraph 22 above) and it had considered that he was not reliable as the applicant had replied in an evasive and hesitant way to police questions concerning his business, profitability, rent, and profits of the previous year (see paragraph 26 above). Nevertheless, the Court cannot but note that the Court of Criminal Appeal had found that A.F.'s statements had been enough to determine the applicant's guilt. In consequence its assessment of the applicant's credibility on the basis of his pre-trial statements can be considered as having been made ex abundanti cautela (out of an abundance of caution). In the light of the Court of Criminal Appeal's finding concerning the sufficiency of A.F.'s statements, the Court considers that the use it made of the applicant's*

statements to assess his credibility cannot be considered as having substantially affected his position.

(iv) Conclusion

119. In conclusion, while very strict scrutiny must be applied where there are no compelling reasons to justify the restriction on the right of access to a lawyer, the Court, in the specific circumstances of the case, finds that having taken into account the combination of the various above-mentioned factors, despite the lack of procedural safeguards relevant to the instant case, the overall fairness of the criminal proceedings was not irretrievably prejudiced by the restriction on access to a lawyer.

120. There has therefore been no violation of Article 6 §§ 1 and 3 (c) of the Convention.'

Interessanti hija l-joint dissenting opinion tal-**Imhallfin Serghides u Pinto de Albuquerque** fejn fost kunsiderazzjonijiet ohra ikkunsidraw li:

'10. In any event, we are of the view that the right to a lawyer at the pre- trial stage does not hinge, in any way or form, on the state of vulnerability of the defendant. Nothing in the Convention makes the Article 6 § 3 (c) right dependent on such vulnerability. Such an abusive and restrictive interpretation of that right contradicts its essence. Every defendant, vulnerable or not, has a right, at the pre-trial stage, to a lawyer who will advise him or her on the defence strategy to be followed.

11. Secondly, the majority state that "The applicant did not allege, either before the domestic courts or before [the Court], that the Police had exerted

any pressure on him, nor that the evidence obtained had been in violation of another Convention provision".[27]

12. We disagree with this argument. The fact that a defendant has not been pressured by the police does not limit his or her right to a lawyer. Legal assistance in a criminal procedure is indispensable not only to counter pressure by the police or any other evidence obtained in violation of the Convention, but to define a strategy for the defence and adapt it to every incident throughout the entire proceedings. The police are expected to act lawfully, regardless of the manner in which a defendant presents his or her defence, with or without the benefit of legal assistance. The one has simply nothing to do with the other. Lawful conduct by the police is not a valuable argument on which to restrict the exercise of a Convention right by the defence. Ultimately, this argument by the majority reflects a very restrictive conception of the role of the lawyer in criminal procedure.

13. Thirdly, the majority state that "in the present case, the applicant was informed repeatedly in a sufficiently explicit manner of his right to remain silent and the privilege against self-incrimination".[28]

14. Again, we cannot accept this argument. The right to remain silent is not interchangeable with the right to a lawyer. These are two very different rights. Legal assistance at the pre-trial stage of a criminal procedure is essential to inform the defendant of the advantages and disadvantages, from the perspective of the defence strategy, of speaking out or remaining silent. In other words, the right to a lawyer is instrumental in effective protection of the right to remain silent (and of the privilege against self-incrimination).

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[27] § 111 of the present judgment. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata hmistax (15) fil-joint dissenting opinion tas-sentenza citata).
[28] § 112 of the present judgment. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata sittax (16) fil-joint dissenting opinion tas-sentenza citata).

15. In short, the fact that the applicant was informed of his right to remain silent if he so desired and the fact that the applicant did not claim that any pressure was exerted on him have nothing to do with his procedural right under Article 6 § 3 (c) of the Convention to have access to a lawyer. Those facts are irrelevant for the purpose of curing the breach of this right. In our view, it is a fundamental mistake at stage two not to take seriously into account the finding of stage one, especially when the test applied should be a very strict scrutiny.[29] Otherwise, what is the point of having two stages!?'

Ikkunsidrat;

B'referenza ghall-gurisprudenza indikata *supra,* din l-Onoabbli Qorti tinnota l-interprettazjoni differenti li tat il-Qorti Ewropea tad-Drittijiet tal-Bniedem fir-rigward tad-dritt tas-smiegh xieraq. Fost id-diversi sentenzi, fejn il-Qorti evalwat jekk kienx hemm ksur tad-dritt tas-smiegh xieraq, issir referenza ghas-sentenzi sucitati fl-ismijiet '**Beuze vs Belgium'**[30] moghtija mill-Grand Chamber tal-Qorti Ewropea tad-Drittijiet tal-Bniedem u s-sentenza tal-Qorti Ewropea tad-Drittijiet tal-Bniedem fl-ismijiet **'Farrugia vs. Malta'**.[31]

Fil-gurisprudenza ndikata iktar l'fuq, ma jistax ma jigix innutat li filwaqt li certu sentenzi jenfazizzaw l-inammisibilta' ta' stqarrija, meta s-ssuspettat ma kienx akkumpanjat mill-avukat tieghu qabel u fil-hin tal-interrogazzjoni, *stante* li difett bhal dan ma jistax jigi sanat, sentenzi ohrajn jtennu illi sempliciment ghax susspettat ma jkunx akkumpanjat mill-avukat tieghu qabel u fil-hin tal-interrogazzjoni m' ghandux awtomatikament ifisser li l-istqarrija li hu jkun

[29] § 108 of the present judgment. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata sbatax (17) fil-joint dissenting opinion tas-sentenza citata).
[30] Deciza mill-Grand Chamber tal-QEDB fid-9 ta' Novembru, 2018 (Applikazzjoni numru: 71409/10).
[31] Deciza mill-QEDB fl-4 ta' Gunju, 2019 u reza finali fis-7 ta' Ottubru, 2019 (Applikazzjoni numru: 63041/13).

irilaxxa hija inammissibli u ghaldaqstant tali proceduri ghandhom jigu evalwati fit-totalita' taghhom u jittiehed kont tal-*'overall fairness'* ta' l-istess proceduri.

Il-Qorti taghmel referenza ghas-sentenza ricenti fl-ismijiet **'Ir-Repubblika ta' Malta vs Ahmed El Fadali Enan'**[32] fejn gie meqjus:

> '15. *Illi l-pozizzjoni ta' dritt li tirregola it-tehid ta' stqarrijiet u dikjarazzjonijiet mis-suspettat taht id-dritt penali nostran ra zviluppi sostanzjali fi snin recenti. Illi fiz-zmien meta l-akkuzat gie arrestat u interrogat lura fil-bidu tas-sena 2010, huwa ma kellux il- jedd ghall-ebda forma ta' assistenza legali la qabel u lanqas matul it-tehid tal-istqarrija. Illi kien sehh bdil ghal Kodici Kriminali permezz ta'l-Att III tal-2002 fejn il-legislatur haseb sabiex "il-persuna li tkun arrestata u qed tinzamm taht il-kustodja tal-Pulizija f'xi Ghassa jew f'xi post iehor ta' detenzjoni awtorizzata ghandha, jekk hija hekk titlob, tithalla kemm jista' jkun malajr tikkonsulta privatament ma' avukat u prokuratur legali, wicc imb'wicc jew bit-telefon, ghal mhux aktar minn siegha zmien. Kemm jista' jkun malajr qabel ma tibda tigi interrogata, l-persuna taht kustodja ghandha titgharraf mill-Pulizija bid-drittijiet li ghandha taht dan is-subartikolu." Madanakollu dan il-bdil ma giex fis-sehh hlief snin wara u cioe' fl-10 ta' Frar 2010 u ghalhekk xahar wara li l-akkuzat rrilaxxa l-istqarrija tieghu. Imbaghad finalment b' trasposizzjoni fil-ligi taghna ta' dak imfassal fid-Direttiva 2013/48/UE tal-Parlament Ewropew u tal-Kunsill tat-22 ta' Ottubru 2013 dwar id-dritt tal-access ghal avukat fi proceduri kriminali u fi proceduri tal-mandat ta' arrest Ewropew, is-suspettat inghata il-jedd ikun assistit minn avukat filwaqt tal-interrogazzjoni tieghu mill-Pulizija.*

[32] Deciza mill-Qorti tal-Appell Kriminali (Sede Superjuri) fis-27 ta' Jannar 2021 (Att tal-Akkuza Numru: 7/2018).

Madankollu, dan il-bdil sehh fl-10 ta' Frar, 2010, xahar wara li l-akkuzat irrilaxxa l-istqarrija. Minkejja l-fatt illi l-akkuzat irrilaxxja din l-istqarrija minghajr ma kellu dritt li jikkonsulta ma' avukat tal-fiducja tieghu, fost affarijiet ohra il-Qorti tal-Appell Kriminali (Sede Superjuri) pprovdiet li:

> *'19. Dan maghdud, allura l-Qorti hija tal-fehma illi f'dan l-istadju bikri tal-proceduri fejn il-process penali ghad irid jinstema' mill-Qorti kompetenti, ma jistax jinghad jekk il- kriterji indikati fil-kaz Beuze gewx segwiti. Ukoll ghaliex, kif tajjeb stqarret l-Ewwel Qorti, la dik il-Qorti u lanqas din il-Qorti ma ghandhom funzjonijiet kostituzzjonali u allura ma ghandhomx il-poter jistharrgu f'dan l-istadju, jekk tkunx sehhet xi vjolazzjoni tad-drittijiet fondamentali tal-persuna akkuzata jew jekk potenzjalment dan jistax isehh u dan fid-dawl tal-linji gwida godda tramandati mill-Qorti Ewropea. Dan ghaliex skont l-imsemmija pronunzjamenti dan n-nuqqas ma jwassalx awtomatikament ghal lezjoni tal-jedd taghha ghal smigh xieraq, meta l-Qorti Ewropea issa qed tidderiegi il-qrati domestici jindagaw jekk il-proceduri fl-intier taghhom kienux gusti fil-konfront tal- akkuzat, bit-test allura li jrid jigi segwiet fuq iz-zewg binarji surriferiti.'*

Il-Qorti fis-sentenza taghha laqghet l-appell ta' l-Avukat Generali u rrevokat fejn il-Qorti kienet iddikjarat l-istqarrija tal-akkuzat bhala inammissibbli u fejn kienet ordnat l-isfilz ta' l-istess u fejn kienet iddikjarat li kwalunkwe referenza fl-atti ghal kontenut ta' tali stqarrija jew ghal dak li l-akkuzat qal lill-Pulizija waqt l-investigazzjoni bhala inammissibli u minflok iddikjarat l-istqarrija ammissibbli bhala prova.

B'kuntrast ghas-sentenza fl-ismijiet **'Ir-Repubblika ta' Malta vs Ahmed El Fadali Enan'**, li referenza saret ghaliha fil-paragrafi precedenti, din il-Qorti taghmel referenza ghas-sentenza fl-ismijiet **'Graziella Attard v. Avukat Generali'**.[33] F'din

[33] Deciza mill-Qorti Kostituzzjonali fis-27 ta' Settembru, 2019 (Rikors mahluf numru: 83/2016 LSO).

is-sentenza ta' l-ahhar**, il-kwistjoni ma kinietx titratta biss dwar stqarrija rilaxxata minghajr l-assistenza legali izda anke minghajr l-opportunita' li tikkomunika ma' Avukat tal-fiducja taghha qabel ma ttiehditilha l-istqarrija mill-Pulizija**. Il-Qorti Kostituzzjonali pprovdiet illi:

> *'persuna interrogata tista' ma tithalliex tkellem avukat huma l-eccezzjoni aktar milli r-regola, u din il- Qorti ghandha s-setgha li taghti rimedju fejn issib li disposizzjoni li thares dritt fondamentali mhux biss "qieghda tigi" izda wkoll meta "tkun x'aktarx sejra tigi miksura", din il-Qorti hija tal-fehma, kif osservat fis-sentenza moghtija fl-24 ta' Gunju 2016 fl-ismijiet* ***Malcolm Said v. Avukat Generali***,[34] *illi ma jkunx ghaqli – partikolarment fid-dawl ta' inkonsistenzi fis-sentenzi tal-Qorti Ewropea li johloq element ta' imprevedibilità, kif jixhdu l-posizzjonijiet konfliggenti li hadet fil-kaz ta' Borg u f'dak ta' Beuze – illi l-process kriminali jithalla jitkompla bil- produzzjoni tal-istqarrija moghtija mill-attrici lill-Pulizija ghaliex tqis illi, fic-cirkostanzi, in-nuqqas ta' ghajnuna ta' avukat ma kienx nuqqas li ma jista' jkollu ebda konsegwenza ta' pregudizzju ghall-attrici, aktar u aktar meta fl-istqarrija ammettiet sehma fir-reat.*
>
> *1. Ghaldaqstant tipprovdi dwar dan l-aggravju tal-avukat Generali billi tghid illi, ghalkemm ma sehh ebda ksur tal-jedd tal-attrici ghal smigh xieraq meta ttehditilha stqarrija, madankollu dik l-istqarrija ma ghand- hiex tibqa' fl-inkartament tal-kawza kontriha.'*

Fl-istess sentenza intqal li:

> '18. *Il-Qorti tqis illi l-ordni li l-istqarrija titnehha mill-inkartament, aktar milli rimedju ghal ksur li, wara kollox, ghadu ma sehhx, huwa garanzija tal-*

[34] Rik. kost. 74/2014. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata sitta (6) fis-sentenza citata).

integrità tal-process u wkoll flinteress pubbliku, biex ma jigrix l- process kontra l-attrici jkollu jithassar wara li jintemm, b'hela ta' hin u rizorsi, li tkun forma ohra ta' ingustizzja ghax il-ligijiet ghandhom iharsu mhux biss lil min hu mixli b'reat izda wkoll lil min jista' jkun vittma ta' reat.

19. Il-Qorti ghalhekk terga' ttenni li ma jkunx ghaqli li jsir uzu mill-istqarrija waqt il-process kriminali, u ghal din ir-raguni tichad ukoll dan l-ahhar aggravju.'

Ikkunsidrat ulterjorament;

Illi kif sejra turi din il-Qorti, jirrizulta li l-Qorti Kostituzzjonali u l-Qorti tal-Appell Kriminali (Sede Superjuri) anke **f'sentenzi moghtija fl-istess jum** waslu ghal **decizjoni differenti** rigwardanti l-ammissibilita' o meno tal-istqarrija rilaxxata fi zmien meta suspettati ma kellhomx dritt li jkunu assistiti minn Avukat waqt ir-rilaxx tal-istqarrija. Fis-sentenza fl-ismijiet **'Ir-Repubblika ta' Malta vs Rosario Militello'**,[35] il-Qorti tal-Appell Kriminali (Sede Superjuri) iddecciedit li:

'23. Ghaldaqstant maghmula dawn il-konsiderazzjonijiet, l-aggravju sollevat mill-Avukat Generali jisthoqqlu akkoljiment b'dan illi fil-kors tac-celebrazzjoni tal-guri, wara li jinstemghu il-provi kollha, fl-indirizz finali, l-Imhallef togat ghandu jaghti dik id-direzzjoni opportuna lil gurati dwar il-valur probatorju ta'l-istqarrija rilaxxati mill-akkuzat jekk jirrizulta illi dawn ma ttiehdux skont il-ligi, jew jekk javveraw irwiehhom dawk ic-cirkostanzi elenkati fil-linji gwida stabbiliti fid-decizjoni Beuze hawn fuq iccitata. Fuq kollox, ghall-appellat dejjem jibqa' id-dritt tieghu li jitlob revizjoni tal-verdett u

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[35] Deciza mill-Qorti tal-Appell Kriminali (Sede Superjuri) fis-27 ta' Jannar, 2021 (Att tal-Akkuza numru: 3/2018).

s-sentenza tal-Qorti Kriminali fl-eventwalita' li jkun hemm dikjarazzjoni ta' htija fil-konfront tieghu.'

Din il-Qorti taghmel referenza ghas-sentenza fl-ismijiet **'Ir-Repubblika ta' Malta vs Hassan Ali Mohammed Abdel Raouf Josephine Wadi'**[36] fejn iz-zmien li fih gew rilaxxati l-istqarrijiet tal-imputati, ghalkemm dawn kellhom id-dritt limitat li jikkonsultaw mal-avukat tal-fiducja taghhom qabel l-interrogazzjoni, id-dritt li l-avukat taghhom ikun prezenti waqt l-interrogazzjoni, ma kienx ghadu provdut fil-Kodici Kriminali. Il-Qorti f'dan il-kaz ghamlet referenza ghas-sentenza fl-ismijiet **Doyle v. Ireland**[37] u fejn il-Qorti Ewropeja tad-Drittijiet tal-Bniedem irriteniet is-segwenti:

> ***'the applicant was allowed to be represented by a lawyer but his lawyer was not permitted in the police interview as a result of the relevant police practice applied at the time. The Court found no violation of Article 6 §§ 1 and 3 (c) of the Convention. It considered that, notwithstanding the impugned restriction on the applicant's right of access to a lawyer during the police questioning, the overall fairness of the proceedings had not been irretrievably prejudiced. In particular, it laid emphasis on the following facts: the applicant had been able to consult his lawyer; he was not particularly vulnerable; he had been able to challenge the admissibility of evidence and to oppose its use; the circumstances of the case had been extensively considered by the domestic courts; the applicant's conviction had been supported by significant independent evidence; the trial judge had given proper instructions to the jury; sound public- interest considerations had justified prosecuting the applicant; and there had***

[36] Deciza mill-Qorti ta' l-Appell Kriminali (Sede Superjuri) fis-27 ta' Jannar, 2021 (Att tal-Akkuza numru: 1/2019)
[37] Deciza mill-QEDB fit-23 ta' Mejju, 2019 u reza finali fit-23 t' Awwissu, 2019 (Applikazzjoni numru: 51979/17).

been important procedural safeguards, namely all police interviews had been recorded on video and made available to the judges and the jury and, while not physically present, the applicant's lawyer had the possibility, which he used, to interrupt the interview to further consult with his client.

429. In addition, the Court has indicated that account must be taken, on a case-by case basis, in assessing the overall fairness of proceedings, of the whole range of services specifically associated with legal assistance: discussion of the case, organisation of the defence, collection of exculpatory evidence, preparation for 48 questioning, support for an accused in distress, and verification of the conditions of detention (Ibid., § 136)."

Fis-sentenza fl-ismijiet **'Ir-Repubblika ta' Malta vs Hassan Ali Mohammed Abdel Raouf Josephine Wadi** il-Qorti wasslet ghall-istess decizjoni tas-sentenza fl-ismijiet **Ir-Repubblika ta' Malta vs Rosario Militello**.

Din il-Qorti temfasizza li nonostante l-fatt li l-legislatur m' ghamilx regola li teskludi l-ammissjoni ta' stqarrija rilaxxata fi zmien fejn suspettat ma kellux id-dritt li jkollu Avukat prezenti, tqis li wiehed ma jistax jistenna li l-legislatur sejjer jindika c-cirkostanzi kollha ta' meta prova ma ghandhiex valur probatorju. Izda d-decizjoni dwar jekk prova ghandhiex valur probatorju ghandha tithalla fid-diskrezzjoni tal-Qrati.

Fis-sentenza ricenti fl-ismijiet **'The Republic of Malta vs. Lamin Samura Seguba'**[38] ikkonkludiet illi:

[38] Deciza mill-Qorti tal-Appell Kriminali fis-27 ta' Jannar, 2021 (Att ta' Akkuza: 11/2017).

'... this Court cannot a priori expunge a statement of a suspect who has been given the right to consult a lawyer before being interrogated, but where his lawyer was not present at the time, solely on the premise that this could potentially infringe his right to a fair hearing. The Court cannot create a blanket evidentiary rule of criminal law declaring a piece of evidence obtained lawfully, inadmissible in criminal proceedings on the basis that this could violate accused's right to a fair trial, all the more so, as already pointed out, where some sort of legal assistance had been given. As the European Court has guided domestic courts in dealing with pre-trials statements, each case must be dealt with individually thus taking into account, on a case by case basis, whether by the fact that accused person did not have a lawyer present when releasing the statement, although such person had obtained legal advice or at least had been given the right to obtain that advice, this could result at a later stage, during the criminal proceedings instituted against him, as a breach of his right to a fair hearing thus vitiating an otherwise legally obtained piece of evidence.

Minn naha l-ohra fis-sentenza moghtija wkoll ricenti mill-Qorti Kostituzzjonali **fl-istess jum** u cioe' fl-istess data tas-sebgha u ghoxrin (27) ta' Jannar tas-sena elfejn u wiehed u ghoxrin (2021) fl-ismijiet **'Morgan Onuorah v. L-Avukat tal-Istat'**[39] *gie meqjus li:*

'25. Fl-ahhar aggravju r-rikorrent argumenta dwar ir-rimedji. Isostni li: "Illi jigi rilevat illi jekk hemm ksur tad-drittijiet fundamentali tal-bniedem minhabba kemm l-operat tal-Pulizija Investigattiva u kemm mill-Avukat Generali, awtomatikament il-proceduri sussegwenti fil-konfront tal-appellanti kienu monki u jilledu d-drittijiet fundamentali tal-bniedem peress li bdew u bbazati fuq cirkostanzi lezivi ghad-drittijiet fundamentali tal-bniedem. L-appellant jirrileva illi l-Qorti bhala Sede Kostituzzjonali ghandha

[39] Rikors numru: 176/2019 FDP.

tiggarantixxi il-korrettezza tal-proceduri mehuda u s-sentenza infushom fis-sens illi ghandhom jigu garantiti l-harsien ta' certu principji procedurali li huma indispensabbli ghall-amministrazzjoni tajba tal- gustizzja".

26. Kif diga` issemma, il-fatt wahdu li saret l-interrogazzjoni mhux fil-presenza ta' avukat ta' fiducja tal-attur m'huwiex bizzejjed sabiex jaghti lok ghall-ksur tad-dritt fundamentali ta' smigh xieraq. Madankollu l-uzu ta' dik l-istqarrija fil-proceduri kriminali, li fiha l-attur ammetta ghal uhud mir-reati li akkuzat biha, taf twassal sabiex isehh dak il-ksur tal-jedd fundamentali. Dan iktar u iktar meta tikkunsidra l-gurisprudenza ampja tal-Qorti Ewropea tad-Drittijiet tal-Bniedem li issa ilha s-snin tirrepeti l- istess insenjament.

27. Li s-suspettat jitkellem ma' avukat qabel l-interrogazzjoni, l- assistenza ta' avukat wara li tkun saret l-interrogazzjoni u n-natura adversarial tal-kawza kriminali sussegwenti, m'humiex garanzija adegwata li jirrimedjaw ghad-difett li s-suspett ma kienx assistit minn avukat waqt l-interrogazzjoni li saret meta kien taht arrest. Fis-sentenza ricenti Mehmet Zeki Celebi v. Turkey (App. 27583/07) il-QEDB kompliet tishaq:

"57. The onus will be on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction on access to legal advice. The Court also reiterates that it is only in very exceptional circumstances that it can conclude that a given trial has not been prejudiced by the restriction of an applicant's right of access to a lawyer (see Dimitar Mitev v. Bulgaria, no. 34779/08, 71, 8 March 2018)".

28. Irrispettivament taqbilx mar-ragunament ta' dik il-Qorti internazzjonali, jibqa' l-fatt li l-gurisprudenza kienet cara meta nghatat is- sentenza ta' Salduz f'Novembru 2008 fis-sens li n-nuqqas ta' assistenza ta' avukat waqt interrogazzjoni tal-Pulizija kienet

difett procedurali. *Dan ghalkemm bis-sentenza Ibrahim and Others v. the United Kingdom tat- 13 ta' Settembru 2016, il-Grand Chamber ghamlet enfazi fuq l-'overall fairness' tal-proceduri kriminali u fis-sentenza Beuze v. Belgium tad-9 ta' Novembru 2018 l-istess Qorti kompliet ticcara kif kellu jigi applikat dak il- principju.*

29. Fl-ahhar mill-ahhar il-qrati domestici ma jistghux jippermettu li f'proceduri kriminali li ghadhom pendenti jithallew stqarrijiet li jkunu saru fl-assenza ta' avukat u li l-QEDB ilha tiddeskrivih bhala difett procedurali bil-periklu manifest li dak il-fatt jikkontamina l-process kriminali kollu.'

Il-Qorti Kostituzzjonali fl-istess sentenza qieset li:

'30. Kien id-dmir tal-Gvernijiet differenti matul is-snin li jaggornaw ruhhom mas-sentenzi tal-Qorti Ewropea u ma jistennewx sal-2016 sabiex jintroducu disposizzjoni fil-Kodici Kriminali li s-suspettat ghandu jedd ghall-assistenza ta' avukat waqt l-interrogazzjoni li ssir meta jkun fil- kustodja tal-Pulizija. Emenda li saret sabiex tittrasponi d-disposizzjoni tad-Direttiva 2013/48/UE tal-Parlament Ewropew (ara Art. 355AT tal- Kodici Kriminali), li fost mizuri ohra assigurat id-dritt tas-suspettat ghall-assistenza ta' avukat waqt l-interrogazzjoni mill-Pulizija.

Ghal dawn il-motivi tichad l-appell, b'dan li taghti direzzjoni lill-Qorti Kriminali sabiex fil-proceduri kriminali The Republic of Malta v. Izuchukwu Morgan Onourah (att ta' akkuza numru 11/2015) ma tippermettix l-uzu bhala prova tal-istqarrija li l-appellant kien ta waqt li kien fil-kustodja tal- Pulizija.

(...)'

Fis-sentenza ricenti fl-ismijiet **<u>'The Police v. Alexander Hickey'</u>**[40] ukoll moghtija fis- 27 ta' Jannar, 2021 gie kkunsidrat li:

> '15. *It is a fact that the appellant was, according to law, given the opportunity to consult a lawyer prior to interrogation. He actually did consult a lawyer and therefore could prepare for his questioning beforehand with his lawyer. <u>However this is not enough to remedy the lack of legal assistance during police interrogation.</u> Amongst other things there is no proof of whether the lawyer was given any information by the police with regards to the alleged crimes committed by the appellant and proof that they had against the suspect (appellant). Information that was essential to place the lawyer in a position to properly advise his client.*
>
> 16. *<u>Therefore, since the criminal proceedings are still pending, it is premature for a court to declare that the accused's right for a fair hearing was breached as a consequence of the fact that the evidence includes two statements he made in the absence of a lawyer.</u>*
>
> 17**. *<u>This notwithstanding, judgments of this court have already made it amply clear that statements given by a suspect while in police custody and in the absence of a lawyer, should not be used as evidence against him due to the risk that it may lead to a breach of the accused's right to a fair hearing. Judgments that are based on clear judgments delivered by the ECtHR throughout the years, which although one might not agree with, have given a clear direction to domestic courts as to the stand it will continue to take if other similar complaints are made to that court.</u>***

[40] Deciza mill-Qorti Kostituzzjonali fis-27 ta' Jannar 2021 (141/2019RGM).

18. In this particular case the self-incriminating statements in issue were probably the reason why the appellant filed an early guilty plea.

19. Since at the time of the interrogations the appellant was still seventeen years old, was a student, had a clean criminal record and never had any previous contact with the police, there is a solid argument to conclude that he was a vulnerable suspect. The appellant also referred to a report filed in the criminal proceedings by psychologist Bernard Caruana, an ex parte witness for the appellant. In the report it is stated that appellant:

i. Has certain symptoms of autism spectrum disorder;

ii. Has attention and emotional difficulties and felt that he was not accepted by others;

iii. Has difficulty to connect with others;

iv. From a young age had been making use of drugs and alcohol;

20. It is a fact that the psychologist's report states, "While his low score on Vulnerability indicates that he perceives himself as capable of handling himself in difficult situations". However, that is appellant's own perception.

21. The court concludes that there is enough evidence to conclude that at the time of the police interrogations appellant could be classified as a vulnerable person. On the other hand it is a fact that throughout the interrogations appellant's mother was present, evidently for support and assistance since he was a minor. This notwithstanding her presence was certainly not a sufficient remedy for the lack of presence of a lawyer.

22. It is a fact that in this particular case the appellant:

i. Was interrogated by the police on the 2nd April 2012 and 3rd April 2012 and charged on the 8th June 2015;

ii. Filed a guilty plea on the 16th November 2015 and was assisted by a lawyer, and warned by the court on the consequences of such a guilty plea and given time to consider whether he should confirm such a plea;

iii. Proposed to the court, in agreement with the prosecution, a punishment of three years imprisonment and €7000 fine;

iv. Produced evidence with regards to the issue concerning punishment and during the sitting of the 2nd December 2016 declared that he had no further evidence;

v. Changed counsel, and it was only at that stage that he first complained with regards to the statements he gave to the police in the absence of a lawyer (sitting of the 6th July 2017). At that point of the criminal proceedings appellant had already declared 56 that he had no further evidence.

vi. Was always assisted by a lawyer during the court hearings and at no stage of the criminal proceedings did he contest the authenticity of the statements made while in police custody;

23. It also seems that the interrogations were not recorded. Therefore it is not possible for the court to know exactly what went on in the interrogation room. On the other hand at no point did appellant allege that irregularities took place during the interrogations and that he was pressured to self-incriminate himself. Neither did he allege that he falsely self-incriminated himself.

24. This notwithstanding on consideration of the judgments delivered by the ECHR, the court is of the opinion that there can be no guarantee that the procedural shortcoming that occurred during the police interrogations can be remedied during the criminal proceedings per se. This especially when one considers that the appellant probably registered a guilty plea on the basis that he made two self incriminating statements while in police custody in the absence of a lawyer. In the recent judgment ***Mehmet Zeki Celebi v Turkey*** *(no. 27582/07) decided on the 28 January 2020, the ECtHR stated:*

"57..... The Court also reiterates that it is only in very exceptional circumstances that it can conclude that a given trial has not been prejudiced by the restriction of an applicant's right of access to a lawyer".

25. There is no doubt that had the appellant been assisted by a lawyer during interrogation, he might have been advised to remain silent or not to answer all self-incriminating questions.

Il-Qorti Kostituzzjonali f'dik is-sentenza kkonkludiet li:

'1. The answer to the first question of the Court of Magistrates (Malta) as a Court of Criminal Judicature is:

i. It is premature to declare that the issue of the contested two statements by the appellant in the absence of legal counsel, constitutes a breach of Article 6(1) and (3) of the Convention and Article 39 of the Constitution.

ii. It is likely that appellant's rights would be breached should the two statements (dated 2nd and 3rd April 2012) be used as evidence, and therefore it is recommended that the two statements are removed.

2. The answer to the second question of the Court of Magistrates (Malta) as a Court of Criminal Judicature is that a judgment based on applicant's guilty plea filed during the sitting of the 15th November 2015, would likely constitute a breach of article 6(1) and (3) of the Convention and Article 39 of the Constitution.

3. Since the appellant made his complaint after the criminal proceedings had been adjourned for final submissions and in view of what has been decided in this judgment, both parties to the criminal proceedings are to be placed in the same position they were prior to appellant's guilty plea filed during the sitting of the 16th November 2015.

4. All judicial costs are to be shared between the parties as to 1/4 at the charge of the appellant and 3/4 at the charge of the respondent. A copy of this judgment is to be inserted in the file of the case The Police v. Alexander Hickey (485/2014). The Registrar is also to ensure that the court file of the criminal case is sent back to the Court of Magistrates (Malta) as a Court of Criminal Judicature.'

Ghaldaqstant din il-Qorti irrakomandat **li ma ghandux isir uzu mill-istqarrijiet rilaxxati mill-akkuzat *nonostante* l-fatt li dawn kienu anke gew guramentati u kienet anke giet registrata ammissjoni.**

Il-Prim Awla tal-Qorti Civili Sede Kostituzzjonali fi-sentenza bl-ismijiet **'Clive Dimech vs Avukat Generali'**[41] tenniet is-segwenti:

'Illi l-Qorti sejra tibda biex titratta t-tieni eccezzjoni tal-intimat ghaliex jekk din tintlaqa' ma jkunx hemm htiega li tezamina l-eccezzjonijiet l-ohrajn. Huwa skontat li m'hemm l-ebda jedd fundamentali taht Art. 39 tal-

[41] Deciza mill-Prim'Awla tal-Qorti Civili (Sede Kostituzzjonali) fl-14 ta' Lulju, 2020 (Rikors numru: 175/19 GM).

Kostituzzjoni jew taht Art. 6 tal-Konvenzjoni Ewropeja ghall-assistenza t'avukat waqt l-interrogazzjoni bhala tali. Hemm jedd fundamentali ghal smiegh xieraq. Biex jigi stabbilit ksur ta' dan il-jedd, irid jigi ezaminat il-process – f'dan il-kaz process kriminali – fit-totalita` tieghu u mhux jigi maqsum biex issir enfasi fuq xi episodju partikolari[42]. F'dan il- kaz il-proceduri ghadhom fil-bidu taghhom u ghalhekk mhux possibbli f'dan l-istadju li l-Qorti tbassar kif sejjer ikun l-iter processwali shih. Dan ma jfissirx li element procedurali partikolari ma jistax minnu nnifsu ikun tant deciziv li l- korrettezza tal-process ma tkunx tista' tigi ddeterminata qabel[43]. Imma f'dan il-kazil-Qorti ma tista' ssib l-ebda cirkostanza bhal din. Ir-rikorrent gie avzat, skont id- disposizzjonijiet tal-ligi kif kienet dak iz-zmien, bid-dritt li jikkonsulta avukat qabel l-interrogazzjoni. Huwa rrinunzja ghal dan id-dritt. Huwa minnu li waqt l- interrogazzjoni ma kienx assistit minn avukat u ma giex infurmat li ghandu dritt bhal dan. B'danakollu gie mwissi li kellu d-dritt li ma jwegibx ghad-domandi u fil-fatt ir-rikorrent ma wiegeb ghall-ebda domanda li saritlu. Ghalhekk ma jirrizultax – dejjem f'dan l-istadju - li r-rikorrent sofra xi nuqqas ta' smiegh xieraq. Ma ressaq l- ebda prova li bis-silenzju tieghu seta' nkrimina ruhu;'

Sussegwentament, il-Qorti Kostituzzjonali fis-sentenza taghha fl-ismijiet **'Clive Dimech v. Avukat Generali'**[44] datata is-27 ta' Jannar, 2021, ipprovdiet illi peress li l-akkuzat ma wiegeb ghall-ebda domanda waqt l-interrogazzjoni, din ma kienitx ser tkun ta' pregudizzju ghall-istess akkuzat. Minkejja dan, din **il-Qorti xorta wahda enfasizzat li jkun floku li fil-proceduri kriminali ma jsirx uzu mill-istqarrija bhala prova.**[45]

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[42] Ara fost l-ohrajn Il-Pulizija v Dr Melvyn Mifsud 26.04.2013 u l-gurisprudenza ccitata; Ronald Agius vs Avukat Generali 30.11.2001 Qorti Kostituzzjonali (Din ir-referenza tinsab fl-ewwel (1) nota ta' qiegh il-pagna tas-sentenza citata).
[43] Noel Arrigo v Malta 10.05.2005 QEDB (Din ir-referenza tinsab fit-tieni (2) nota ta' qiegh il-pagna tas-sentenza citata).
[44] Deciza mill-Qorti Kostituzzjonali fis-27 ta' Jannar, 2021 (Rikors numru: 175/2019 GM).
[45] Ara fost ohrajn Christopher Bartolo v. Avukat Generali et 5-10-2018 u Il-Pulizija vs Aldo Pistella 14.12.2018.

L-akkuzat, Clive Dimech, ghazel li ma jwegibx ghal mistoqsijiet maghmula lilu u ghaldaqstant l-istqarrija ma kienitx wahda nkriminanti. Madankollu, il-Qorti xorta wahda pprovdiet illi din m'ghandiex tintuza bhala prova u ghal din ir-raguni din is-sentenza hi ta' sinifikat.

Fis-sentenza ricentissima fl-ismijiet '**<u>Christopher Bartolo vs Avukat ta l-Istat</u>**',[46] Il-Qorti ddecidiet bl-istess mod ta' kif iddecidiet fis-sentenzi Onuorah Morgan vs Avukat Generali u Clive Dimech vs Avukat Generali indikati *supra.* Din il-Qorti rreteniet is-segwenti:

> *74. Daqshekk huwa importanti li stqarrija tittiehed bil-garanziji kollha li jharsu d-drittijiet ta' min ikun qieghed jirrilaxxja ghaliex l-ammissjoni hija wara kollox ir-regina tal-provi. Di fatti Karen Reid fil-ktieb 'A practitioner's Guide to the European Convention on Human Rights' (Tielet Edizzjoni) f'pagna 70: "While the conformity of a trial with the requirements of Article 6 must be assessed on the basis of the trial as a whole,* ***<u>a particular incident may assume such importance as to constitute a decisive factor in the general appraisal of the trial overall."</u> <u>Igifieri, prova wahda ottenuta kontra l-ligi, tista' wahedha tikkontamina l-process kollu.</u>***

Ghaldaqstant il-Qorti kkonkludiet bis-segwenti:

> *79. Il-Qorti qed tipprova tirrinkoncilja l-fatt, fid-dawl ta' dak li ddecidiet il-Qorti Kostituzzjonali fil-5 ta' Ottubru 2018.* ***<u>Dik il-Qorti ordnat, li biex ma jsehhx ksur tad-drittijiet tar-rikorrent ma jsirx aktar uzu fil-proceduri kriminali miz-zewg stqarrijiet rilaxxjati mir-rikorrent.</u> <u>Fid-dawl ta' din l-ordni, din il-Qorti ma tistax tifhem b'liema tigbid tal-immaginazzjoni tista' tasal ghall-konkluzjoni li l-konferma bil-</u>***

[46] Deciza mill-Qorti Kostituzzjonali fit-22 ta' Gunju, 2021 (Rikors numru: 255/2020 TA).

gurament ta' dawk l-istqarrijiet quddiem il-Magistrat ma ghandhomx ukoll ikunu mwarrbin. Kwazi kwazi dan ghandu xebh mal-kaz fejn dokument originali jitwarrab izda mhux il-kopja tieghu. Il-konferma bil-gurament hija unikament imsejsa fuq l-istqarrijiet u kwalunkwe ammissjoni kienet ukoll b'konsegwenza tal-istess.

80. Ghalhekk anke f'dan ir-rigward, din il-Qorti ssib li gew lezi l-artikolu 39(1) u 6(1) tal-Kostituzzjoni u l-Konvenzjoni rispettivament.

Min-naha l-ohra, fis-sentenza ricenti fl-ismijiet '**Briegel Micallef vs Avukat Generali'**[47] gie ritenut il-kuntrajrju ghall-ahhar erba' sentenzi sucitati fejn il-Qorti Kostituzzjonali tat direzzjoni lil Qorti Kriminali sabiex ma tqisx bhala prova stqarrijiet li jkunu gew rilaxxati minghajr id-dritt tal-assistenza legali u dan minhabba l-periklu li jkun hemm difett procedurali jekk jinstab illi dawn jilledu id-dritt tal-persuna akkuzata ghal smiegh xieraq. Il-Qorti Kostituzzjonali qalet hekk f'dan ir-rigward:

*'13. **Hu minnu li din l-istess Qorti f'sentenzi ohrajn qalet li jkun floku li stqarrija li jkun ta imputat titnehha mill-process tal-proceduri Kriminali sabiex jigi zgurat li ma jkunx hemm periklu li eventwalment isiru proceduri Kostituzzjonali li jistghu jwasslu biex jigi annullat process shih. Madankollu, filwaqt li hemm ukoll sentenzi fejn din il-Qorti ghamlet semplicement rakkomandazzjoni, wiehed irid jiftakar li kull kaz ghandu c-cirkostanzi partikolari tieghu. F'dan il-kaz partikolari diga' hemm sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali u li fiha sar apprezzament tal-provi kollha li tressqu quddiem dik il-Qorti fil-kors tal-process kollu. Cirkostanza li ma kinitx tezisti f'kazijiet ohra***

[47] Deciza mill-Qorti Kostituzzjonali nhar it-10 ta' Gunju, 2021.

li ddecidiet dwarhom din il-Qorti. Ovvjament dak l-apprezzament ser jigi mistharreg mill-Qorti tal-Appell Kriminali.'

Ikkunsidrat ulterjorament;

Illi bis-sahha tat-trasposizzjoni tad-'Direttiva 2013/48/UE tal-Parlament Ewropew u tal-Kunsill tat-22 ta' Ottubru 2013 dwar id-dritt ta' access ghas-servizzi ta' avukat fi proccedimenti kriminali u fi procedimenti ta' mandat ta' arrest Ewropew, u dwar id-dritt li tigi infurmata parti terza dwar ic-cahda tal-libertà u d-dritt ghal komunikazzjoni ma partijiet terzi u mal-awtoritajiet konsulari, matul ic-cahda tal- libertà' fil-Ligi ta' Malta, li sehhet wara li l-appellat irrilaxxa l-istqarrijiet tieghu, kien hemm tibdil sostanzjali f'dak li d-dritt ta' access ghal Avukat fi proceduri Kriminali jinkludi. L-artikolu 3 ta' din id-Direttiva jipprovdi:

'Id-dritt ta' access ghas-servizzi ta' avukat fi procedimenti kriminali

1. L-Istati Membri ghandhom jizguraw li l-persuni suspettati u akkuzati jkollhom id-dritt ta' access ghas-servizzi ta' avukat f'hin u b'mod li l-persuni koncernati jkunu jistghu jezercitaw d- drittijiet taghhom ta' difiza b'mod prattiku u b'mod effettiv.

2. Il-persuni suspettati jew akkuzati ghandu jkollhom access ghas-servizzi ta' avukat minghajr dewmien zejjed. Fi kwalunkwe kaz, il-persuni suspettati jew akkuzati ghandu jkollhom id-dritt ta' access ghas-servizzi ta' avukat mill-mument l-aktar qrib minn dawn li gejjin:

a. qabel ma jigu interrogati mill-Pulizija jew minn awtorità ohra tal-infurzar tal-ligi jew gudizzjarja;

b. mat-twettiq minn awtorità ta' investigazzjoni jew awtorità kompetenti ohra ta' att investigattivi jew att iehor ta' gbir ta' provi skont il-punt (c) tal-paragrafu 3;

c. minghajr dewmien zejjed wara c-cahda tal-libertà;

d. fejn gew imharrka biex jidhru quddiem Qorti li ghandha gurisdizzjoni f'materji kriminali, fi zmien debitu qabel ma jidhru quddiem dik il-Qorti.

3. Id-dritt ta' access ghas-servizzi ta' avukat ghandu jimplika dan li gej:

a. L-Istati Membri ghandhom jizguraw li persuna suspettata jew akkuzata jkollha d-dritt li tiltaqa' fil-privat u tikkomunika mal-avukat li jirrapprezentaha, inkluz qabel interrogazzjoni mill-Pulizija jew minn awtorità ohra tal-infurzar tal-ligi jew awtorità gudizzjarja;

b. ***L-Istati Membri ghandhom jizguraw li l-persuna suspettata jew akkuzata jkollha d-dritt li l-avukat taghha jkun prezenti u jippartecipa b'mod effettiv meta hija tigi interrogata. Tali partecipazzjoni ghandha tkun konformi mal-proceduri taht il-ligi nazzjonali, dment li tali proceduri ma jippregudikawx l-ezercizzju effettiv u l-essenza tad-dritt koncernat. Fejn avukat jippartecipa matul interrogazzjoni, il-fatt li saret tali partecipazzjoni ghandu jigi rregistrat bl-uzu tal-procedura ta' registrar f'konformità mal-ligi tal-Istat Membru koncernat;***

c. ghandhom, minn tal-inqas, ikollhom id-dritt li l-avukat taghhom jattendi ghall-avvenimenti investigattivi jew l-attita' gbir ta' provi li gejjin, fejn dawk l-atti huma previsti fil-ligi nazzjonali u jekk il-persuna suspettata jew akkuzata hija mehtiega jew permessa li tattendi l-att koncernat:

i. ringieli ta' persuni ghall-identifikazzjoni;

ii. konfrontazzjonijiet;

iii. rikostruzzjonijiet sperimentali tax-xena tar-reat kriminali.

4. *L-Istati Membri ghandhom jimpenjaw ruhhom li jaghmlu l-informazzjoni generali disponibbli biex jaghmluha facli ghall- persuni suspettati jew akkuzati li jsibu avukat. Minkejja d-dispozizzjonijiet tal-ligi nazzjonali dwar il-prezenza obbligatorja ta' avukat, l-Istati Membri ghandhom jaghmlu l-arrangamenti mehtiega biex jizguraw li l-persuni suspettati jew akkuzati li jincahdu mil-libertà taghhom ikunu f'pozizzjoni li jezercitaw b'mod effettiv id-dritt taghhom ta' access ghas- servizzi ta' avukat, sakemm ma jkunux irrinunzjaw dak id- dritt f'konformità mal-Artikolu 9.*

5. *Huwa f'cirkostanzi eccezzjonali u biss fl-istadju ta' qabel il- kawza li l-Istati Membri jistghu jidderogaw temporanjament mill-applikazzjoni tal-punt (c) tal-paragrafu 2 fejn iddistanza geografikament 'il boghod ta' persuna suspettata jew akkuzata taghmilha impossibbli li jigi zgurat id-dritt ta' access ghas- servizzi ta' avukat minghajr dewmien zejjed wara li persuna tkun incahdet mil-libertà taghha.*

6. *F'cirkostanzi eccezzjonali u biss fl-istadju ta' qabel il- kawza, l-Istati Membri jistghu jidderogaw temporanjament mill-applikazzjoni tad-drittijiet previsti fil-paragrafu 3 sakemm dan ikun iggustifikat fic-cirkostanzi partikolari tal-kaz, abbazi ta' wahda mir-ragunijiet konvincenti li gejjin:*

a. fejn hemm htiega urgenti li jkunu evitati konsegwenzi negattivi serji ghall-hajja, illibertàjew l-integritàfizika ta' persuna;

b. fejn l-azzjoni immedjata mill-awtoritajiet investigattivi tkun essenzjali biex jigu evitati li l-procedimenti kriminali jigu pperikolati b'mod sostanzjali.' (Emfazi u sottolinear mizjud minn din il-Qorti.)

Prezentament, is-subartikoli (1) u (2) tal-artikolu 355AUA tal-Kapitolu 9 tal-Ligijiet ta' Malta kif mizjud b'Att LI tal-2016 jipprovdu s-segwenti:

> '*(1) Il-persuna suspettata jew akkuzata ghandu jkollha d-dritt ta' access ghal avukat fil-hin u b'tali mod li jhalliha tezercita d-drittijiet ta' difiza taghha b'mod prattiku u effettiv.*
>
> *(2) Il-persuna suspettata jew akkuzata ghandu jkollha access ghal avukat minghajr ebda dewmien. Fi kwalunkwe eventwalità, il-persuna suspettata jew akkuzata ghandu jkollha access ghal avukat mill-mument li ssehh l-ewwel wahda minn dawn il-grajjiet:*
>
> *(a) qabel ma tkun interrogata mill-Pulizija Ezekuttiva jew minn awtorità ohra ghall-infurzar tal-ligi jew awtorità gudizzjarja fir-rigward tat-twettiq ta' reat kriminali;*
>
> *(b) mat-twettiq minn awtoritajiet investigattivi jew awtoritajiet kompetenti ohra ta' xi att ta' natura investigattiva jew att ta' kollezzjoni ta' evidenza ohra skont is-subartikolu (8)(e);*
>
> *(c) minghajr ebda dewmien wara li tkun giet imcahhda l-libertà;*
>
> *(d) meta tkun giet imharrka sabiex tidher quddiem Qorti lighandha gurisdizzjoni f'materji kriminali, f'qasir zmien qabel ma titressaq quddiem dik il-Qorti.*'

Filwaqt li l-artikolu 355AUA(8) tal-Kapitolu 9 tal-Ligijiet ta' Malta imbghad jaqra:

> ***'Id-dritt ta' access ghal avukat ghandu jfisser dan li gej:***

(a) *il-persuna suspettata jew akkuzata, jekk tkun ghazlet li tezercita d-dritt taghha ghall-assistenza legali, u l-avukat taghha, ghandhom ikunu infurmati bl-allegat reat li ghalih il-persuna suspettata jew akkuzata ser tkun interrogata. Dik l-informazzjoni ghandha tinghata lill-persuna suspettata jew akkuzata qabel ma tibda l-interrogazzjoni, liema hin m'ghandux ikun inqas minn siegha qabel ma tibda l-interrogazzjoni;*

(b) il-persuna suspettata jew akkuzata ghandu jkollha d-dritt li tiltaqa' u tikkomunika fil-privat mal-avukat li jirrapprezentaha, inkluz interrogazzjoni minn qabel mill-Pulizija jew minn awtorità ohra ta' infurzar tal-ligi jew awtorità gudizzjarja;

(c) ***<u>il-persuna suspettata jew akkuzata ghandu jkollha d-dritt li l-avukat taghha jkun prezenti u jippartecipa b'mod effettiv fl-interrogazzjoni. Dik il-partecipazzjoni tista' tigi regolata skont proceduri li l-Ministru responsabbli ghall-Gustizzja jista' jistabbilixxi permezz ta' regolamenti, hekk izda li dawk il-proceduri ma jippregudikawx l-ezercizzju effettiv u l-essenza ta' dak id-dritt koncernat. Meta avukat jippartecipa fl-interrogazzjoni, il-fatt li kien hemm dik il-partecipazzjoni ghandu jkun irregistrat permezz tal-uzu fejn, fl-opinjoni tal-intervistatur, hu possibbli ta' mezzi awdjovizwali skont il-paragrafu</u>***

Izda d-dritt tal-avukat li jippartecipa b'mod effettiv ma ghandux jinftiehem bhala dritt tal-avukat li jostakola l- interrogazzjoni jew li jissuggerixxi twegibiet jew reazzjonijiet ohra ghall-interrogazzjoni u kull mistoqsija jew rimarka ohra mill-avukat ghandha, hlief f'cirkostanzi eccezzjonali, issir wara li l-Pulizija Ezekuttiva jew awtorità ohra investigattiva jew awtorità gudizzjarja jkunu ddikjaraw li ma ghandhomx aktar mistoqsijiet;

(d) l-interrogazzjoni, it-twegibiet kollha li jinghataw ghaliha u l-proceduri kollha relatati mal-interrogazzjoni tal-persuna suspettata jew akkuzata, ghandhom fejn, fl-opinjoni tal-intervistatur, hu possibbli jkunu rrekordjati b'mezzi awdjovizwali u f'dak il-kaz ghandha tinghata kopja taghhom lill-persuna suspettata jew akkuzata wara li tkun intemmet l-interrogazzjoni. Kwalunkwe recording ghandu jkun ammissibbli bhala prova, sakemm il-persuna suspettata jew akkuzata ma tallegax u ma taghtix prova li r-recording mhuwiex ir-recording originali u li dan gie mbaghbas. M'hemmx ghalfejn issir traskrizzjoni tar-recording meta tkun uzata fi proceduri fil-Qorti tal-gustizzja ta' gurisdizzjoni kriminali, lanqas ma hemm bzonn tal-firma tal-persuna suspettata jew akkuzata f'dikjarazzjoni bi-lmiktub li tkun saret wara l-konkluzjoni tal-interrogazzjoni galadarba l-mistoqsijiet u t-twegibiet kollha, jekk hemm, ikunu gew irrekordjati fuq mezzi awdjovizwali;

(e) il-persuna suspettata jew akkuzata ghandu jkollha d-dritt li l-avukat taghha jattendi ghall-atti investigattivi jew gbir ta' evidenza jekk il-persuna suspettata jew akkuzata jehtigilha jew giet permessa li tattendi ghall-att koncernat:

i. ringiela ta' persuni suspettati ghal finijiet ta' identifikazzjoni;
ii. konfrontazzjonijiet;
iii. rikostruzzjonijiet tax-xena tad-delitt.
(Emfazi u sottolinear mizjud minn din il-Qorti).

Il-ligi li akkuzat ghandu dritt ghall-assistenza legali qabel u waqt l-interrogazzjoni dahlet fis-sehh wara li l-akkuzati gew nterrogati mill-Pulizija.

Din il-Qorti taghmilha cara illi minkejja li l-akkuzat Jesmond Mary Vella ma nghatax 'caution' meta rrilaxxa l-istqarrija datata 20 ta' Gunju, 2008, huwa nghata d-drittijiet li kienu vigenti fiz-zmien meta ttiehdet l-istqarrija fejn ghalhekk ma kellux id-dritt ghall-assistenza legali qabel u waqt it-tehid tal-istqarrija.

Mhux kompitu ta'din il-Qorti biex tara jekk kienx hemm xi ksur tad-dritt tas-smiegh xieraq, izda biss jekk tali stqarrija ghandiex tigi kkunsidrata bhala inammissibli jew le. L-akkuzat ma ressaqx allegazzjonijiet ta' vulnerabilita', lanqas ma ressaq allegazzjonijiet fosthom dwar il-mod ta' kif giet rilaxxata l-istqarrija. jew allegazzjonijiet ohrajn li jsegwu fil-kawza ta' *Beuze v. Belgium* u li gew citati *supra.*

Dwar il-kuncett ta' certezza legali li huwa ta' importanza kbira ghas-Saltna ta' Dritt f'pajjiz demokratiku, il-Qorti Kostituzzjonali fis-sentenza taghha fl-ismijiet **il-Pulzija vs Alfred Camilleri**[48] tat importanza ghal dan il-kuncett u spjegat it-tifsira tieghu meta stqarret:-

> *"**Filwaqt li huma minnu lil-Qrati nostrana m'humiex marbuta bil-ligi tal-precedent, huma jutilizzaw il-principju auctoritas rerum similiter judicatarum sabiex tigi kreata certezza legali u dan hafna aktar determinant fil-kamp kriminali. Huwa minnu wkoll li c-certezza tad-dritt tista tkun flessibbli fis-sens illi l-Qrati jistghu f'xi hin jaghtu interprettazjonijiet godda.** Izda, l-Qorti Ewropeja kellha diversi okkazzjonijeit sabiex tanalizza l-elementi li jistghu iwasslu ghal-lezjoni kif qieghed jigi sotttomess l-esponent. F'dan is-sens issir referenza ghas-sentenza fl-ismijiet **Beian vs Romania** (Applikazzjoni nru. 30658/05) decided on the 6th December 2007 whereby this Court stated: "*

[48] Deciza mill-Qorti Kostituzzjonali fl-14 ta' Dicembru, 2018 (Rikors numru: 21/2015AF).

37. Admittedly, divergences in case-law are an inherent consequence of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. ***However, the role of a supreme court is precisely to resolve such conflicts*** *(see Zielinski and Pradal and Gonzalez and Others v. France [GC], nos. 24846/94 and 34165/96 to 34173/96, § 59, ECHR 1999-VII).*

"38. In the instant case it is clear that the HCCJ was the source of the profound and lasting divergences complained of by the applicant. "

39. The practice which developed within the country's highest judicial authority is in itself contrary to the principle of legal certainty, a principle which is implicit in all the Articles of the Convention and constitutes one of the basic elements of the rule of law (see, mutatis mutandis, Baranowski v. Poland, no. 28358/95, § 56, ECHR 2000-III). Instead of fulfilling its task of establishing the interpretation to be followed, the HCCJ itself became a source of legal uncertainty, thereby undermining public confidence in the judicial system (see, mutatis mutandis, Sovtransavto Holding v. Ukraine, no. 48553/99, § 97, ECHR 2002-VII, and Păduraru, cited above, § 98; see also, by contrast, Pérez Arias v. Spain, no. 32978/03, § 27, 28 June 2007)." (enfasi tal-esponent).

"Ghar-rigward tal-principji stabbiliti mill-istess Qorti, issir referenza wkoll ghas-sentenza fl-ismijiet ***Albu u Ohrajn vs Romania*** *moghtija fl-10 ta' Mejju 2012, fejn a para 34 insibu ssegwenti:*

"(iii) The criteria that guide the Court's assessment of the conditions in which conflicting decisions of different domestic courts ruling at last instance are in breach of the fair trial requirement enshrined in Article 6 § 1 of the Convention consist in establishing whether "profound and long-standing differences" exist in the case-law of the domestic courts, whether the domestic

law provides for machinery for overcoming these inconsistencies, whether that machinery has been applied and, if appropriate, to what effect (see Iordan Iordanov and Others, cited above, §§ 49-50; see also Beian (no. 1), cited above, §§ 34-40; Ştefan and Ştef v. Romania, nos. 24428/03 and 26977/03, §§ 33-36, 27 January 2009; Schwarzkopf and Taussik, cited above, 2 December 2008; Tudor Tudor, cited above, § 31; and Ştefănică and Others, cited above, § 36);

"(iv) The Court's assessment has also always been based on the principle of legal certainty which is implicit in all the Articles of the Convention and constitutes one of the fundamental aspects of the rule of law (see, amongst other authorities, Beian (no. 1), cited above, § 39; Iordan Iordanov and Others, cited above, § 47; and Ştefănică and Others, cited above, § 31);

"(v) The principle of legal certainty, guarantees, inter alia, a certain stability in legal situations and contributes to public confidence in the courts. The persistence of conflicting court decisions, on the other hand, can create a state of legal uncertainty likely to reduce public confidence in the judicial system, whereas such confidence is clearly one of the essential components of a State based on the rule of law (see Paduraru v. Romania, § 98, no. 67 63252/00, ECHR 2005-XII (extracts); Vinčić and Others v. Serbia, nos. 44698/06 and others, § 56, 1 December 2009; and Ştefănică and Others, cited above, § 38);

Illi mhux l-ewwel darba li din l-Onorabbli Qorti ghamlet referenza ghad-divergenzi assoluti fl-interprettazjonijiet moghtija mill-istess Qrati nostrana u cioé l-Qorti Kostituzzjonali u l-Qorti tal-Appelli Kriminali (sede Superjuri), li, fin-nuqqas ta' Qorti ta' Kassazjoni, il-Qorti Kostituzzjonali ghandha hi d-dmir li tnehhi kull incertezza u certament mhux tkun tikkreja hi tal-istess.

Il-principju ta' '*legal certainty*' huwa wiehed t' importanza kbira. Huwa fatt illi sentenzi li anke inghatatlu fl-istess jum, kif din il-Qorti diga rrimarkat, hadu

direzzjoni konfliggenti, tant li l-Qorti tal-Appell Kriminali (Sede Superjuri) provdiet direzzjoni differenti minn dik moghtija mill-Qorti Kostituzzjonali fl-istess jum dwar din il-kwistjoni u dan nhar is-27 ta' Jannar, 2021.

Kif meqjus fis-sentenza moghtija mill-Qorti Kriminali fl-ismijiet **'The Republic of Malta vs Lamin Samura Seguba'**[49]

> *'12. The Farrugia v. Malta case essentially states that not all statements given by suspects in the pre-trial proceedings in the absence of legal assistance should be expunged from the records. The court needs to follow a number of criteria before deciding on such a request among which whether the accused was a vulnerable person, the age of the accused and whether that statement was the only evidence adduced. This Court now finds itself in a situation where it could have acceded to a request or a plea such as the present and must now decide in an opposite manner the next day even where there results "a systematic breach of pre-trial proceedings". Legal uncertainty for an accused may potentially be conducive to a breach of a fair hearing. It is the opinion of this Court that there needs to be a strong degree of certainty in such circumstances and not to hold a trial within a trial to examine whether a statement, for instance, is the only evidence produced by the prosecution;*
>
> *13. Indeed the rules as provided in Directive 13/48 cited above should be the yardstick to which all pre-trial proceedings should be subjected without making any difference with regard to the vulnerability or otherwise of the suspects, their age and other criteria. In the case at hand, the accused was offered legal assistance consisting of a maximum one hour colloquial with a lawyer or legal procurator and subject to the right of inference if he does take up such offer. This Court is not aware of what made the accused decide to not take up that offer. Perhaps he decided that it would have been useless to talk*

[49] Deciza mill-Qorti Kriminali fil-11 ta' Gunju, 2020 (Att ta' Akkuza numru: 11/2017).

to a lawyer for one hour over the phone or face to face and not having the lawyer by his side during the interrogation proper and this is precisely another reason why certainty of rules and rights is of utmost importance;

14. The Court therefore upholds the first plea raised by the accused and orders that the statement of the accused given on the 7 of December 2014 and exhibited as Doc PG3 at folio 17 et seq of the records be expunged and that no reference can be made by any witness of the prosecution to any verbal or written declaration made by the accused from the moment of his arrest;'

Sussegwentement il-Qorti tal-Appell Kriminali (Sede Superjuri) fis-sentenza fl-ismijiet **'The Republic of Malta vs. Lamin Samura Seguba'**[50] qieset li:

'10. In its reasoning the First Court laments the lack of legal certainty which the domestic courts have had to face in decisions regarding the probative value of pre- trial statements where the suspect did not have a lawyer present during his interrogation, and this in line with current legislation which saw the transposition into Maltese law of Directive 2013/48/EU of the European Parliament and of the Council dated 22 October 2013, and this by means of Act LI of 2016. This Court concurs with the objections put forward by the First Court to the ever-evolving situation regarding the legal validity of pre-trial statements obtained without a lawyer's assistance. Indeed, both our jurisprudence and that of the European Court present differing and often contradictory dicta on the matter. And it is precisely this legal uncertainty that led the First Court to uphold accused's preliminary plea regarding the inadmissibility of his pre-trial statements as evidence in the criminal proceedings brought against him. The Court thus states in its judgment:

[50] Deciza mill-Qorti tal-Appell Kriminali fis-27 ta' Jannar, 2021 (Att ta' Akkuza: 11/2017).

12. The Farrugia v. Malta case essentially states that not all statements given by suspects in the pre-trial proceedings in the absence of legal assistance should be expunged from the records. The court needs to follow a number of criteria before deciding on such a request among which whether the accused was a vulnerable person, the age of the accused and whether that statement was the only evidence adduced. This Court now finds itself in a situation where it could have acceded to a request or a plea such as the present and must now decide in an opposite manner the next day even where there results "a systematic breach of pre-trial proceedings". Legal uncertainty for an accused may potentially be conducive to a breach of a fair hearing. It is the opinion of this Court that there needs to be a strong degree of certainty in such circumstances and not to hold a trial within a trial to examine whether a statement, for instance, is the only evidence produced by the prosecution.

13. Indeed the rules as provided in Directive 2013/48 cited above should be the yardstick to which all pre-trial proceedings should be subjected without making any difference with regard to the vulnerability or otherwise of the suspects, their age and other criteria. In the case at hand, the accused was offered legal assistance consisting of a maximum one hour colloquial with a lawyer or legal procurator and subject to the right of inference if he does take up such offer. This Court is not aware of what made the accused decide to not take up that offer. Perhaps he decided that it would have been useless to talk to a lawyer for one hour over the phone or face to face and not having the lawyer by his side during the interrogation proper and this is precisely another reason why certainty of rules and rights is of utmost importance.

11. This Court however cannot accept the line of reasoning of the First Court, as it is its duty to lay down rules where the law fails to do so to provide that legal certainty which every accused person has a right to. This does not necessarily amount to the removal from the records of the case of all pre-trial

statements, all the more where the said statements were released according to law.

12. The regulatory principle as to the admissibility of evidence in criminal proceedings presupposes the existence of an express provision of law which regulates the admission of such evidence in a court of law. Evidence is consequently deemed to be inadmissible only if the law precludes its production.'

Il-Qorti tal-Appell Kriminali (Sede Superjuri) ghalhekk laqghet l-appell tal-Avukat Generali u rrevokat fejn l-Ewwel Qorti kienet laqghet l-ewwel eccezzjoni preliminari tal-akkuzat u ghalhekk il-Qorti tal-Appell Kriminali (Sede Superjuri) cahdet l-eccezzjonijiet preliminari kollha.

Madankollu, din il-Qorti f'dan il-punt tixtieq taghmel referenza ghas-sentenza ricenti fl-ismijiet '**Ir-Repubblika ta' Malta vs Kevin Gatt u Omissis'**[51] fejn il-Qorti tal-Appell Kriminali (Sede Superjuri) tenniet is-segwenti:

'6. Illi ghalhekk il-Qorti tazzarda tghid illi lanqas hemm il-konfliggenza lamentata u l-konsegwenti incertezza ta' dritt, bejn id-decizjonijiet ta' din il-Qorti u dawk tal-Qorti Kostituzzjonali, billi dawn huma kollha konkordi fil-fehma illi sakemm il-process penali ma jkunx gie finalment determinat sabiex il-kriterju tal-overall fairness ikun jista' jigi mistharreg, ma jistax jinghad illi hemm xi lezjoni taht l-artikolu 6 tal-Konvenzjoni. Huwa r-rimedju moghti li huwa differenti u dan ghaliex filwaqt li l-Qorti Kostituzzjonali qed tidderigi lil Qorti Kriminali sabiex preventivament ma ggibx dik l-istqarrija a konjizzjoni tal-gurati waqt ic-celebrazzjoni tal-guri, fil-parametri tas-setghat lilha moghtija fl-artikolu 46 tal-Kostituzzjoni,

[51] Deciza mill-Qorti tal-Appell Kriminali fis-27 ta' Ottubru, 2021 (Att ta' Akkuza: 05/2017).

u dan sabiex ma jkunx hemm il-periklu li l-proceduri jkunu mittiefsa meta xi kundanna eventwali tigi imsejsa fuq prova li tista' tkun ivvizjata, din il-Qorti qed taghti direzzjoni xort'ohra lil Qorti Kriminali, fil-parametri tas-setghat lilha moghtija bil-ligi, billi tidderigieha tapplika il-kriterji imfassal fid-decizjoni Beuze qabel ma tghaddi biex tiskarta prova li hija legalment valida u ammissibbli, u dan sakemm dan l-ezercizzju dwar l-overall fairness ma jkunx jista' isir minn din il-Qorti preventivament minn ezami tal-atti kumpilatorji. Dan meta l-Qorti Ewropea issa qed tidderiegi il-qrati domestici jindagaw jekk il-proceduri fl-intier taghhom kienux gusti fil-konfront tal-akkuzat, bit-test allura li jrid jigi segwiet fuq iz-zewg binarji surriferiti. Dan ifisser illi bil-fatt illi din il-Qorti qed taghti rimedju xort'ohra minn dak moghti mill-Qorti Kostituzzjonali f'kazijiet analogi, ma jfissirx illi tezisti dik l-incertezza fil-ligi lamentata mill-appellant billi lgurisprudenza hija illum konkordi fil-fehma illi fl-istadju bikri tal-proceduri mhux dejjem jista' jigi determinat jekk sehhitx dik lezjoni tal-jedd tal-persuna akkuzata ghal smigh xieraq.

F'din is-sentenza, il-Qorti tal-Appell Kriminali ppronunciet ruhha bis-segwenti mod rigward l-ammissibilita' o meno ta' stqarrija li ttiehdet **qabel l-10 ta' Frar, 2010,** mill-akkuzat meta dan ta' l-ahhar ma kellux jedd ghall-ebda tip ta' assistenza legal, la qabel u lanqas matul l-interrogazzjoni:

'Illi fil-fehma tal-Qorti, minghajr ma tinoltra ruhha fil-mertu tal-kaz, dawn it-twegibiet jistghu jkunu inkriminatorji billi min huwa imsejjah biex jiggudika jista' jinferixxi li l-appellant allura verament kien a konoxxenza tan-negozju ta' traffikar ta' droga mertu ta' dawn il-proceduri. Illi dawn it-twegibiet inghataw minnu meta huwa ma kellu jedd ghall-ebda difiza u ghalhekk meta kien injar mill-konsegwenzi legali li din il-linja ta' twegibiet setghet iggib fuqu. ***Illi allura minn dan il-kwadru ta' fatti marbuta***

mal-interrogatorrju tal-appellant, meta huwa ma kellu ebda dritt li jiddefendi ruhu permezz ta' xi forma ta' assistenza legali, jemergi mhux biss illi fl-ewwel stadji tal-investigazzjonijiet huwa gie interrogat minghajr ma inghata ebda twissija, izda imbaghad meta moghti it-twissija vigenti skont il-ligi f'dak iz-zmien, injar mill-konsegwenzi tal-mod kif kien qieghed iwiegeb ghal mistoqsijiet li kienu qed isirulu, seta' inkrimina ruhu u dan minghajr ma kellu dik id-difiza adegwata. *Dan jista' isarraf f'pregudizzju irrimedjabbli ghall-appellant ghalkemm fl-istadju tac-celebrazzjoni tal-guri huwa ser ikun assistit minn avukat u ser ikollu l-opportunita' iressaq id-difiza tieghu. Illi allura, ghalkemm l-istqarrija tat-13 ta' Otturbu 2008 giet rilaxxata skont il-ligi vigenti f'dak iz-zmien, madanakollu huwa indubitat illi din il-prova li ittiehdet meta l-appellant ma kellux il-jedd li jiddefendi ruhu hija prova determinanti tant illi, bil-mod kif l-appellant wiegeb ghal mistqosijiet li sarulu huwa seta' inkrimina ruhu irrevokabbilment u dan bi pregudizzju serju ghar-retta amministrazzjoni tal-gustizzja.* ***Dan ifisser illi ghalkemm ghad irid jigi iccelebrat il-guri, madanakollu huwa bil-wisq evidenti f'dan l-istadju tal-proceduri, meta il-Qorti hija moghnija bil-provi kkumpilati, illi l-prova li l-Prosekuzzjoni qed tfittex li taghmel, kemm permezz tad-dikjarazzjonijiet verbali maghmula mill-appellant, kif ukoll dawk maghmula fl-istqarrija rilaxxata minnu lil Pulizija, tista' tkun vvizzjata minhabba il-fatt illi l-appellant ma setax jiddefendi ruhu kif xieraq u ghalhekk din il-prova ghandha tigi imwarrba.*** *F'dan il-kaz, il-Qorti hija tal-fehma illi n-nuqqasijiet minnha ravvizati ma jistghu bl-ebda mod jigu sanati ghaliex l-Imhallef togat necessarjament irid iwissi lil gurati fl-indirizz finali tieghu b'dawn l-imsemmija nuqqasijiet, li x'aktarx ser jivvizjaw l-istqarrija u dikjarazzjonijiet maghmula mill-appellant miksuba minghajr ma kellu ebda difiza, sabiex b'hekk ikun ferm riskjuz li huma jistriehu fuqha meta jigu biex jaghmlu il-gudizzju ahhari taghhom. Dan minhabba l-fatt li meta din il-Qorti twiezen il-valur probatorju ta' din l-istqarrija meta komparat mal-pregudizzju*

irrimedjabbli li ser ibati l-appellant f'kaz l-istess tigi ammess, huwa indubitat illi il-pregudizzju rekat jizboq il-valur probatorju taghha. Il-Qorti ghalhekk qed titbieghed mill-fehma milhuqa mill-Qorti Kriminali f'dan ir-rigward, ukoll ghaliex il-fattispecje ta' dan il-kaz ma ghandhom xejn x'jaqsmu ma' dawk li isawwru il-kaz minnha iccitat fis-sentenza appellata u li fuqu strahet biex sejset id-decizjoni taghha.

22. Ghaldaqstant maghmula dawn il-konsiderazzjonijiet, dan l-ewwel aggravju sollevat mill-appellant jisthoqqlu akkoljiment u ghalhekk tordna illi l-prova li l-Prosekuzzjoni trid taghmel permezz tad-dikjarazzjonijiet kemm verbali kif ukoll bil-miktub maghmula mill-appellant meta huwa gie arrestat u interrogat ghandha tigi imwarrba u ma tingiebx a konjizzjoni tal-gurati matul ic-celebrazzjoni tal-guri.'

Il-Qorti ta' l-Appell Kriminali fis-sentenza '**Ir-Repubblika ta' Malta vs Ismael Habesh et'**,[52] applikat l-istess linja ta' hsieb meta gie ntavolat appell mill-Avukat Generali u dan minhabba li l-Qorti Kriminali kienet ikkunsidrat stqarrijiet li saru qabel l-10 ta' Frar, 2010, bhala inammissibli ghal kuntrarju ta' stqarrijiet ohrajn li saru sussegwentament u ddikjarathom bhala ammissibli.

F'din is-sentenza gie ritenut is-segwenti:

*'16. Dan qed jinghad ghaliex, ghalkemm f'dan l-istadju din il-Qorti, bhal Qorti Kriminali qabilha, ma ghandhiex is-setgha tidhol biex tqis il-provi fil-mertu, madanakollu dan l-ezercizzju qed isir ghaliex l-Avukat Generali jilmenta mill-fatt illi l-Qorti Kriminali ma dahhlitx biex tezamina jekk il-kriterji imfassla fid-decizjoni Beuze humiex sodisfatti fir-rigward tal-istqarrijiet mertu ta' dan l-appell**. Il-Qorti Kriminali kienet tal-fehma illi***

[52] Deciza mill-Qorti tal-Appell Kriminali nhar it-22 ta' Settembru, 2021 (Att t' Akkuza 14/2017).

l-fatt wahdu illi l-appellat ma nghata ebda forma ta' assistenza legali meta rrilaxxa l-istqarrijiet tieghu lura fis-sena 2005 u l-2009, u dan ghaliex il-ligi ma kenitx taghtih dan id-dritt, kienet raguni sufficjenti sabiex tqies illi dawn l-istqarrijiet kellhom jitwarrbu mill-atti processwali billi jkun perikoluz ferm illi il-gudizzju ahhari isir fuq prova li inkisbet meta s-suspettat ma kellux jedd ghal ebda forma ta' difiza. ***Illi l-Qorti fliet bir-reqqa il-kontenut tal-istqarrijiet mertu ta' dan lappell u tqis illi ghalkemm huwa minnu illi l-appellat cahad kategorikament l-involviment tieghu fl-omicidju, madanakollu huwa jwiegeb ghal mistqosijiet kollha li jsirulu meta jintalab jaghti dettalji dwar dak li ghamel fil-lejla in kwistjoni, fejn anke biddel ghal darba darbtejn xi dettalji mill-verzjoni tieghu tal-fatti. Dan ghamlu meta huwa ma kellu ebda forma ta' difiza, fejn allura certu inkonsistenzi jistghu jdaghjfu l-kredibbilita' tieghu, biex b'hekk bil-fatt illi huwa rrinunzja ghall-jedd tieghu ghas-silenzju f'cirkostanzi fejn ma kellu ebda forma ta' difiza, dan jista' jissarraf f'pregudizzju irrimedjabbli.'***

'20. Illi hija l-fehma tal-Qorti allura, stabbilit li ma kienx hemm ragunijiet impellenti li wasslu sabiex id-dritt ghall-assistenza legali jigi michud u adottat il-kriterju tal-"overall fairness of the proceedings" imfassal fil-kaz Beuze vs il-Belgju, ***ghalkemm l-istqarrijiet mertu tal-appell inkisbu skont il-ligi vigenti f'dak iz-zmien, madanakollu dan ma jistax jeradika mill-fatt illi l-appellat irrilaxxa diversi stqarrijiet li l-Prosekuzzjoni bi hsiebha tressaq bhala prova fil-guri, meta dawn gew rilaxxati minghajr ebda forma ta' ghajnuna legali sabiex tiggwida lill-appellat.*** ***Dan iktar u iktar, jerga' jigi emfasizzat, meta l-istharrig tal-Pulizija ha bixra differenti minn dak inizjali meta allura l-appellat ma kienx ghadu gie mgharraf li qed jigi indagat b'relazzjoni ma' akkuzi dwar omicidju, tant illi kif inghad, fl-istqarrijiet li gew wara li bdiet l-indagini dwar l-omicidju, l-appellat jibda' ibiddel xi***

dettalji minn dak mistqarr minnu inizjalment. ***L-istess ma jistax jinghad, kif gustament stqarret il-Qorti Kriminali, fir-rigward tal-istqarrija li imbaghad giet rilaxxata fis-sena 2013 meta ftit wara l-appellat gie mixli bl-omicidju ta' Simon Grech. Dan ghaliex fl-ewwel lok huwa kien mgharraf dwar ir-raguni li kien qed jigi interrogat, inghata il-jedd jikkonsulta ma' avukat, u mhux biss, izda bit-trapass taz-zmien meta llura kien jaf bl-evidenza li kellhom f'idejhom il-Pulizija, kellu kull opportunita' jiehu dak il-parir mehtieg konsapevoli li kien qed jigi indagat dwar l-omicidju ta' Grech.***

21. Illi d-direzzjoni li qed tigi moghtiija mill-Qorti Ewropeja dwar id-Drittijiet talBniedem hija univoka u cioe' illi kull kaz irid jitqies ghalih billi jigi mistharreg f'kull kaz individwalment jekk, bil-fatt illi l-persuna akkuzata ma kellhiex jedd ghal ebda forma ta' assistenza legali, jew inkella, bil-fatt illi ma kellhiex l-avukat prezenti waqt it-tehid tal-istqarrija, ghalkemm dik il-persuna tkun kisbet parir legali jew ghall-inqas inghatat il-jedd li jkollha dak il-parir, dan setax impinga fuq is-smigh xieraq iktar 'il quddiem tul il-proceduri penali istitwiti kontra taghha. ***F'dan il-kaz, il-Qorti hija tal-fehma illi n-nuqqasijiet minnha ravvizati, bhalma gew ravvizati ukoll mill-Qorti Kriminali qabilha, ma jistghu bl-ebda mod jigu sanati ghaliex l-Imhallef togat necessarjament irid iwissi lil gurati fl-indirizz finali tieghu b'dawn l-imsemmija nuqqasijiet, li x'aktarx ser jivvizjaw l-istqarrijiet tal-appellat miksuba minghajr ma kellu ebda difiza, sabiex b'hekk ikun ferm riskjuz li huma jistriehu fuqha meta jigu biex jaghmlu il-gudizzju ahhari taghhom.***

22. Illi allura ghal motivi hawn fuq migjuba, b'zieda mal-fehma milhuqa mill-Qorti Kriminali fis-sentenza appellata, jkun ghaqli li f'dan l-istadju bikri tal-process gudizzjarju, din il-prova maghmula mill-Prosekuzzjoni permezz ta'l-istqarrijiet li gew rilaxxati mill-appellat Ismael Habesh lura fis-snin 2005 u 2009, meta ma kellu jedd

ghall-ebda forma ta' assistenza legali, jigu imwarrba u ma jingiebux a konjizzjoni tal-gurati matul ic-celebrazzjoni tal-guri.'

Illi in vista ta' dak kollu citat supra, jidher illi filwaqt illi l-enfasi qiedgha illi kull kaz ghandu jigi mistharreg individwalment, ricentament jidher illi filwaqt li stqarrijiet li ttiehdu qabel l-10 ta' Frar, 2010, meta akkuzat jew suspettat ma kellu l-ebda dritt ta' assistenza legali, qed jigu ddikjarati bhala inammissibli u dan stante l-fatt illi l-akkuzat jew suspettat ma kellu ebda forma ta' difiza u dan jista' jissarraf f'pregudizzju irrimedjabbli. Mhux l-istess jista' jintqal ghall-istqarrijiet li ttiehdu wara l-10 ta' Frar, 2010, stante li wara din id-data akkuzat jew suspettat kellu forma ta' assistenza legali ghalkemm limitata.[53] Din il-Qorti ma taqbilx ma din il-fehma tal-ahhar u kellha c-cans telabora fuq dan fis-sentenza **r-Repubblika ta' Malta vs Clive Butler.**[54]

Fil-kaz odjern, kif diga gie ritenut, l-akkuzat Jesmond Mary Vella rrilaxxa stqarrija f'Gunju, 2008, fejn ma kienx assistit minn avukat tal-fiducja tieghu, la qabel u anqas wara l-interrogazzjoni mill-Pulizija. Hu ma nghata l-ebda dritt li jfittex l-ghajnuna ta' avukat sabiex la jaghtih parir legali u lanqas biex jassistih matul l-interrogazzjoni, u dan billi dan id-dritt ma kienx moghti bil-ligi f'dak iz-zmien. Illli minn qari tal-istqarrija, jidher illi l-akkuzat, inghata twissija fis-sens li kellu dritt li ma jwegibx ghad-domandi izda jekk iwiegeb dak li jghid jista' jingieb bhala prova. Madankollu, xorta jibqa' l-fatt illi jista' jkun hemm pregudizzju kontra l-akkuzat, specjalment meta min hu imsejjah sabiex jiggudika jara xi twegibiet minnu moghtija fl-istqarrija tieghu u meta hu ma kellu jedd ghall-ebda difiza. Ghalhekk, meta hadet in konsiderazzjoni dak kollu sucitat, din il-Qorti hi

[53] Ara fost ohrajn **<u>The Republic of Malta vs Chritoph Doll</u>** deciza mill-Qorti tal-Appell Kriminali nhar it-22 ta' Settembru, 2021 (Att t' Akkuza 05/2020); **<u>Ir-Repubblika ta' Malta vs Jonathan Roger Portelli</u>** deciza mill-Qorti tal-Appell Kriminali nhar it-22 ta' Settembru, 2021 (Att t' Akkuza 14/2018): *'Din il-Qorti ma tistax tqis li dawn l-istqarrijiet huma inadmissible bhala prova fi proceduri kriminali minhabba l-fatt li fiz-zmien li fihom inghataw il-jedd ghall-assistenza legali vigenti ma kienx ukoll jinkludi l-assistenza legali matul l-interrogatorju – inkluzjoni fl-estensjoni tad-dritt tal-assistenza legali li dahlet fis-sehh snin wara'*; **<u>The Republic of Malta vs Chritoph Doll</u>**

[54] Deciza mill-Qorti Kriminali nhar il-25 t' Ottubru, 2022.

tal-fehma illi fir-rigward tal-istqarria tal-akkuzat u kwalunkwe indikazzjoni jew referenza ghaliha ghandhom jigu ddikjarati inammissibli u konsegwentament sfilzati mill-atti processwali.

Ghalhekk, ghal dawn il-motivi din il-Qorti qiedgha tilqa' l-eccezzjoni ulterjuri tal-akkuzat u wara li hadet in konsiderazzjoni ta' dak kollu sucitat, din il-Qorti hi tal-fehma illi fir-rigward tal-istqarrija u/jew dikjarazzjoni rilaxxata mill-akkuzat, kemm skritta u/jew verbali, u kwalunkwe indikazzjoni jew referenza ghaliha ghandhom jigu ddikjarati inammissibli u sussegwentament sfilzati mill-atti processwali.

Consuelo-Pilar Scerri Herrera
Imhallef

Vera Kopja

Adrian Micallef
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