



THE CRIMINAL COURT

The Hon. Judge Dr. Audrey Demicoli LL.D.

Bill of Indictment number 36/2022

THE REPUBLIC OF MALTA

vs.

ALEXANDAR STOJANOVIC

Today the fifth (5th) day of December 2023

The Court,

1. Having seen the bill of indictment filed against Alexandar STOJANOVIC forty three (43) years old son of Radomir and Verica born in Serbia on the 27th. April, 1979, currently residing in Corradino Correctional Facility and holder of Maltese Identity Card number 62335A who was accused of:

First Count: Wilful Homicide of Walid Salah Abdel Moteleb Mohamed

THE FACTS

During the night between the fourteenth (14) and the fifteenth (15) January of the year two thousand and eighteen (2018) the accused **Aleksandar Stojanovic**, with the intent to kill or put the life of *Walid Salah Abdel Moteleb Mohamed* in manifest jeopardy, caused the death

of *Walid Salah Abdel Moteleb Mohamed*, in a field in the area of San Dimitri in the limits of Għarb, Gozo.

The accused **Aleksandar Stojanovic** was in contact with the victim, *Walid Salah Abdel Moteleb Mohamed* discussing a business offer regarding works to be carried out on a farmhouse. The victim, *Walid Salah Abdel Moteleb Mohamed* was very interested in this business offer and in fact he mentioned it several times to his employer and friend, Terence Zammit, who was unconvinced given the fact that the victim *Walid Salah Abdel Moteleb Mohamed* was getting calls very late in the evening with respect to this deal. According to witnesses, the victim Walid referred to the person he was going to do business with as '*the Russian guy*'.

In the afternoon of the fourteenth (14) of January of the year two thousand and eighteen (2018), the victim *Walid Salah Abdel Moteleb Mohamed* spotted the accused **Aleksandar Stojanovic** while waiting on the vehicle apron at the Mġarr Gozo ferry terminal to cross to Malta. Spotting him, the victim *Walid Salah Abdel Moteleb Mohamed*, who had been driving, indicated the accused to his friend and employer Terence Zammit as '*the Russian guy*' he had told him about previously. Terence Zammit also saw the accused waiting in line for the Gozo ferry in a vehicle of the make BMW. It was at that moment that the accused **Aleksandar Stojanovic** told *Walid Salah Abdel Moteleb Mohamed* that he would see him later that night.

Later, that same night the victim *Walid Salah Abdel Moteleb Mohamed* returned to Gozo on the ferry and drove from the Mġarr ferry terminal towards Victoria, parking opposite the Victoria Arkadia complex, in front of the Melita communications outlet and waited for a few minutes. After some minutes, the aforementioned grey BMW (*Grey / lead colour BMW bearing UK registration number RN52GKJ and chassis number WBABV7206OJZ79109*) driven by **Aleksandar Stojanovic** arrived and stopped beside *Walid Salah Abdel Moteleb Mohamed's* car. The victim *Walid Salah Abdel Moteleb Mohamed*, who was still in his car up to that point, got out of his vehicle and quickly got in the front passenger seat of the BMW which was being driven by the accused **Aleksandar Stojanovic**.

It was at that point that the accused **Aleksandar Stojanovic** drove the victim *Walid Salah Abdel Moteleb Mohamed* to an area of San Dimitri, in a field in the limits of Għarb, Gozo where with the intent to kill or put the life of *Walid Salah Abdel Moteleb Mohamed* in manifest jeopardy, caused the death of *Walid Salah Abdel Moteleb Mohamed* by aiming a twelve (12) gauge shotgun at the victim and violently shooting his victim twice (2) in vital areas of the body at close range, to ensure *Walid Salah Abdel Moteleb Mohamed's* death. *Walid Salah Abdel Moteleb Mohamed's* corpse was later discovered by a farmer in the morning

hours of Monday the fifteenth (15) January 2018 in a large pool of blood. The post-mortem examination performed on the body of the victim identified two (2) gunshot wounds, specifically a shot in the right-hand side of the chest and another shot on the left part of the neck. The latter shot was angled upwards, in a manner that the pellets from the cartridge, despite entering from the neck area, were found inside the skull of the victim. Parts of the shell casing was found in each of the two (2) wounds.

Moreover, the accused **Aleksandar Stojanovic**, having carried out the willful homicide of *Walid Salah Abdel Moteleb Mohamed* as described in the count of this bill of indictment, rendered himself a recidivist, after being found guilty by virtue of the following judgments delivered by the Court of Magistrates of Malta, which judgements have become *res judicata* and cannot be changed:

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-second (22) of June of the year two thousand and eleven (2011) per Magistrate (now retired Judge) Dr Antonio Mizzi, in the names: Il-Pulizija (Spettur Robert Vella) versus Aleksandar Stojanovic (number 740/2011);

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the fourteenth (14) of December of the year two thousand and fifteen (2015) per Magistrate Dr Monica Vella, in the names: The Police (Inspector Trevor Micallef) versus Aleksandar Stojanovic;

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-third (23) of October of the year two thousand and eighteen (2018) per Magistrate Dr Francesco Depasquale, in the names: Il-Pulizija (Spettur Therese Grima) versus Aleksandar Stojanovic;

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-first (21) of November of the year two thousand and nineteen (2019) per Magistrate Dr Ian Farrugia, in the names: The Police (Inspector Leeroy Balzan Engerer) versus Alexandar Stojanovic;

THE CONSEQUENCES

Therefore, by committing the above-mentioned acts maliciously, and with criminal intent, the accused **Aleksandar Stojanovic** rendered himself guilty of willful homicide, namely that during the night between the fourteenth (14) and fifteenth (15) January of the year two thousand and eighteen (2018), in the area of San Dimitri, limits of Għarb, Gozo, maliciously, with intent to kill a person, *Walid Salah Abdel Moteleb*

Mohamed or to put the life of that person in manifest jeopardy, caused the death, of *Walid Salah Abdel Moteleb Mohamed*.

THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, and facts which have already been mentioned above in this Count of this bill of indictment, accuses the aforementioned **Aleksandar Stojanovic**, as guilty of wilful homicide, namely that during the night between the fourteenth (14) and the fifteenth (15) of January of the year two thousand and eighteen (2018), in the area of San Dimitri, limits of Għarb, Gozo, maliciously, with intent to kill *Walid Salah Abdel Moteleb Mohamed* or to put his life in manifest jeopardy, caused the death, of the same *Walid Salah Abdel Moteleb Mohamed*.

Additionally, the accused **Aleksandar Stojanovic**, having carried out the wilful homicide of *Walid Salah Abdel Moteleb Mohamed*, during the night between the fourteenth (14) and the fifteenth (15) January of the year two thousand and eighteen (2018) rendered himself a recidivist, after being found guilty by virtue of judgments delivered by the Court of Magistrates of Malta, which judgements have become *res judicata* and cannot be changed, namely:

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-second (22) of June of the year two thousand and eleven (2011) per Magistrate (now retired Judge) Dr Antonio Mizzi, in the names: Il-Pulizija (Spettur Robert Vella) versus Aleksandar Stojanovic (number 740/2011);

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the fourteenth (14) of December of the year two thousand and fifteen (2015) per Magistrate Dr Monica Vella, in the names: The Police (Inspector Trevor Micallef) versus Aleksandar Stojanovic;

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-third (23) of October of the year two thousand and eighteen (2018) per Magistrate Dr Francesco Depasquale, in the names: Il-Pulizija (Spettur Therese Grima) versus Aleksandar Stojanovic;

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-first (21) of November of the year two thousand and nineteen (2019) per Magistrate Dr Ian Farrugia, in the

names: The Police (Inspector Leeroy Balzan Engerer) versus Alexandar Stojanovic;

THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Aleksandar Stojanovic** is, according to the law, **sentenced to imprisonment for life together with a period of solitary confinement not exceeding twelve terms** in accordance with the content of articles 9, 17, 23, 23B, 31, 49, 50, 211(1), 211(2), 532A and 533 of Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

Second Count: *At the time of committing a crime against the person of Walid Salah Abdel Moteleb Mohamed had on his person any arm proper or ammunition or an imitation of any arms proper or ammunition*

THE FACTS

Whereas, as explained in the first Count of this Bill of Indictment, it has transpired that in order to carry out the wilful homicide of *Walid Salah Abdel Moteleb Mohamed*, during the night between the fourteenth (14) and the fifteenth (15) January of the year two thousand and eighteen (2018), the accused **Aleksandar Stojanovic**, after driving the victim *Walid Salah Abdel Moteleb Mohamed* in a grey vehicle of the make BMW bearing UK registration number RN52GKJ to the area of San Dimitri, in a field in the limits of Għarb, Gozo, made use of arms proper, specifically a twelve (12) gauge shotgun, with which he violently shot the victim *Walid Salah Abdel Moteleb Mohamed* twice (2) in the vital areas of his body at close range, specifically a shot in the right-hand side of the chest and another shot on the left side of the neck. The latter shot in the neck was angled upwards, in a manner that the pellets from the cartridge, despite entering from the neck area, were found in the skull of the victim. Parts of the shell casing was found in each of the wounds. The total of four (4) spent shell casings (cartridges) were found on the ground near the corpse of *Walid Salah Abdel Moteleb Mohamed*. Consequently, the arms proper and ammunition were on the person of the accused **Aleksandar Stojanovic** at the moment of the commission of the crime against the person of *Walid Salah Abdel Moteleb Mohamed*.

Moreover, the accused **Aleksandar Stojanovic**, in the light of the facts and circumstances mentioned in this count of this bill of indictment, having committed a crime against the person of *Walid Salah Abdel Moteleb Mohamed* while having on his person any arm proper or ammunition or an imitation of any arms proper or ammunition as described in the count of this bill of indictment, rendered himself a recidivist, after being found guilty by virtue of the following judgments delivered by the Court of Magistrates of Malta, which judgements have become *res judicata* and cannot be changed:

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-second (22) of June of the year two thousand and eleven (2011) per Magistrate (now retired Judge) Dr Antonio Mizzi, in the names: Il-Pulizija (Spettur Robert Vella) versus Aleksandar Stojanovic (number 740/2011);

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the fourteenth (14) of December of the year two thousand and fifteen (2015) per Magistrate Dr Monica Vella, in the names: The Police (Inspector Trevor Micallef) versus Aleksandar Stojanovic;

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-third (23) of October of the year two thousand and eighteen (2018) per Magistrate Dr Francesco Depasquale, in the names: Il-Pulizija (Spettur Therese Grima) versus Aleksandar Stojanovic;

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-first (21) of November of the year two thousand and nineteen (2019) per Magistrate Dr Ian Farrugia, in the names: The Police (Inspector Leeroy Balzan Engerer) versus Alexandar Stojanovic;

THE CONSEQUENCES

Therefore, by committing the above-mentioned acts with criminal intent, the accused **Aleksandar Stojanovic** rendered himself guilty of having, during the night between the fourteenth (14) and fifteenth (15) January of the year two thousand and eighteen (2018), in the area of San Dimitri, in the limits of Għarb, Gozo, at the time of the commission of a crime against the person of *Walid Salah Abdel Moteleb Mohamed*, had on his person arms proper and ammunition, which arms proper and ammunition were used to carry out the wilful homicide of *Walid Salah Abdel Moteleb Mohamed*.

THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, and facts which have already been mentioned above in this Count of this bill of indictment, accuses the aforementioned **Aleksandar Stojanovic**, as guilty of having, during the night between the fourteenth (14) and the fifteenth (15) of January of the year two thousand and eighteen (2018), in the area of San Dimitri, in the limits of Għarb, Gozo, at the time of committing the crime of wilful homicide against the person of *Walid Salah Abdel Moteleb Mohamed*, had on his person arms proper or ammunition or an imitation of any arms proper or ammunition.

Additionally, the accused **Aleksandar Stojanovic**, in the light of the facts and circumstances mentioned in this count of this bill of indictment during the night between the fourteenth (14) and the fifteenth (15) January of the year two thousand and eighteen (2018), rendered himself a recidivist, after being found guilty by virtue of the following judgments delivered by the Court of Magistrates of Malta, which judgements have become *res judicata* and cannot be changed, namely:

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-second (22) of June of the year two thousand and eleven (2011) per Magistrate (now retired Judge) Dr Antonio Mizzi, in the names: Il-Pulizija (Spettur Robert Vella) versus Aleksandar Stojanovic (number 740/2011);

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the fourteenth (14) of December of the year two thousand and fifteen (2015) per Magistrate Dr Monica Vella, in the names: The Police (Inspector Trevor Micallef) versus Aleksandar Stojanovic;

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-third (23) of October of the year two thousand and eighteen (2018) per Magistrate Dr Francesco Depasquale, in the names: Il-Pulizija (Spettur Therese Grima) versus Aleksandar Stojanovic;

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-first (21) of November of the year two thousand and nineteen (2019) per Magistrate Dr Ian Farrugia, in the names: The Police (Inspector Leeroy Balzan Engerer) versus Alexandar Stojanovic;

THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Aleksandar Stojanovic** is, according to the law, **sentenced to a term of imprisonment not exceeding four years** in accordance with the content of articles 5, 55 of Chapter 480 of the Laws of Malta and Articles 17, 23, 23B, 31, 49, 50, 532A and 533 of Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

THIRD COUNT: *Having kept in any premises or had in his possession, under his control or carried outside any premises or appurtenances any firearm or ammunition, without a license by the Commissioner of Police.*

THE FACTS

Whereas as explained in the first Count of this Bill of Indictment, on the same date, place, time and circumstances, it transpires from the evidence that in order to carry out the crime of wilful homicide, of *Walid Salah Abdel Moteleb Mohamed*, during the night between the fourteenth (14) and the fifteenth (15) January of the year two thousand and eighteen (2018), the accused **Aleksandar Stojanovic**, after driving the victim *Walid Salah Abdel Moteleb Mohamed* in a grey vehicle of the make BMW bearing UK registration number RN52GKJ to the area of San Dimitri, in a field in the limits of Għarb, Gozo, made use of firearms and ammunition, specifically a twelve (12) gauge shotgun in order to carry out the wilful homicide of *Walid Salah Abdel Moteleb Mohamed*, with which he violently shot the victim *Walid Salah Abdel Moteleb Mohamed* twice (2) in the vital areas of his body at close range, specifically a shot in the right-hand side of the chest and another shot on the left part of the neck. The latter shot in the neck was angled upwards, in a manner that the pellets from the cartridge, despite entering from the neck area, were found in the skull of the victim. Parts of the shell casing was found in each of the wounds.

The total of four (4) spent shell casings (cartridges) were found on the ground near the corpse of *Walid Salah Abdel Moteleb Mohamed*. Consequently the firearm and ammunition were on the person of the accused **Aleksandar Stojanovic** at the moment of the commission of the crime against the person of *Walid Salah Abdel Moteleb Mohamed*. Consequently, the said firearm and ammunition were carried outside premises, without a license issued by the Commissioner of Police.

Moreover, the accused **Aleksandar Stojanovic**, in the light of the facts and circumstances mentioned in this count of this bill of indictment, having committed a crime against the person of *Walid Salah Abdel Moteleb Mohamed* while having kept in any premises or had in his possession, under his control or carried outside any premises or appurtenances any firearm or ammunition, without a license by the Commissioner of Police, rendered himself a recidivist, after being found guilty by virtue of the following judgments delivered by the Court of Magistrates of Malta, which judgements have become *res judicata* and cannot be changed:

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-second (22) of June of the year two thousand and eleven (2011) per Magistrate (now retired Judge) Dr Antonio Mizzi, in the names: Il-Pulizija (Spettur Robert Vella) versus Aleksandar Stojanovic (number 740/2011);

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the fourteenth (14) of December of the year two thousand and fifteen (2015) per Magistrate Dr Monica Vella, in the names: The Police (Inspector Trevor Micallef) versus Aleksandar Stojanovic;

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-third (23) of October of the year two thousand and eighteen (2018) per Magistrate Dr Francesco Depasquale, in the names: Il-Pulizija (Spettur Therese Grima) versus Aleksandar Stojanovic;

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-first (21) of November of the year two thousand and nineteen (2019) per Magistrate Dr Ian Farrugia, in the names: The Police (Inspector Leeroy Balzan Engerer) versus Alexandar Stojanovic;

THE CONSEQUENCES

Therefore, by committing the above-mentioned acts with criminal intent, the accused **Aleksandar Stojanovic** rendered himself guilty of having, during the night between the fourteenth (14) and fifteenth (15) January of the year two thousand and eighteen (2018) in the same place, time and circumstances mentioned in this Count of this Bill of Indictment kept in any premises or had in his possession, under his control or carried outside any premises or appurtenances thereof any firearm or ammunition, without a license by the Commissioner of Police.

THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, and facts which have already been mentioned above in this Count of this Bill of Indictment, accuses the aforementioned **Aleksandar Stojanovic**, as guilty of having, during the night between the fourteenth (14) and the fifteenth (15) of January of the year two thousand and eighteen (2018), in the area of San Dimitri, in the limits of Għarb, Gozo, at the time of committing the crime of wilful homicide against the person of *Walid Salah Abdel Moteleb Mohamed*, had on his person or carried outside any premises or appurtenances a firearm and ammunition without a license issued by the Commissioner of Police.

Additionally, the accused **Aleksandar Stojanovic**, in the light of the facts and circumstances mentioned in this count of this bill of indictment, during the night between the fourteenth (14) and the fifteenth (15) January of the year two thousand and eighteen (2018) rendered himself a recidivist, after being found guilty by virtue of the following judgments delivered by the Court of Magistrates of Malta, which judgements have become *res judicata* and cannot be changed, namely:

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-second (22) of June of the year two thousand and eleven (2011) per Magistrate (now retired Judge) Dr Antonio Mizzi, in the names: Il-Pulizija (Spettur Robert Vella) versus Aleksandar Stojanovic (number 740/2011);

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the fourteenth (14) of December of the year two thousand and fifteen (2015) per Magistrate Dr Monica Vella, in the names: The Police (Inspector Trevor Micallef) versus Aleksandar Stojanovic;

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-third (23) of October of the year two thousand and eighteen (2018) per Magistrate Dr Francesco Depasquale, in the names: Il-Pulizija (Spettur Therese Grima) versus Aleksandar Stojanovic;

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-first (21) of November of the year two thousand and nineteen (2019) per Magistrate Dr Ian Farrugia, in the names: The Police (Inspector Leeroy Balzan Engerer) versus Alexandar Stojanovic;

THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Aleksandar Stojanovic** is, according to the law, **sentenced to a term of imprisonment not less than three months but not exceeding five years** in accordance with the content of articles 5, 51 of Chapter 480 of the Laws of Malta, and Articles 17, 23, 23B, 31, 49, 50, 532A, 533 of Chapter 9 of the Laws of Malta, or for any othersentence according to law that can be given to the aforementioned accused.

Fourth Count: Having as a person acquiring or coming into possession of a firearm or ammunition otherwise than in virtue of a license, did not immediately notify the Commissioner of Police

THE FACTS

Whereas it is abundantly clear from the evidence and circumstances available that in order to carry out the wilful homicide of *Walid Salah Abdel Moteleb Mohamed*, during the night between the fourteenth (14) and the fifteenth (15) January of the year two thousand and eighteen (2018), the accused **Aleksandar Stojanovic**, after driving the victim *Walid Salah Abdel Moteleb Mohamed* in a grey vehicle of the make BMW bearing UK registration number RN52GKJ to the area of San Dimitri, in a field in the limits of Gharb, Gozo, was in possession and made use of firearms and ammunition, specifically a twelve (12) gauge shotgun, in order to carry out the wilful homicide of *Walid Salah Abdel Moteleb Mohamed*, with which he violently shot and hit the victim *Walid Salah Abdel Moteleb Mohamed* twice (2) in the vital areas of his body at close range. The accused was in possession of this firearm and ammunition without being in possession of a license and without immediately notifying the Commissioner of Police.

Moreover, the accused **Aleksandar Stojanovic**, in the light of the facts and circumstances mentioned in this count of this bill of indictment, having committed a crime against the person of *Walid Salah Abdel Moteleb Mohamed* while having in his possession a firearm and ammunition without being in possession of a license and without immediately notifying the Commissioner of Police, rendered himself a recidivist, after being found guilty by virtue of the following judgments delivered by the Court of Magistrates of Malta, which judgements have become *res judicata* and cannot be changed:

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-second (22) of June of the year two thousand and eleven (2011) per Magistrate (now retired Judge) Dr Antonio Mizzi, in the names: Il-Pulizija (Spettur Robert Vella) versus Aleksandar Stojanovic (number 740/2011);

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the fourteenth (14) of December of the year two thousand and fifteen (2015) per Magistrate Dr Monica Vella, in the names: The Police (Inspector Trevor Micallef) versus Aleksandar Stojanovic;

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-third (23) of October of the year two thousand and eighteen (2018) per Magistrate Dr Francesco Depasquale, in the names: Il-Pulizija (Spettur Therese Grima) versus Aleksandar Stojanovic;

In the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-first (21) of November of the year two thousand and nineteen (2019) per Magistrate Dr Ian Farrugia, in the names: The Police (Inspector Leeroy Balzan Engerer) versus Alexandar Stojanovic;

THE CONSEQUENCES

Therefore, with his own actions, by committing the above-mentioned acts with criminal intent, the accused **Aleksandar Stojanovic** rendered himself guilty of having, during the night between the fourteenth (14) and fifteenth (15) January of the year two thousand and eighteen (2018) in the same time and circumstances, in these Islands, acquired or came into possession of a firearm and ammunition otherwise than in virtue of a license and did not immediately notify the Commissioner of Police.

THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, and facts which have already been mentioned above in this Count of this bill of indictment, accuses the aforementioned **Aleksandar Stojanovic**, as guilty of having, during the night between the fourteenth (14) and the fifteenth (15) of January of the year two thousand and eighteen (2018), in the area of San Dimitri, in the limits of Għarb, Gozo and/or in these Islands, as a person acquired or came into possession of a firearm or ammunition otherwise

than in virtue of a license and did not immediately notify the Commissioner of Police.

Additionally, the accused **Aleksandar Stojanovic**, in the light of the facts and circumstances mentioned in this count of this bill of indictment, during the night between the fourteenth (14) and the fifteenth (15) January of the year two thousand and eighteen (2018) rendered himself a recidivist, after being found guilty by virtue of the following judgments delivered by the Court of Magistrates of Malta, which judgements have become *res judicata* and cannot be changed, namely:

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-second (22) of June of the year two thousand and eleven (2011) per Magistrate (now retired Judge) Dr Antonio Mizzi, in the names: Il-Pulizija (Spettur Robert Vella) versus Aleksandar Stojanovic (number 740/2011);

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the fourteenth (14) of December of the year two thousand and fifteen (2015) per Magistrate Dr Monica Vella, in the names: The Police (Inspector Trevor Micallef) versus Aleksandar Stojanovic;

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-third (23) of October of the year two thousand and eighteen (2018) per Magistrate Dr Francesco Depasquale, in the names: Il-Pulizija (Spettur Therese Grima) versus Aleksandar Stojanovic;

Judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the twenty-first (21) of November of the year two thousand and nineteen (2019) per Magistrate Dr Ian Farrugia, in the names: The Police (Inspector Leeroy Balzan Engerer) versus Alexandar Stojanovic;

THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Aleksandar Stojanovic** is, according to the law, **sentenced to a term of imprisonment of six months and a fine (*multa*) of two hundred and thirty-two Euros and ninety-four cents (€232.94)** in accordance with the content of articles 5, 41, 51(8) of Chapter 480 of the Laws of Malta and Articles 17, 23, 23B, 31, 49, 50, 532A, 533 of Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

Fifth Count: Having driven a motor vehicle without a license

THE FACTS

Whereas, it further results from the circumstances, facts and evidence of this case as explained in this Bill of Indictment, that during the night of the fourteenth (14) and fifteenth (15) January of the year two thousand and eighteen (2018), the accused **Aleksander Stojanovic** drove a grey motor vehicle of the make *BMW bearing United Kingdom registration number RN52GKJ and chassis number WBABV7206OJZ79109* for the purpose of carrying out the crime of the wilful homicide of *Walid Salah Abdel Moteleb Mohamed* as he drove the same motor vehicle without a license, to the area of San Dimitri, in a field in the limits of Għarb, Gozo.

THE CONSEQUENCES

Therefore, with his own actions, by committing the above-mentioned acts with criminal intent, the accused **Aleksandar Stojanovic** rendered himself guilty of having, during the night between the fourteenth (14) and fifteenth (15) January of the year two thousand and eighteen (2018) in the same place, time and circumstances, driven a grey motor vehicle of the make *BMW bearing United Kingdom registration number RN52GKJ and chassis number WBABV7206OJZ79109* without a license.

THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, and facts which have already been mentioned above in this Count of this bill of indictment, accuses the aforementioned **Aleksandar Stojanovic**, as guilty of having, during the night between the fourteenth (14) and the fifteenth (15) of January of the year two thousand and eighteen (2018), in the area of San Dimitri, in the locality of Għarb, Gozo, driven a grey motor vehicle of the make *BMW bearing United Kingdom registration number RN52GKJ and chassis number WBABV7206OJZ79109* without a license.

THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the

aformentioned **Aleksandar Stojanovic** is, according to the law, **sentenced to a term of imprisonment not exceeding one year or a fine (*multa*) of one thousand and two hundred Euros (€1,200)** in accordance with the content of articles 15(1)(a) of Chapter 65 of the Laws of Malta and Articles 17, 23, 23B, 31, 532A, 533 of Chapter 9 of the Laws of Malta or for any other sentence according to law that can be given to the aformentioned accused.

Sixth Count: Used a motor vehicle without a policy of insurance in respect of third party risks in force

THE FACTS

Whereas, it further results from the circumstances, facts and evidence of this case that, during the night of the fourteenth (14) and fifteenth (15) January of the year two thousand and eighteen (2018), it transpired that the accused **Aleksandar Stojanovic** drove a grey motor vehicle of the make *BMW bearing United Kingdom registration number RN52GKJ and chassis number WBABV7206OJZ79109* for the purpose of carrying out the crime of the wilful homicide of *Walid Salah Abdel Moteleb Mohamed*, as he drove the same motor vehicle without a license, to the area of San Dimitri, in a field in the limits of Għarb, Gozo. This vehicle was not covered by a policy of insurance in respect of third party risks in force.

THE CONSEQUENCES

Therefore, with his own actions, the accused **Aleksandar Stojanovic** rendered himself guilty of having, during the night between the fourteenth (14) and fifteenth (15) January of the year two thousand and eighteen (2018) in the same place, time and circumstances, used a grey motor vehicle of the make *BMW bearing United Kingdom registration number RN52GKJ and chassis number WBABV7206OJZ79109* without a policy of insurance in respect of third party risks in force.

THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe and facts which have already been mentioned above in this Count of this bill of indictment, accuses the aformentioned **Aleksandar Stojanovic**, as guilty of having, during the night between the fourteenth (14) and the fifteenth (15) of January of

the year two thousand and eighteen (2018), in the area of San Dimitri, in the limits of the locality of Għarb, Gozo, used a grey motor vehicle of the make *BMW bearing United Kingdom registration number RN52GKJ and chassis number WBABV7206OJZ79109* without a policy of insurance in respect of third party risks in force.

THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Aleksandar Stojanovic** is, according to the law, **sentenced to a fine (*multa*) of four thousand, six-hundred and fifty-eight Euros and seventy-five cents (€4,658.75)** in accordance with the content of article 3 of Chapter 104 of the Laws of Malta and Articles 17, 23, 23B, 31, 532A, 533 of Chapter 9 of the Laws of Malta or for any other sentence according to law that can be given to the aforementioned accused.

Seventh Count: *Had in his possession or charge a motor vehicle which was not registered with the Authority for Transport in Malta*

THE FACTS

Whereas, it further results from the circumstances and evidence of this case that, during the night of the fourteenth (14) and fifteenth (15) January of the year two thousand and eighteen (2018), the accused **Aleksander Stojanovic** had in his possession or charge and drove a grey motor vehicle of the make *BMW bearing United Kingdom registration number RN52GKJ and chassis number WBABV7206OJZ79109* for the purpose of carrying out the crime of the wilful homicide of *Walid Salah Abdel Moteleb Mohamed*, as he drove the same motor vehicle, to the area of San Dimitri, in a field in the limits of Għarb, Gozo, which vehicle was not registered with the Authority for Transport in Malta.

THE CONSEQUENCES

Therefore, with his own actions, the accused **Aleksandar Stojanovic** rendered himself guilty of having, during the night between the fourteenth (14) and fifteenth (15) January of the year two thousand and eighteen (2018) in the same place, time and circumstances, had in his possession or charge a grey vehicle of the make *BMW bearing United Kingdom registration number RN52GKJ and chassis number*

WBABV7206OJZ79109 which was not registered with the Authority for Transport in Malta.

THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this Count of this Bill of Indictment, accuses the aforementioned **Aleksandar Stojanovic**, as guilty of having, during the night between the fourteenth (14) and the fifteenth (15) of January of the year two thousand and eighteen (2018), in the area of San Dimitri, in the locality of Għarb, Gozo, had in his possession or charge a grey vehicle of the make *BMW bearing United Kingdom registration number RN52GKJ and chassis number WBABV7206OJZ79109*, which vehicle was not registered with the Authority for Transport in Malta.

THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Aleksandar Stojanovic** is, according to the law, **sentenced to a term of imprisonment not exceeding three months or to a fine (*multa*) of two hundred and thirty-five Euros (€235)** in accordance with the content of article 3, 44 of Subsidiary Legislation 368.02 and Articles 17, 23, 23B, 31, 532A, 533 of Chapter 9 of the Laws of Malta or for any other sentence according to law that can be given to the aforementioned accused.

Eighth Count: used a motor vehicle on the road without a valid circulation licence or a valid circulation permit or a valid temporary licence disk issued by Transport Malta

THE FACTS

Whereas, it further results from the circumstances and evidence of this case that, during the night of the fourteenth (14) and fifteenth (15) January of the year two thousand and eighteen (2018), the accused **Aleksander Stojanovic** had in his possession and used a grey vehicle of the make *BMW bearing United Kingdom registration number RN52GKJ and chassis number WBABV7206OJZ79109* for the purpose of carrying out the crime of the wilful homicide of *Walid Salah Abdel*

Moteleb Mohamed, which vehicle was not issued with a valid circulation license or a valid circulation permit or a valid temporary licence disk by the Authority for Transport in Malta.

THE CONSEQUENCES

Therefore, with his own actions, the accused **Aleksandar Stojanovic** rendered himself guilty of having, during the night between the fourteenth (14) and fifteenth (15) January of the year two thousand and eighteen (2018) in the same place, time and circumstances, had in his possession or use a grey vehicle of the make *BMW bearing United Kingdom registration number RN52GKJ and chassis number WBABV7206OJZ79109*, which vehicle, whether parked or in use, was not issued with a valid circulation license or a valid circulation permit or a valid temporary licence disk by the Authority for Transport in Malta.

THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe and facts which have already been mentioned above in this Count of this Bill of Indictment, accuses the aforementioned **Aleksandar Stojanovic**, as guilty of having, during the night between the fourteenth (14) and the fifteenth (15) of January of the year two thousand and eighteen (2018), in the area of San Dimitri, in the limits of the locality of Għarb, Gozo, had in his possession or use a grey vehicle of the make *BMW bearing United Kingdom registration number RN52GKJ and chassis number WBABV7206OJZ79109*, which vehicle was not issued with a valid circulation license or a valid circulation permit or a valid temporary licence disk by the Authority for Transport in Malta.

THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Aleksandar Stojanovic** is, according to the law, **sentenced to a fine of twenty-five (€25) Euros** for driving, or causing to stand, a motor vehicle without the vehicle licence disc being affixed to the vehicle windscreen in accordance with the content of articles 13, 44 of Subsidiary Legislation 368.02, and Articles 17, 23, 23B, 31, 532A, 533 of Chapter 9 of the Laws of Malta or for any other sentence according to law that can be given to the aforementioned accused.

2. Having seen the note of preliminary pleas submitted by the accused Aleksandar STOJANOVIC on the 27th February 2023 wherein he raised the following pleas:

1. The nullity of the bill of indictment and consequently the acts of the proceedings and this since this was not filed within the term of one month from the day of the receipt of the acts of the proceedings as per Article 432 (1) of Cap 9 of the Laws of Malta. From the acts of the proceedings a fol. 30 it results that the Attorney General had made a request for extension for the term of fifteen days however, such application was not favourably acceded to and therefore, the filing of the bill of indictment on the 24th November 2022 renders the bill of indictment as well as the proceedings null and void according to Law;
2. The nullity of the acts of the proceedings with reference to article 597 (4) of Cap 9 of the Laws of Malta. In this regard, it is noted that the examination of the accused in criminal proceedings is a pre-requisite *sine qua non, ad validitatem*. In this case the examination was not carried out in conformity with Article 392 of Cap 9 of the Laws of Malta and is therefore null and void. Here it must be pointed out that all the details of the accused required by Law are not mentioned, precisely with regards to the details of his parents. Such details are so relevant in criminal proceedings that they are also requested *sine qua non*, even in summary proceedings as evidenced in Article 370 (4) (a) of Cap 9 of the Laws of Malta. All this results from the examination in the acts of the compilation a fol. 17 and a fol. 1608;
3. The nullity of these proceedings including the bill of indictment, since Article 432 (2) of Cap 9 of the Laws of Malta (the remittal of 5 days) was not adhered to. This article states that, "*the record of inquiry is found to be defective through the non-observance of any of the provisions of this Code or of any other law relating to such inquiry, the Attorney General may send back the record to the court from which it was received, together with a demand in writing that the court proceed afresh with the inquiry or that the record be rectified, according to circumstances, pointing out the defect and the relative provisions of this Code or of such other law.*" In this regard it must be pointed out that the acts of the compilation were defective (see fol. 1746). It resulted from the note of remittal sent by the Attorney General (a fol. 1745) that there was a serious defect in the acts since the indicated date was that of the previous year. Instead of following the provisions in question, the Attorney General presented an application requesting the correction of the Acts. The Court of Magistrates as a Court of Criminal Inquiry acceded to such correction. That with all due respect the Court should not have done so since the above-mentioned procedure was not followed. Moreover, *dato ma non concesso*, even if such correction

were to be acceded, the Court had to proceed to re-do the examination of the accused and this prior to giving a prima facie decree;

4. That moreover and without prejudice to the above-mentioned pleas, the accused is asking for the removal from the acts of all the testimonies given by expert witnesses nominated by the inquiring magistrate and subsequently confirmed by the Magistrate presiding over the Compilation of evidence as well as all the viva voce testimonies and reports made by the same as well as any other reference to their work made in these proceedings. This is being submitted due to the fact that the actual nomination given to each expert does not transpire from anywhere, saving a general and standard form which is identical for all experts and in the same form such specific nomination is not included. *Ergo*, their nomination is null and without valid effect and this goes against the proviso in Article 650 (5) of Cap of the Laws of Malta;

This is being submitted, notwithstanding the fact that according to jurisprudence the Court does not have to specify in detail all that the expert is assigned to do vide. *Repubblika ta' Malta vs. George Degiorgio et.* decided on the 30th October 2020 by the Criminal Court. This however does not signify that the Court does not have to direct the witnesses appointed by itself on what their specific function is since this cannot be presumed. In this case there is no indication whatsoever of the particular assignment given to the experts.

5. That, with regards to the appointment of Dr. Daniel Calleja, it must be reiterated that such appointment is null, this because of that predisposed by Article 548(1) of Cap 9 of the Laws of Malta, where the last proviso states that; "*provided further that, without prejudice to the provisions of article 552(2), no expert shall be appointed solely for the purpose of examining witnesses on oath and taking down their depositions in writing and establishing the relevant facts, where the offence to be investigated is one which carries a maximum term of imprisonment of seven years or more*". It results that on the 23rd of January 2018, he was appointed with the power of giving oath (see fol. 122 et. seq. of the acts of the inquiry). Consequently, once again such nomination, testimony and report and any reference made to the same must be removed.
6. That the nullity, yet again, of certain court-appointed experts including but not limited to PC 602 Jonathon Attard, Antoine Fenech, WPC 140 Kirsty Cremona and PC 422 Neil Godwin Caruana. Their nomination is null and void since they form part of the Police Force and thus, can never be considered to be independent and impartial. Here reference can be made to the constitutional case in the names *John Saliba vs Attorney General et.* decided by the Constitutional Court on the 8th of July 1998, where it was outlined that the Court expert can never be a member of the Police Force, as a police officer can never be considered as an independent person. Today this principle is imprinted in Maltese criminal jurisprudence and in this regard, reference can be made to the

judgement of *Republic of Malta vs Longino Aquilina* decided by the Criminal Court on the 26th February 2001. Consequently, it must be reiterated that such expert nominations, testimonies, reports and any reference made to the same must be removed.

7. That, furthermore, the report of Dr. Daniel Calleja LL.D presented a fol. 118 et. seq. should not be admitted as evidence since in the best hypotheses this was not even in conformity with the above-mentioned nomination and the same expert heard witnesses under oath (see a fol. 1123) and therefore expressly went against what the law states in Article 548(1) of Cap 9 of the Laws of Malta;
8. That, moreover, it does not transpire from the acts of the proceedings that when requested to translate from Maltese to English and/or vice-versa, the interpreters inter alia, Dr. Claire Caruana (a fol. 24) , Dr. Larry Formosa (a fol. 1069) , Dr. Jonathan Mintoff (a fol. 1639) and Mr. Anthony Mizzi (a fol. 1746) were submitted the oath of appointment as is required ad *validitatem* according to Article 391 (2) of Cap 9 of the Laws of Malta. Therefore, in line with the maxim *quod prouocit effectum*, all such witness depositions and any reference to them should be removed from the acts of the proceedings.
9. That parts of the evidence given by Christiana Vella on the 28th May 2021 should be removed from the acts since this constitutes hearsay evidence, dictum del dicto. Reference is particularly made to fol. 44-50; It must be pointed out that this is not a question of mere relevance which therefore must be regulated by the trial judge. Hearsay evidence is non-evidence and therefore would prove to be prejudicial to the accused if admitted in the acts of the case.
10. That the accused is requesting the removal of all CCTV cameras, stills and reports pertaining to the same and this due to the fact that rather than being the court expert who downloaded and extracted such information, it was the police themselves who downloaded such CCTV's and passed them on to the Court Expert. Moreover, the original owners of the CCTV cameras were never brought to testify before the Court and thus resulting in a serious defect in the chain of evidence.
11. That the accused, is requesting the removal from the acts of all documents pertaining to Interpol exhibited a fol. 1214-1219 and the testimony of Inspector Bernard Charles Spiteri a fol. 1568-1576 which have nothing to do with the facts of the case per se and which serve the purpose of tarnishing his image which could negatively impress the jurors. By analogy this is the reason why proof of recidivism and antecedents of the accused are never submitted in evidence;
12. That the accused, is requesting the removal from the acts of all judgments presented as proof of recidivism by Dr. Mary Debono Borg on the 30th September 2022 and the 21st October 2022, which have

nothing to do with the facts of the case per se and which serve the purpose of tarnishing his image which could negatively impress the jurors.

13. Saving further pleas permissible at Law, at a later stage;

3. Having seen the **note** submitted by the **Attorney General on the 6th. March 2023** in reply to the note of preliminary pleas submitted by the accused Aleksandar Stojanovic wherein he raised the following pleas regarding the admissibility of evidence which the accused intends to produce in terms of Article 438 of Chapter 9 of the Laws of Malta.

Whereas, the Attorney General has been notified with the preliminary pleas of Aleksandar Stojanovic on the 28 February 2023 with the faculty to reply in terms as stipulated by law;

Whereas, the accused Aleksandar Stojanovic in his note of preliminary pleas has indicated a number of witnesses and documents which he intends to produce during the trial by jury. The Attorney General is hereby giving notice of any plea regarding the admissibility of evidence which the accused intends to produce in terms of Article 438 of Chapter 9 of the Laws of Malta;

1. Whereas, in relation to the first three (3) bullet points of point number three (3) of the list of witnesses of the note of preliminary pleas filed by the accused, the Attorney General is raising the issue of inadmissibility, since the accused has not indicated the proof he intends to establish with such evidence, in particular:
 - which Judgments the accused is referring to; and
 - who are the accused/defendants in relation to whom the Judgments have been given;

Therefore, these documents are not admissible in accordance with the law;

2. Whereas, in relation to the sixth (6) bullet point of point number three (3) of the list of witnesses of the note of preliminary pleas filed by the accused, the Attorney General is raising the issue of inadmissibility, since the sworn testimony of Inspector Colin Sheldon in relation to ongoing investigations may irredeemably prejudice these investigations. Moreover, sworn testimony in relation to pending cases that are not yet *res judicata* can also wreak grave prejudice to

such cases. Therefore, such witness/testimonies are not admissible in accordance with the law;

Whereas, in relation to point number four (4) of the list of witnesses of the note of preliminary pleas filed by the accused, the Attorney General is raising the issue of inadmissibility, since the accused has not indicated any particular witness or document he intends to produce and the proof he intends to establish with such witnesses in accordance with Article 438 of Chapter 9 of the Laws of Malta. Therefore, such statements of a general nature regarding witnesses are not admissible in accordance with the law;

4. Having seen the **note** submitted by the accused **Alexandar Stojanovic of the 15th. March 2023 in reply to** the pleas raised by the Attorney General whereby he submitted the following:

1. That with regards to paragraph of the note of the Attorney General, it must be stated that according to Article 328(2) of Chapt. 09 of the Laws of Malta, nowhere does it state that the accused has to specify the scope and reasons why he intends to summon any particular witness. It is a cardinal principal of criminal law that the articles of law have to be interpreted in a restrictive fashion and therefore the legal maxim *ut lex voluit dixit*, applies. This notwithstanding the accused is explaining the scope of the said witnesses:

The Registrar of the Civil Courts and Tribunals of both Malta and Gozo is being mentioned as a witness in order to produce judicial acts indicating that the said accused endeavoured and took all possible legal action to be able to stay in Malta. Furthermore, the accused also requests the said Registrar to produce relative court judgments or to indicate relative judicial acts showing previous convictions of the witness Andre Galea and similar acts indicating that the *decius* had criminal proceedings and judgments relating to domestic violence. Here it must also be pointed out that the defendant has a right to challenge the credibility (as opposed to challenging the admissibility of a witness) naturally then the Prosecution will have the right to present the previous convictions of the accused.

2. With regards to Inspector Colin Sheldon, the accused expresses his surprise at the objection of the Attorney General, primarily since the said inspector has already given his evidence before the Court of Criminal Inquiry and also since the reasons given are not based on any provision of law. The issue therefore is not one of admissibility

o meno, but rather of relevance which issue must be decided by the presiding Judge when the matter is raised during trial.

3. With regards to the final objection regarding any other competent and admissible witness at law, it must be stated that the accused put down this premise *ex abutantia cautela*, and obviously, as a formality since he knows only too well that if the need arises he would have to request a special permission from the presiding judge.

5. Having heard the oral submissions of the parties with regards to these preliminary pleas raised by the accused Aleksandar STOJANOVIC and having seen the Note of References submitted by the accused on the 26th. July 2023.

Considered as follows:

6. In his first preliminary plea the accused argued that the records of the proceedings did not contain evidence that the request filed by the Attorney General in terms of Article 432 (1) of the Criminal Code on the 21st. November 2022 was acceded to by the Criminal Court. He argued that this defect constituted a ground for nullity of the bill of indictment and consequently the acts of the proceedings since the indictment was not filed within the term of one month from the day of the receipt of the acts of the proceedings thus implying that the filing of the bill of indictment on the 24th. November 2022 rendered the bill of indictment as well as the proceedings null and void.

7. On the other hand the Attorney General insisted that a copy of the application containing the request made in terms of Article 432(1) of the Criminal Code dated 21st November 2022 – found at folio 30 of the acts of the proceedings – was timely filed. The Attorney General reaffirms his position at law that once the request in terms of Article 432(1) of the Criminal Code was filed on time no nullity can arise solely because there is no record in the acts of the proceedings of the Court's decree granting the extension since this operates ipso iure upon the request being filed with the Court having no discretion in the exercise of its powers in terms of law.

8. There is no contestation by the accused that the request for the extension (talba ghal proroga) made in terms of Article 432(1) of the Criminal Code was lodged on time by the Attorney General. From the acts of the proceedings it in fact transpires that the records of the inquiry were transmitted to the Attorney General by the Court of Magistrates (Gozo) on the 21st. October 2022 and that the request for an extension was made on the 21st. November 2022, therefore within the time limit laid down in Article 432(1) of the Criminal Code.

9. Article 431(1) of the Criminal Code provides that the functions of the Attorney General commenced on the day that he received the record of the inquiry from the Court of Magistrates (Gozo) as a Court of Criminal inquiry. Article 432(1) of the Criminal Code granted the Attorney General one month from the date of receipt of the records of the inquiry to file the bill of indictment against the accused and it also grants the Attorney General the right to lodge a request to the Criminal Court for an additional period of fifteen days. In **The Republic of Malta vs Daniel Muka**ⁱ it was established that “*the law did not allow any discretion to the Criminal Court in this case*” since the law provides that “*the said term shall on the demand of the Attorney General be extended by the Court for an additional period of fifteen days and on the expiration of this other period by the President of Malta to a further additional period of fifteen days and, where the matter is such that the determination of the true nature of the offence necessarily depends upon the lapse of a longer period of time to such longer period. Provided however that where such longer period extends beyond forty days, the accused shall have the right to be released on bail*”.

10. In Republic of Malta vs Daniel Muka it was in fact held as follows:
 - i. To avail himself of the extension of the original time limits, the Attorney General was obliged to lodge the said demand; but once that demand was lodged, then it was bound to be acceded to by operation of Law. The Law granted no discretion to the Criminal

Court or to the President of Malta to reject this request. The sine qua non requirement was the timely demand that had to be lodged by the Attorney General for the extension of the time frames imposed by law.

- ii. Once the demand is lodged to the Criminal Court before the lapse of the time frames stipulated by law - and evidence thereof is found in the records of the proceedings - then this Court need dig no further and deeper into the issue as that demand is to be upheld by the Criminal Court. And once the demand was upheld by this Court, the request and the decree upholding the request did not need to be proven as they are deemed to form part of the records of the proceedings. There was no need for the demand to be made accessible to the Court of Magistrates, provided that both demand and corresponding decree acceding to it resulted from the records of the Criminal Court. This was the line of reasoning adopted in the appeal proceedings **Il-Pulizija vs. Victor Magro** decided on the 11th March 1993 where the Court of Criminal Appeal, presided by Mr. Justice C. A. Agius.
- iii. In this case there was no contestation about the fact that the request for the extension (“talba għal proroga”, or “proroga”, in brief as distinguished from the decree of the Criminal Court acceding to it) was lodged by the Attorney General, and that this was lodged on time. Case Law required the demand for extension to be timely lodged by the Attorney General, there being no explicit necessity for evidence of it to be found in the records of the Court of Magistrates, albeit found in the records of the Criminal Court. Had there been contestation about whether the request for extension was timely lodged, then the matter would have required further analysis by the competent court. This was part of the decision in the appeal **Il-Pulizija vs. Edward Cassar et** decided on the 26th June 1986 which held:

Illi konsiderazzjoni ohra ta' importanza u rilevanza li l-Ewwel Qorti ghamlet fis-sentenza appellata kienet li la gie allegat mill-Prosekuzzjoni wara l-verbal tad-difiza (fol. 34) u wisq anqas ma saret il-prova li l-estensjoni taz-zmien giet effettivament mitluba u moghtija ai termini tal-artikolu 444(1) tal-Kap. 12 u li ghalhekk dik il-Qorti ma setghetx tassumi dak li fl-atti ma kienx jirrizulta skond il-ligi.

Illi effettivament din il-Qorti ma tistax taqbel ma dan ir-ragjonament u dana ghaliex jekk kien hemm talba ghal proroga u digriet relattiv dawn anki jekk inghataw mill-Qorti Kriminali jiformaw parti mill-atti ta' din il-kawza u jehtiegux provi. Jekk kien hemm, kif kien hemm, quddiem l-Ewwel Qorti il-kwistjoni ta' jekk ir-rinviju de quo sarx tempestivament jew le, l-ezistenza o meno tal-proroga kienet fundamentali, specjalment f'dan il-kaz. Infatti filwaqt li l-Ewwel Qorti

qalet fis-sentenza appellata li f'kaz ta' proroga ir-rinviju kien tardiv l-istess l-Avukat Generali qed isostni l-oppost u cioe' li rinviju sar in tempo billi t-talba ghal proroga saret fit-12 ta' Lulju, 1985.

11. In this case as already pointed out in paragraph 8 supra there is no contestation that the request for an extension was lodged by the Attorney General within the time limit stipulated by law. This Court therefore, as was laid down in the Muka judgement, is entitled to take judicial notice of the demand which if lodged and found in the records of the Criminal Court according to the case law mentioned above is still considered as part of the records of the case hence requiring no further proof. This Court proceeded to verify the records of its own Registry and confirmed that this Court had taken cognisance of the demand lodged by the Attorney General on the 21st November 2022 and acceded to the demand for an extension of the original time limit. The Court took judicial notice of the original document of the demand lodged by the Attorney General held in the Registry of the Criminal Court on which document is found the decree of this Court upholding the request indicated by the phrase "Akk.22.xi.22", with the judge's signature attesting the decree. This Court therefore has no doubt that the demand for an extension was lodged on time, that it was acceded to and that therefore the bill of indictment filed on the 24th. November 2022 was filed within the fifteen day extension granted in terms of Article 432(1) of the Criminal Code.

12. This Court furthermore refers to the principle laid out by the Court of Criminal Appeal (Superior Jurisdiction) in the ruling given on the 26th. April 2023 in Republic of Malta vs Daniel Muka wherein it was held:

Furthermore, appellant's grievance that the decree found only in the Registry of the Criminal Court is tantamount to an absence of the said court order from the acts of the case is completely unfounded. Suffice it to say that the acts of the inquiry do not amount to the acts of the proceedings in their entirety. And notwithstanding that the original application and court order are filed in the registry of the Criminal Court, they still do form part of the acts of the proceedings as a whole, the original being retained in the records of the Criminal Court (from which Court the decree was issued) with a copy sent to the Court of

Magistrates to be inserted in the inquiry for the sake of completeness. Consequently, there is no defect in the records of the inquiry as envisaged by appellant in his plea, all time limits having been adhered to, and thus his first grievance is being rejected as completely unfounded.

13. Therefore the argument put forward by the accused that the bill of indictment and the subsequent acts are null cannot be upheld because the said indictment was filed within the fifteen day extension granted to the Attorney General in terms of Article 432 (1) of the Criminal Code and cannot be declared null or impugned in terms of Article 597(4) of the Criminal Code.

14. Consequently this Court is hereby rejecting the first preliminary plea raised by the accused.

Considered further:

15. In his **second preliminary plea** the accused is raising the issue of the nullity of the acts of the proceedings in terms of Article 597(4) of the Criminal Code due to the fact that the examination of the accused (at folio 17 and 1608 of the acts of the proceedings) was not carried out in conformity with Article 392 of the Criminal Code because the details of the accused's parents are not included and the said examination is consequently null and void. The accused points out that the examination of the accused person is a pre-requisite sine qua non ad validatem and that the details of the accused are so relevant in criminal proceedings that they are required sine qua non even in summary proceedings as evidenced in Article 370(4) of the Criminal Code.

16. The Attorney General on the other hand reiterates that Article 597(4) of the Criminal Code states that the bill of indictment can only be impugned in the case of the total absence of the examination of the accused from the records of the inquiry and not because certain minor details have been omitted. The details of the parents of the accused are minor details and only serve as an

additional means of identification and in this case there is no issue regarding the identification of the accused according to the Attorney General.

17. Article 597(4) of the Criminal Code states:

*The indictment cannot be impugned on the ground of any defect in the record of inquiry nor can the accused demand that on the ground of any such defect the trial on the said indictment be not proceeded with, unless such defect consists in **the total absence of the charges being read or of the examination of the accused** or of the order committing the accused for trial or in the refusal of the court of criminal inquiry, without just cause to hear the evidence produced by the accused saving always the right of the accused and the Attorney General to oppose their production, at the trial of any act tendered in evidence which is not according to law.*

18. Article 392(1) of the Criminal Code provides as follows:

The examination of the accused referred to in article 390(1) shall, without threat or promise and without oath, be made in the following manner:

- (a) The court shall ask him his name and surname, his age his place of birth and abode his trade profession or calling the name and surname of his parents and whether his parents are alive or dead;*
- (b) The court shall ask the accused if and what he wishes to reply to the charge.*

19. The records of these proceedings show that the accused was duly examined after the charges were read on the 19th. May 2021 and on the 30th. September 2021 (at folio 17 and 1608 of the acts of the proceedings) and that all the details mentioned in Article 392(1)(a) of the Criminal Code were included except for the details pertaining to surname of his parents because their first names were indicated as Radamir and Verita. This Court agrees with the Attorney General that the details omitted are indeed minor details especially since the surname of the accused was indicated, and which only serve as a further means of identification of the accused and at no stage of the proceedings was there an issue relating to the identity of the accused. More importantly Article 597(4) of the Criminal Code makes it abundantly clear that it is **the total absence** of the examination of the accused which brings about the nullity of the bill of indictment and therefore the said bill of indictment cannot be impugned because of the omission of minor details as are the details pertaining to the parents of the accused. In

this regard referencde is made to the ruling of the Criminal Court of the **11th. May 2023** in **Ir-Repubblika ta' Malta vs Clayton Azzopardi** wherin it was laid down as follows:

Oltre minn hekk, l-Artikolu 597(4) sucitat, jistipula illi l-att t'akkuza ma jistax jigi attakat hlief minhabba difetti fil-kumpilazzjoni bhan-nuqqas **ghal kollox** tal-ezami tal-akkuzat, xi haga li mhux applikabbli ghal kaz odjern u dan stante li kif diga gie ritenut, l-ezami tal-akkuzat jinsab a fol. 16 tal-process. Ghal dawn ir-ragunijiet din il-Qorti qedgha tichad l-ewwel eccezzjoni preliminari tal-akkuzat.

20. Consequently this Court is hereby rejecting the second preliminary plea raised by the accused.

21. In the **third preliminary plea** the accused again raises the issue of the nullity of the proceedings including the bill of indictment since according to him Article 432(2) of the Criminal Code (the remittal of five days) was not adhered to. The accused points out that the acts of the compilation were defective because in the note of remittal (at folio 1745) sent by the Attorney General there was a serious defect in the acts since the indicated date was that of the previous year. According to the accused the procedure adopted by the Attorney Geenral was defective because instead of following the applicable provisions laid down in Article 432(2) of the Criminal Code, he submitted an application requesting the correction of the acts. The Court of Magistrates as a Court of Criminal Inquiry then proceeded to accede to the request for a correction in the acts when the procedure laid down in Article 432(2) of the Criminal Code had not been adhered to and without proceeding to re-do the examination of the accused and then proceeding to give a prima facie decree.

22. The Attorney General maintains that the correction in question, which related to a correction because of an error in the numerical part of a date when the date in words was correct, was a lapsus calami or lapsus komputeris and that the correction did not in any way prejudice or effect the accused.

23. Article 432(2) and (3) of the Criminal Code provide as follows:

(2) If the record of the inquiry is found to be defective through the non-observance of any of the provisions of this Code or of any other law relating to such inquiry the Attorney General may file a demand in writing that the court proceed afresh with the inquiry or that the record be rectified according to the circumstances pointing out the defect and the relative provisions of this Code or of such other law

(3) The Court shall within the term of five (50 working days which shall run from the day on which the demand is filed by the Attorney General which term may, upon a demand in writing by the court and on a just cause be caused, may be extended by the President of Malta for a further period of five (5) working days, conclude the fresh inquiry or rectify the record, and shall grant the Attorney General access by electronic means to the said record; and in such case the term for filing the indictment shall commence to run from the day on which the attorney General shall have been given access to the record of the fresh inquiry or the record as rectified.

24. This Court considers that the Attorney General was correct in not resorting to the provisions of Article 432(2) of the Criminal Code when requesting a rectification of the error in the date in figures which did not reflect the date in words which was on the other hand correct and which error was obviously a lapsus calami or komputeris, and in simply proceeding to rectify this lapsus komputeris by requesting a correction in terms of article 175(1) of Chapter 12 of the Laws of Malta which provision of the law was also made applicable to criminal proceedings as per Article 520(1)(c) of the Criminal Code. The record of the inquiry was not defective because of any non-observance of any of the provisions of the Criminal Code or of any other law and therefore Article 432(2) of the Criminal Code was not applicable and the Court of Magistrates (Gozo) as a Court of Criminal inquiry was correct in acceding to the Attorney General's request. In this regard reference is made to what was said by the Criminal Court in a ruling of the **14th. February 2008** in the case **Repubblika ta Malta vs Anthony Muscat et** wherein it was held that "Meta l-Artikolu 175 tal-Kap. 12 gie rez applikabbli ghall-proceduri kriminali l-intenzjoni tal-legislatur kienet li l-formalizmu zezjed jitnaqqas ghall-minimu possibli. Bid-digriet ghall-korrezzjoni ma gietx effettwata is-sustanza tal-azzjoni". Also in a judgement of the **16th. January 2013** in the names

‘Pulizija vs Angelo Fregapane’ the Court of Criminal Appeal in its inferior jurisdiction laid down as follows:

Huwa minnu illi min iddattilografia dan l-att nizżel din id-data. Daqstant ieħor iżda jirriżulta illi meta mtlew id-dettalji tat-timbru li hemm fuq l-ewwel faċċata, inkitbet id-data tad-19 ta’ Ottubru 2012 minn deputat reġistratur tal-Qorti, u meta mtlew id-dettalji tat-timbru tal-preżentata fuq it-tieni faċċata, ukoll tniżżlet id-data tad-19 ta’ Ottubru 2012. Barra minn hekk il-proċeduri kontra l-appellant inbdew f’dik il-ġuranta, jgħifieri d-19 ta’ Ottubru 2012, kif jider mill-eżami li sar tal-appellant (a fol. 16) u mill-verbal tal-Qorti (a fol. 17). Mela meta fuq l-ewwel faċċata għet dattilografata s-sena 2008, dan ma kien xejn ħlief *lapsus computeri*. Dan ma jwassal għall-ebda nullità. Għalhekk anke dan l-aggravju huwa miċħud.

25. In this case the correction made can by no stretch of the imagination be deemed to effect the substance of the action or in any way prejudice the accused and the acts of these proceedings and the bill of indictment cannot be declared null in terms of Article 597(4) of the Criminal Code.

26. Consequently this Court is rejecting the third preliminary plea raised by the accused.

Considered further:

27. In his **fourth preliminary plea** the accused is requesting for the removal from the acts of all the testimonies given by expert witnesses appointed by the Inquiring Magistrate and subsequently confirmed by the Court of Magistrates (Gozo) as a Court of Criminal Inquiry as well as all the viva voce testimonies and reports made by the same as well as any other reference to their work made in these proceedings and this due to the fact that the decree of appointment relating to the said experts is a general and standard form which does not specify the parameters and scope of their appointment and is consequently null and void since it is not in line with the provisions of Article 650(5) of the Criminal Code.

28. The accused does not specify to which decrees relating to the appointment of experts he is referring to. This Court examined the acts of the proceedings and concluded that reference is being made to the decrees appointing various experts by the Inquiring Magistrate at folios 122 to 142 of the acts of the proceedings. This Court could not fail to note that although the format used for the various decrees appointing each individual expert is the same, there is a separate decree of appointment for each expert and whilst in every decree there is an indication that the appointment is being made “for the purpose of examining and establishing the circumstances leading to this inquiry” in every decree there is also a clear indication of that particular expert’s line of expertise, so for example PS 659 Jeffrey Hughes was appointed as a Scene of the Crime Officer, PS602 Jonathan Attard was appointed as a ballistics expert, PS1147 Antoine Fenech was appointed as a photography expert Dr. Marisa Cassar was appointed as a DNA expert, Dr. Michael Scottham was appointed as a toxicology expert, Dr. Michael Refalo and Dr. Mario Scerri were appointed as forensic experts, Professor Marie Therese Camilleri and Dr. Ali Safraz were appointed as pathologists, Professor Saviour Formosa was appointed as a digital engineer and so forth. In the case of Dr. Daniel Aquina who was appointed as a legal expert, he was designated as the expert empowered to administer the oath and this for the purpose of examining and establishing the circumstances leading to the inquiry. These appointments were therefore made according to the provisions of Article 650(5) of the Criminal Code because they are giving the necessary direction to the experts thereby being appointed.

29. This Court considers that in every decree of appointment there is a clear and unequivocal indication of each expert’s line of expertise and therefore there is a direction of what his appointment as an expert entails. This Court refers to a ruling handed down by the Criminal Court dated **30th October 2020**, also confirmed by the Court of Criminal Appeal in its Superior jurisdiction, in **The Republic of Malta vs Alfred Degiorgio et** where this particular issue was specifically addressed and where it was held as follows:

Dan maghdud madanakollu l-Qorti tqies illi meta l-inkwirenti jahtar espert sabiex permezz tas-sengha u l-hila specjali tieghu jkun jista' jasal biex jistabbilixxi xi prova determinanti fil-kors tal-istharrig li jkun qed isir, huwa ghandu jaghti direzzjoni lil dak l-espert biss jekk ikun hemm il-htiega ghaldaqstant. Dan huwa stabbilit fl-artikolu 650(5) tal-Kodici Kriminali li jistabbilixxi d-direzzjonijiet li ghandhom jinghataw lil periti mill-qorti sabiex jespletaw l-inkarigu lilhom moghti, liema disposizzjoni ta' dritt hija applikabbli ukoll ghall-*in genere*¹:

Il-qorti, kull meta jkun hemm bżonn, tagħti lill-periti d-direzzjonijiet meħtieġa u ż-żmien li fih għandhom jagħmlu r-rapport tagħhom.

F' dan il-kaz ma kienx jenhtieg illi l-espert jinghata din is-setgha b'mod specifiku u kif inghad fi kwalunkwe kaz ix-xhieda ser jergghu jiddeponu waqt is-smiegh tal-guri.

"8. Din il-Qorti żżid tgħid, pero`, li l-Qorti (jew il-maġistrat fil-kors ta' l-inkjesta dwar l-in genere) li tinnomina espert fi branka ta' hila jew sengħa specjali m'għandhiex għalfejn tispecifika bid-dettalji kollha dak kollu li dak l-espert għandu jagħmel. Infatti l-Qorti tagħti d-direttivi meħtieġa lill-esperti kull meta jkun hemm bżonn ("... whenever it is expedient ..." fit-test Inġliż)(artikolu 650(5), Kap. 9). L-esperti hekk nominati, proprju minħabba l-expertise tagħhom, jibqagħlhom ukoll margini ta' diskrezzjoni sabiex jagħmlu "ix-xogħol u l-esperimenti li titlob il-professjoni jew is-sengħa tagħhom (artikolu 653(1), Kap. 9)."²

24. Issa, l-eċċezzjoni ta' inammissibilita` tippresupponi xi disposizzjoni tal-liġi li teskludi dik il-prova milli tingieb 'il quddiem fil-proċess. Fil-kaz odjern in-nomina ta' l-esperti saret mill-Maġistrat Inkwirenti a tenur ta' l-artikolu 548 tal-Kodici Kriminali. Imbagħad is-subartikolu (5) ta' l-artikolu 650 – reż applikabbli għall-in genere mill-ewwel proviso ta' l-imsemmi artikolu 548 – jipprovdi li: "Il-qorti, kull meta jkun hemm bżonn, tagħti lill-periti d-direzzjonijiet meħtieġa" (sottolinear ta' din il-Qorti). Naturalment sabiex ma jkunx hemm ekwivoċi hu desiderabbli li jkun hemm deskrezzjoni ta' l-inkarigu mogħti lill-

¹ Artikolu 548 Kodici Kriminali

² Ir-Repubblika ta' Malta v. Martin Dimech mogħtija fit-28 ta' Frar 2012 – App.Sup

esperti rispettivi fid-digriet tan-nomina. Fil-każ in eżami m'hemm l-ebda ekwivoku, peress illi kull wieħed mill-esperti ndika fir-relazzjoni tiegħu l-inkarigu speċifiku li kellu. Barra minn hekk, id-difiża jibqagħlha dejjem id-dritt li tikkontrolla dak li jiġi konstatat mill-esperti prodotti billi jekk hekk jidhrilha timpunja l-kompetenza, l-kredibilita` u l-affidabilita` tal-istess esperti u tal-konkluzjonijiet tagħhom.

30. In the Degiorgio judgement the Criminal Court also referred to a another ruling of the Criminal Court of Appeal in its superior jurisdiction in **Repubblika ta' Malta vs Carmelo Spiteri** wherein it was held as follows:

"Din il-Qorti ma tistax ma tosservax ukoll li fil-kors ta' l-istrutturja meta kienu qed jigu kkonfermati jew nominati d-diversi esperti, l-akkuzat -- li kien dejjem legalment assistit -- f'ebda hin ma ghamel l-icken oggezzjoni ghal dawn il-konfermi u nomini. Bhalma fissret ruhha l-Qorti Kostituzzjonali fis-sentenza tagħha fil-kaz ta' Harrington (supra), huwa ferm ingust u certament mhux konducenti ghar-retta amministrazzjoni tal-gustizzja li meta qorti tkun innominat perit, minn ikollu xi oggezzjoni ghal dik in-nomina, flok ma jgib 'l quddiem dik l-oggezzjoni minnufih sabiex il-qorti tkun tista' tikkunsidrha u, jekk ikun il-kaz tappunta lil xi hadd iehor, ihalli kollox ghaddej, imbghad fi stadju inoltrat, meta possibilment lanqas ikun aktar possibbli jew utili li ssir perizja gdida, jivventila l-oggezzjoni tiegħu. Kif tajjeb osservat dik il-Qorti fis-sentenza tagħha fil-kaz ta' Nicholas Ellul, ghalkemm "akkuzat ghandu dritt ghal smiegh xieraq izda dan is-smiegh xieraq waqt li jipprotegi l-presunta innocenza tal-akkuzat, ghandu wkoll ikun fair mas-socjeta' li tkun giet oltraggata bid-delitt³"

31. **The fourth preliminary plea raised by the accused is also hereby being rejected.**

³ Ir-Repubblika ta' Malta vs Carmelo Spiteri App. Sup. Deciza 19/04/2001

32. **The accused withdrew the fifth preliminary plea during the hearing held on the 25th. July 2023 and the Court is hereby refraining from taking further cognisance of the said plea.**

33. **The sixth preliminary plea** also refers to the appointment of certain experts in the in genere and subsequently confirmed by the Court of Magistrates (Gozo) as a Court of Criminal Inquiry namely but not limited to PC602 Jonathan Attard, PS1147 Antoine Fenech, WPc140 Kirsty Cremona and PC422 Neil Godwin Caruana. The accused insists that their appointment is null and void since they form part of the Police Force and can therefore never be considered to be independent and impartial and is therefore requesting that their reports, testimonies and any reference to the same is removed from the acts of the proceedings.. Specific reference was made by the accused to a judgement of the 8th. July 1999 handed down by the Constitutional Court in John Saliba vs the Attorney General and to another ruling handed by the Criminal Court on the 26th February 2001 in Republic of Malta vs Longino Aquilina.

34. The Attorney General on the other hand highlights the fact that the fact that the experts referred to in the sixth preliminary plea are police officers does not impinge on their impartiality. The Attorney General pointed out that the said experts were entrusted by the Court to carry out their respective tasks and duties and they submitted voluminous, detailed and meticulous record reports relating to the tasks they were entrusted with by the Court, they also testified under oath during the inquiry proceedings where the Defence had every opportunity to cross examine them and at no point in time was their integrity and impartiality questioned or put into doubt by the Defence.

35. The Attorney General also referred to what was said by the **European Court of Fundamental Human Rights** in **Nazzareno Zarb vs Malta** (application number 16631/04 in this regard wherein it was laid down as follows:

The Court reiterates that the requirements of impartiality and independence enshrined in Article 6 of the Convention only refer to

the “tribunal” called upon to determine the criminal charges against the accused and do not apply to the prosecuting authorities (see *Forcellini v. San Marino* (Dec.) no. [34657/97](#), 28 May 2002, *Priebke v. Italy* (Dec.), no. [48799/99](#), 5 April 2001, and *De Lorenzo v. Italy* (Dec.), no. [69264/01](#), 12 February 2004) or to experts. However, the position occupied by the experts throughout the proceedings and the manner in which they performed their functions is relevant in assessing whether the principle of equality of arms has been complied with (see *Brandstetter v. Austria*, judgment of 28 August 1991, Series A no. 211, p. 25, § 59). On this point, it is to be recalled that by virtue of their functions as neutral and impartial auxiliaries of the court, the statements of court appointed experts might have carried greater weight than those of an “expert witness” called by the accused (see *Bönisch v. Austria*, judgment of 6 May 1985, Series A no. 92, p. 16, § 33, and *Emmanuello v. Italy* (Dec.), no. [35791/97](#), 31 August 1999).

Admittedly, the fact that the experts charged to check and take the fingerprints at the scene of the crimes were members of the police – who owe a general duty of obedience to the State’s executive authorities and usually have links with the prosecution (see *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 712, § 56) – may have given rise to apprehensions on the part of the applicant. Such apprehensions may have a certain importance, but are not decisive. What is decisive is whether the doubts raised by appearances can be held objectively justified (see, *Brandstetter*, judgment quoted above, p. 21, § 44, and *Emmanuello*, decision quoted above).

36. This Court concurs with the reasoning of the European Court of Fundamental Human Rights in the Nazareno Zarb judgement and agrees with the submissions made by the Attorney General that the fact that an expert is a member of the police force does not mean that he will not be able to carry out the task he has been entrusted with by the Inquiring Magistrate and the Court of Magistrates as a Court of Criminal Inquiry with proper neutrality. As aptly pointed out in the Zarb judgement “to hold otherwise would in many cases place unacceptable limits on the possibility for the courts to obtain expert advice having regard in particular, to the technical skills that members of the police have in taking and comparing fingerprints (see *Emmanuello* decision quoted above) . Furthermore the applicant did not produce any element showing that the experts complained of performed their duties in a way which was not impartial and objective”.

As also aptly pointed out by the Attorney General during oral submissions, the experts referred to in the sixth preliminary plea produced detailed and meticulous reports relating to the carrying out of the tasks they were entrusted with and at no point during the compulsory stage of these proceedings did the accused question their impartiality and objectivity in the course of the carrying out of their duties.

37. This Court is therefore hereby rejecting the sixth preliminary plea raised by the accused.

Considers further:

38. That in the seventh preliminary plea the accused is contesting the admissibility of the report submitted by the expert Dr. Daniel Calleja (at folio 1118 et seq.) as well as his testimony and this because his appointment was not in conformity with the law (Article 548(1) of the Criminal Code) because he could not be appointed as an expert to hear witnesses under oath and his report should consequently be removed from the acts. The Attorney General on the other hand, whilst acknowledging that the inquiring magistrate was precluded from appointing Dr. Daniel Calleja as an expert solely for the purpose of hearing witnesses under oath, points out that from the report submitted by Dr. Daniel Calleja and from his testimony it transpires that the actual task with which Dr. Calleja was entrusted by the Inquiring Magistrate was not solely to examine witnesses but also to prepare an inventory of the contents found in the victims residence as well as the objects found in the two vehicles used by Walid Saleh Abdel Motaleb Mohammed (those bearing registration numbers HAJ-909 and JBP 086, and that for this reason alone the seventh plea should be rejected.

39. The decree at folio 122 of the acts of the proceedings dated 15th. January 2018 provides that 'Dr. Daniel Calleja (espert legali) was being appointed *'bil-fakulta li tamministra/jamministra l-gurament lix-xhieda jekk ikun il-kaz sabiex jezamina/tezamina u jistabilixxi/tistabilixxic-cirkostanzi li gabu li gabu din l-inkjesta bil-poter li jaghti l-gurament.'*" Dr. Calleja's report (at folio

1118 et sequitur of the acts of these proceedings) specifies that the task with which Dr. Calleja was entrusted by the Inquiring Magistrate was ‘sabiex isir inventarju tal-oggetti li insabu gewwa Dresden Flat 2, Triq it-Tempju tal-Imramma, Sannat, Ghawdex u taz-zewg vetturi li kien juzufriwixxi minnhom bin-numru tar-registrazzjoni HAJ-909 u JBP 086 wara l-omicidju ta’ Walid Salah Abdel Motaleb Mohammed” and that subsequently the Inquiring Magistrate verbally instructed him to elevate the objects found in the victim’s residence and to deposit them in the acts of the inquiry. The only witness heard under oath by Dr. Calleja was Francis Fava, the lessor of the property where the victim resided. The said Fava is indicated as a witness in the list of witnesses attached to the bill of indictment and will therefore give his testimony in the trial by jury.

40. The third proviso to Article 548(1) of the Criminal Code lays down that *‘without prejudice to the provisions of Article 552(2) no expert shall be appointed solely for the purpose of examining witnesses on oath and taking down their depositions in writing and establishing the relevant facts, where the offence to be investigated is one which carries a maximum term of imprisonment of seven years or more’*. In this case there is no contestation about the fact that the offence being investigated carried a maximum term of imprisonment exceeding seven years and that therefore no expert could be appointed solely for the purpose of examining witnesses under oath.

41. In this regard the Court refers to a ruling handed down by the Criminal Court on **the 6th. December 2022** in **ir-Repubblika ta’ Malta vs Carl Caruana** where a similar plea had been raised whereby it was laid down as follows:

- i. Minn qari akkurat tal-Liġi kwindi jirriżulta kif il-Maġistrat Inkwirenti għandu s-setgħa li jaħtar sabiex jassistuh fl-inkjesta dawk l-esperti li hu jikkunsidra meħtieġa skont il-każ li jkun u filwaqt li jagħtihom dawk id-direzzjonijiet li jqis opportuni, jista’ wkoll jiddelega lilhom bil-fakulta’ li jisimgħu x-xhieda u jirċievu dokumenti taħt ġurament u dan in konnessjoni mar-reat li jkun ġie hekk iddenuncjat mill-Ispettur ai termini tal-Artikoli 540 u 546 et sequitur tal-Kodiċi Kriminali, Kapitolu 9 tal-Liġijiet ta’ Malta. Pero, permezz ta’ Att XXIV tas-sena 2014, it-tielet proviso tal-Artikolu 548(1) tal-Kodiċi Kriminali ġie emendat biex b’hekk din is-setgħa ta’ delegazzjoni tal-Maġistrat

Inkwirenti ma baqgħetx wiesgħa in kwantu f'każ fejn ir-reat iddenunċjat **ikun wieħed li jgorr piena massima ta' seba' snin priġunerija jew aktar**, il-Maġistrat Inkwirenti ma jistax jaħtar espert **biss** sabiex jisma' x-xhieda bil-ġurament u jieħu x-xhieda tagħhom bil-miktub u jistabbilixxi l-fatti rilevanti.

- ii. F'dan il-każ, ud-Difiża ssostni li Dr. Martha Mifsud ġiet nominata preċiżament sabiex twettaq dawk il-mansjonijiet li l-Liġi stess ma tippermettix li jsiru f'każijiet fejn ir-reat in meritu jeżorbita l-piena ta' seba' snin priġunerija jew iżjed. Huwa minnu li l-mansjoni mogħtija lil Dr. Mifsud ma kienetx biss li tisma' xhieda bil-ġurament u tistabbilixxi l-fatti rilevanti in kwantu ġiet maħtura sabiex "sabiex bl-esperjenza legali tagħha tiġbor u tippreserva l-provi u tistabbilixxi tramite l-expertise tagħha fil-liġi n-natura tar-reat u jekk hemm malvivent li jista' jiġi identifikat". Iżda fil-verita, dawn huma mansjonijiet li l-Liġi stess trid li f'dawk il-każijiet ta' reati ipotizzati li jgorrri piena ta' seba' snin jew iżjed ma jiġux delegati lil ħaddieħor mill-Maġistrat Inkwirenti. Fil-fatt Dr. Mifsud għamlet konstatazzjonijiet ta' fatt u ta dritt li huma riżervati għall-Maġistrat Inkwirenti b'disposizzjoni espressa tal-Liġi. Iżda anke hekk il-Liġi ġiet mibdula fl-2014, il-Leġislatur ma semma xejn dwar x'konsegwenzi jista' jkun hemm fil-każ li Maġistrat ma jimxix kelma b'kelma ma dak li jipprovdi l-artikolu 548 tal-Kodiċi Kriminali.
- iii. Fil-fatt, konsiderazzjoni simili kienet saret fil-kawża fl-ismijiet **Ir-Repubblika ta' Malta vs. Carmel Saliba** deċiża nhar it-2 ta' Mejju 2013 fejn il-Qorti tal-Appell Kriminali (Sede Superjuri). F'dak il-każ, il-Liġi kienet għadha mhix emendata u t-tielet proviso tal-artikolu 548 tal-Kodiċi Kriminali kien jipprovdi li

Iżda wkoll, bla ħsara għad-disposizzjonijiet ta' l-artikolu 552(2), ebda espert ma għandu jinħatar biss sabiex jisma' x-xhieda bil-ġurament u jieħu x-xhieda tagħhom bil-miktub u jistabbilixxi l-fatti rilevanti.

- iv. Dak il-każ ukoll kien jitratta allegazzjonijiet ta' tentattiv ta' omiċidju volontarja bl-użu ta' arma tan-nar. F'dak il-każ ġara li l-Avukat Dottor Stefano Filletti kien ġie maħtur bħala espert tekniku matul il-kors tal-in genere. Intqal hekk:

20. Issa, mill-proċess verbal jirriżulta illi fid-digriet tannomina ta' l-esperti il-Maġistrat Inkwirenti nnomina lill-Avukat Dottor Stefano Filletti "bħala espert legali biex jieħu x-xhieda neċessarji u jstabilixxi l-fatti kollha rilevanti dwar il-każ". Jiġifieri l-Avukat Filletti ġie nominat preċiżament biex jagħmel dak li l-Liġi stess tgħid li m'għandux isir. B'danakollu il-liġi ma kkominat ebda nullita` marbuta man-nuqqas tal-Maġistrat Inkwirenti. Ma hemm xejn x'jeskludi li l-Avukat Filletti jiġi prodott bħala xhud ordinarju sabiex jixhed dwar il-konstatazzjonijiet fattwali li huwa għamel meta aċċeda fuq il-post ta' l-incident u biex jikkonferma l-korrettezza taddikjarazzjonijiet li sarulu

u li ġew riportati minnu, naturalment safejn dan ikun meħtieġ. Għalhekk ma hemm xejn li jostakola l-użu tad-dikjarazzjonijiet msemmija, kemm mill-prosekuzzjoni kif ukoll mid-difiża għall-finijiet ta' kontroll, għaladarba x-xhieda kollha minnu mismugħa xehdu waqt il-kumpilazzjoni u sejrin jiġu prodotti sabiex jixhdu viva voce waqt il-ġuri. Kwindi, u salv dak li jipprovdi l-ewwel proviso tas-subartikolu (2) ta' l-artikolu 646 tal Kodiċi Kriminali,⁴ ir-relazzjoni ta' l-Avukat Filletti għandha tibqa' parti mill-provi iżda ma titqassamx lill-ġurati. Difatti xiehda preċedenti tinqara u titqassam f'każ li fl-okkażjoni li jkun qiegħed jiġi ċelebrat il-ġuri, "ix-xhud ikun mejjet, ikun barra minn Malta jew ma jkunx jista' jinsab".

- v. F'dan il-każ in disamina, il-Legislatur kien laħaq emenda l-Liġi b'mod li preskriva fejn Maġistrat Inkwirenti setgħa jiddelega l-poter li Maġistrat Inkwirenti setgħa jiddelega lil espert tekniku l-possibilita li jisma' xhieda bil-ġurament u jieħu x-xiehda tagħhom bil-miktub u jistabbilixxi l-fatti rilevanti. Illum allura ebda espert ma għandu jinħatar biss sabiex jisma' x-xhieda bil-ġurament u jieħu x-xiehda tagħhom bil-miktub u jistabbilixxi l-fatti rilevanti, meta r-reat li għandu jiġi investigat hu wieħed li hu punibbli bi piena massima ta' prigunerija għal seba' snin jew aktar. A contrario sensu allura f'dawk il-każijiet fejn ir-reat li għandu jiġi investigat hu wieħed li hu punibbli bil-piena massima ta' anqas minn seba' snin prigunerija huwa possibbli li Maġistrat jaħtar tali espert biex jisma' x-xiehda bil-ġurament, jieħu x-xiehda tagħhom bil-miktub u jistabbilixxi l-fatti rilevanti.
- vi. Iżda għalkemm ix-xenarju legali huwa differenti minn dak li kien applikabbli għall-każ **Saliba** fejn id-divjet tan-nomina kienet waħda ta' natura ġenerika, filwaqt li issa hija ta' natura speċifika, simili għas-sitwazzjoni legali fi żmien is-sentenza **Saliba** minkejja tali emenda fl-2014, il-Legislatur naqas milli jsemmi x'konsegwenzi jikkonsegwu fil-każ fejn Maġistrat imur kontra l-kelma esplicita tal-Liġi u jaħtar espert biss sabiex jisma' x-xhieda bil-ġurament u jieħu x-xiehda tagħhom bil-miktub u jistabbilixxi l-fatti rilevanti, meta r-reat li għandu jiġi investigat hu wieħed li hu punibbli bi piena massima ta' prigunerija għal seba' snin jew aktar.
- vii. Isegwi għalhekk li r-raġunament superjuri tal-Qorti tal-Appell kolleġjalment komposta għadu jagħmel stat interpretattiv b'saħtu in kwantu fin-nuqqas ta' tali konsegwenza legalment komminabbli

⁴ (2) Ix-xiehda tax-xhieda, sew kontra kemm favur l-imputat jew akkużat, kemm-il darba tkun ittieħdet bil-ġurament matul il-kompilazzjoni, skont il-liġi, tista' tingiebb bħala prova: Basta li x-xhud jingiebb ukoll fil-qorti biex jiġi eżaminatvivoce kif provdut fis-subartikolu (1) ħlief jekk, meta jitqiesu ċ-ċirkostanzi tal-każ, huwa evidenti lill-Qorti li xhieda viva voce tista'tikkawża ħsara psikoloġika lix-xhud u jekk ix-xhud ikun mejjet, ikunbarra minn Malta jew ma jkunx jista' jinsab u bla ħsara għad-dispożizzjonijiet tas-subartikolu (8):Iżda wkoll meta x-xhud ikun minuri taħt is-sittax-il sena utingiebb bi prova reġistrazzjoni bl-awdjo u bil-video tax-xiehda tal-minuri, il-minuri ma għandux jingiebb biex jiġi eżaminat viva voce.

b'disposizzjoni espressa tal-Liġi, l-effetti ta' dik is-sentenza jippervadu wkoll it-territorju ta' dan il-każ.

42. In view of the abovementioned considerations this Court is partially acceding to the seventh preliminary plea on the lines of what was laid down in *Ir-Repubblika ta' Malta vs. Cammel Saliba* as of quoted above in the sense that there is nothing which precludes Dr. Daniel Calleja being produced as an ordinary witness in order to ascertain and establish the facts that resulted during the site inspections carried out by him and to confirm the correctness of the declarations made to him as reproduced in his report so that both the Prosecution and the Defence can use these declarations as a means of exercising control over the witnesses who also gave evidence during the compulsory stage of the proceedings and will also give viva voce evidence during the trial by jury. Therefore and save what is provided in the first proviso to subarticle (2) of Article 646 of the Criminal Code Dr. Daniel Calleja's report should remain in the acts of the proceedings but shall not be passed on to the jurors (except when requested by either of the parties for the purpose of exercising control over a witness).

Considers further:

43. In his **eighth preliminary plea** the accused is attacking the admissability of all the witness depositions at folio 24 (Christiana Vella), at folio 1069 (Victor Vella) at folio 1639 (Derrick Vella) and at folio 1746 (Christian Curmi) of the acts of the proceedings since it transpires from the said acts that when Dr. Claire Caruana, Dr. Larry Formosa, Dr. Jonathan Mintoff and Mr. Anthony Mizzi were appointed as interpreters to translate from the Maltese language to the English language and vice versa they were not administered the oath of appointment as required ad validatem according to Article 391(2) of the Criminal Code and thus according to the accused and in line with the maxim quod nullum est nullum producit effectum all such witness depositions and any reference to them should be removed from the acts of the proceedings.

44. Article 391(2) of the Criminal code does in fact provide that at the request of the accused a sworn interpreter shall be employed to translate a deposition of a witness into the language in which the written proceedings are being conducted. In this case the proceedings are being conducted in the English language and the witnesses in question testified in Maltese and an interpreter was thus appointed by the Court of Magistrates Gozo as a Court of Criminal Inquiry to translate their depositions into the English language for the benefit of the accused. The minutes of the sittings whereby the said witnesses testified and the relative transcriptions of their testimonies effectively do not indicate that the interpreters were administered the oath. This Court however deems that the failure to administer the oath to the interpreters does not bring about the nullity of the proceedings or the inadmissibility of the depositions of the witnesses whose testimonies the interpreters were tasked to translate into the English language for the benefit of the accused so that he could comprehend what was being said and be able to effectively participate in the proceedings. Article 3(d)(e) of Chapter 189 of the Laws of Malta, Judicial Proceedings (Use of the English Language) Act provides as follows:

(d) where a court has ordered proceedings to be conducted in the English language, that language shall be used in all subsequent stages of the proceedings, unless the order is revoked by that court or any other court before which the proceedings are pending;

(e) where the evidence of witnesses is to be taken down, it shall be taken down in Maltese, except where it is given in English, in which case it shall be taken down in English:

Provided that where the evidence is taken down in English in proceedings which are conducted in the Maltese language or in Maltese in proceedings which are conducted in the English language, a translation of such evidence into the language in which the proceedings are being conducted shall be inserted by the registrar in the record of the proceedings as soon as practicable.

45. Additionally all the witnesses referred to were themselves administered the oath and the translations of their depositions from the Maltese language into the English language were duly ordered by the Court and are inserted in the acts of these proceedings, except for the testimony of Christiana Vella of

the 2th.May 2021 where the translation made by the interpreter Dr. Claire Caruana was recorded and transcribed hence eliminating the necessity for a translation to be ordered.

46. Having made these considerations this Court does not consider that the fairness of the proceedings against the accused has been prejudiced and is therefore rejecting the eighth preliminary plea.

Considers further:

47. In his **ninth preliminary plea** the accused attacks the admissibility of parts of the testimony of Christiana Vella given on the 28th. May 2021, particularly what was said by the said witness at folios 44 to 50 of the acts of the proceedings, since according to him this constitutes hearsay evidence and must therefore be removed from the acts. The accused maintains that this is not a question of mere relevance which therefore must be regulated by the trial judge and that hearsay evidence is non-evidence and would therefore prove to be prejudicial to the accused if admitted in the acts of the case. The Attorney General on the other hand rebuts that hearsay evidence is admissible in a court of law when it is not evidence of a fact per se but evidence of what someone said about something and not evidence about something which happened. The Attorney General points out that the part of Christiana Vellas testimony to which the accused is referring to is that where she is relating to what her daughter told her and it therefore cannot be excluded a priori at this stage of the proceedings because at trial stage the judge presiding the trial by jury would be able to point out and explain the rules pertaining to hearsay evidence to the jurors and only at that stage would it be possible to decide whether or not to discard that part of Christiana Vella's testimony which refers to what her daughter told her.

48. This issue insofar as as the hearsay evidence exclusionary rule is concerned was addressed by the Criminal Court in the **Muka** judgement where it was held that Article 645 of the Criminal Code rendered the

provisions of Articles 598 and 599 of Chapter 12 of the Laws of Malta applicable to criminal procedure, and stated:

598(1) As a rule, the court shall not consider any testimony respecting facts the knowledge of which the witness states to have obtained from the relation or information of third persons who can be produced to give evidence of such facts.

(2) The court may, either ex officio or upon the objection of any party, rule out or disallow any question tending to elicit any such testimony.

(3) Nevertheless the court may require the witness to mention the person from whom he obtained knowledge of the facts to which any such question refers

599. The court may, according to circumstances, allow and take into consideration any testimony on the relation of third persons, where such relation has of itself a material bearing on the subject-matter in issue or forms part thereof; or where such third persons cannot be produced to give evidence and the facts are such as cannot otherwise be fully proved, especially in cases relating to births, marriages, deaths, absence, easements, boundaries, possession, usage, public historical facts, reputation or character, words or deeds of persons who are dead or absent and who had no interest to say or write a falsehood, and to other facts of general or public interest or of public notoriety

- i. This exclusionary rule was also addressed by the Criminal Court in **Ir-Repubblika ta' Malta vs. George Degiorgio, Alfred Degiorgio u Vincent Muscat** in a judgment dated 30th October 2020 where reference was also made to a previous ruling in **Ir-Repubblika ta' Malta vs. Mario Azzopardi** handed down on the 24th October 2011:

Il-każ li mhux l-ewwel darba li ġie ċitat b'approvazzjoni dwar il-hearsay rule f'kawżi ta' natura kriminali huwa **Subramaniam v. Public Prosecutor** fejn insibu dan il-kliem:

“Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made.’

Jekk wieħed jeżamina l-ewwel sentenza tal-artikolu 599 tal-Kap 12, wieħed jista' jikkonkludi li l-hearsay rule fil-Liġi tagħna mhix daqshekk assoluta. U fil-fatt hekk qalet il-Qorti Kostituzzjonali hija u tiddeċiedi il-każ '**Joseph Mary Vella et versus Il-Kummissarju tal-Pulizija**' (13 ta' Jannar 1988) fejn il-Qorti kkonfermat digriet tal-Prim'Awla biex

jithalla jixhed Prokuratur Legali li kien marbut bis-sigriet professjonali. Dan thalla jixhed mingħajr ma kellu jikxef isem it-terza persuna li kienet qaltlu biex il-fatti li fuqhom kellhom jixhed il-Prokuratur Legali.

Peress li d-depożizzjoni, li tista' tkun hearsay, tista' tkun prova diretta li ntqal xi haġa, ma tistax tiġi eskluża fl-istadju tal-eċċezzjonijiet preliminari. (sottolinjar tal-Qorti)

F'dak li huma deċiżjonijiet kriminali, il-Qrati tagħna issa ilhom sew isegwu l-prattika dwar il-hearsay rule. (Ara dwar dan il-punt: Ir-Repubblika versus Meinrad Calleja⁹). Reċentement il-Qorti tal-Appell Kriminali diversament preseduta qalet hekk: 9 Appell Kriminali Ir-Repubblika ta' Malta v. Meinrad Calleja, 26 ta' Mejju 2005:

“Kwantu ghax-xiehda ta' Clarissa Cachia l-ewwel Qorti kienet ċara meta spjegat li l-kontenut ta' dak li qalet lill-Pulizija, fl-assenza tax-xiehda diretta tagħha, ma kienx jagħmel prova la kontra u lanqas favur lakkużat. Mill-banda l-oħra spjegat korrettement li ċ-ċirkostanza li qalet ċertu diskors setgħet tittiehed bhala ċirkostanza li tikkorrobora dak li seta' qal haddiehor.”

Fil-limiti tal-użu li għamlet l-ewwel Qorti tal-okkorrenza msemija, ma hemm xejn irregolari. Hu ben stabbilit li waqt li prova hearsay ma hix prova tal-kontenut ta' dak li jiġi rapportat li ntqal, hi prova li dak rapportat li ntqal fil-fatt intqal fiċ-ċirkostanzi, data, post u ħin li ntqal u in kwantu tali hi ċirkostanza li meħuda ma' provi u ċirkostanza oħra tista' wkoll tikkontribwixxi għall-apprezzament li tagħmel il-Qorti.' (1 ta' April 2011 'Il-Pulizija versus Fabio Schembri' preseduta mis-S.T.O. il-Prim Imħallef Dr Silvio Camilleri).”

Fis-sentenza tagħha tal-5 ta' Lulju 2012 fl-istess ismijiet, mbaghad, il-Qorti tal-Appell kienet ikkummentat hekk:

“18. ... Ilu ben stabbilit minn din il-Qorti, kif anki rilevat mill-ewwel Qorti fis-sentenza tagħha, li mhux kull relazzjoni ta' x'qal haddiehor tikkostitwixxi hearsay evidence iżda jekk dak rapportat hux hearsay evidence jew le jiddependi mill-użu li wiehed jippretendi li jsir minn dak rakkontat. Jekk dak rakkontat jiġi preżentat bhala prova tal-kontenut tiegħu allura dak ikun hearsay evidence u bhala tali inammissibbli iżda jekk dak rakkontat jiġi preżentat mhux bhala prova tal-kontenut tiegħu iżda bhala prova li dak li ntqal verament intqal fiċ-ċirkostanzi ta' data, post u ħin li fihom intqal allura dan ma jkunx hearsay evidence u huwa ammissibbli għal ċerti għanijiet legali legittimi bhala sabiex tiġi kontrollata x-xiehda diretta tax-xhud li l-kliem tiegħu ikun qiegħed jiġi rapportat jew, fiċ-ċirkostanzi idoneji, anki sabiex tiġi korroborata xiehda diretta oħra. Huma għal dawn ir-raġunijiet, kif tajjeb spjegat l-ewwel Qorti, li din it-tip ta' xiehda ma tistax tiġi eskluża a priori iżda d-deċiżjoni dwar l-opportunita` o meno li titthalla tingħata dik ix-xiehda u titqiegħed quddiem il-ġurija trid neċessarjament tiġi rimessa lill-Imħallef togat li jippresjedi l-ġuri li jkun tenut jagħti d-deċiżjoni tiegħu

skont iċ-cirkostanzi li fihom jiżvolġi l-ġuri u skont l-esiġenzi evidenzjarji u proċedurali tal-proċess. (sottolinjar tal-Qorti)

21. Iżda huwa proprju għalhekk li l-proċess tal-ġuri huwa presedut mill-Imħallef toġat sabiex dan jassigura li tali abbuż ma jsirx. L-abbuż hu possibbli għar-rigward ta' kull regola legali tal-evidenza iżda dan ma jfissirx li minħabba tali possibilita` ta' abbuż dik ir-regola għandha tiġi skartata. Ir- rimedju hu dak li pprovdiet il-liġi u cioè` li l-Imħallef li jkun jippressjedi l-ġuri ma jhallix l-abbuż jiġri suġġett dejjem għas-salvagward aħħari tad-dritt tal-appell tal-akkużat fl-eventwalita` li l-Imħallef jonqos milli jeżerċita sew is-setgħat tiegħu skont il-liġi.

49. The ruling given by the Criminal Court in **Ir-Repubblika ta' Malta vs. George Degiorgio, Alfred Degiorgio, Vincent Muscat** was confirmed by the Court of Criminal Appeal (Superior Jurisdiction) in its judgment of the 22nd September 2021 wherein it was held as follows:

Illi r-regola dwar il-hearsay evidence jehtieg li tkun ukoll, jekk mhux qabel kollox, vista mill-ottika ta' dak li jiġri fil-prattika u fl-assjem tal-process kriminali kollu. Meta xhud jirrakonta l-verzjoni tiegħu u jesprimi haga li qallu haddiehor hemm l-impresjoni zbaljata li jew il-gudikant jew il-magistrat fil-vesti kumpilatorja jaqbzu fuqu u jiddikjaraw l-inammissibilita' ta' dak li jkun qal. **Dak li jiġri fir-rejalta' hu, bhal fil-kaz odjern, li l-ufficjal prosekutur qua xhud, spjega kif gabar l-informazzjoni kollha minghand l-esperti u s-subalterni tiegħu u ta stampa tal-investigazzjoni sabiex, bhalma invariabilment jiġri fi processi ta' din in-natura, dak li jkun jista' jaqbad art u jifhem il-komplessita' tal-kaz. Issa meta jixhed viva voce quddiem il-ġuri, xhud mhux necessarjament, anzi difficli, jirrakonta kelma b'kelma u bl-istess sekwenza dak li jkun iddepona quddiem l-Istrutturja. Allura mhux inaspettat li jghid ukoll hwejjeg li jistgħu jammontaw għall-hearsay.**⁵ U hafna drabi ukoll ma tqumx il-kwistjoni sakemm in kontro-ezami l-persuna fuq il-pedana tkun mistoqsija kif saret taf jew ma tafx dak li qalet hi stess jew jekk qalitx hekk ghaliex semghatu minghand terz jew terzi. Xjiġri, f'dak il-kaz, iqum chaos shih waqt il-ġuri?; jkun xolt il-ġuri?; tintalab sottomissjoni u decizjoni dwar punt ta' ligi fl-assenza tal-gurati? – xejn minn dan. Dak l-“incident” ikun rimess għall-gudizzju tal-gurati fil-hin tad-deliberazzjoni tagħhom wara li l-Imħallef, kif obligat, jkun spjega lill-gurati r-regola tal-hearsay evidence u dik dwar il-valur probatorju sabiex jiddeciedu huma jekk dak li ntqal u li kien maghruf tramite terzi kienx segwit b'xhieda li jikkonfermaw il-kontenut ta' dak li jkun ddepona x-xhud.

⁵ Emphasis of this Court.

50. Based on the ruling in **Mario Azzopardi** (which judgement was also confirmed by the Court of Criminal Appeal collegially composed) and the **George Degiorgio et** ruling, this Court considers that that part of Christiana Vella's evidence referred to by the accused in his ninth preliminary plea cannot be declared as hearsay and inadmissible a priori and at this point in time when it still needs to be established whether the object of that evidence is not to establish the truth of the statement but the fact that it was made or whether it can be used to exercise control over other direct and admissible evidence.

51. In the light of the above considerations this Court is hereby rejecting the ninth preliminary plea.

Considers further:

52. In his tenth preliminary plea the accused attacked the admissibility of all CCTV camera recordings, stills and reports pertaining to the same and this due to the fact that these recordings were downloaded by the Police themselves and then passed on to the court appointed expert rather than being extracted by the experts themselves and moreover the original owners of the CCTV recordings were never brought to testify in the compilatory stage of the proceedings thus resulting in a serious defect in the chain of evidence according to the accused.

53. The Attorney General on the other hand rebuts that the downloading of CCTV footage does not involve special expertise and is therefore not something which necessarily needs to be done by an expert. Consequently there is no serious defect in the chain of evidence because the footage was downloaded by the police officers themselves and then passed on to the court appointed experts for analysis.

54. The CCTV footage referred to and exhibited in the acts of these proceedings was downloaded by police officers who gave their testimony during the

compilatory stage of the proceedings and will also give evidence during the trial by jury and passed on the relative footage to be analysed by the court appointed experts. The experts declared under oath and in their official capacity as experts to the Inquiring Magistrate how they came about the respective footage and what they did in the performance of their functions. As part of their task these experts confirmed how they established the provenance of the CCTV footage analysed by them. They also gave the date, place, time and ownership of these footages. In the ruling handed down by the Criminal Court in **Republic of Malta vs Daniel Muka** it was established that *'this created a iuris tantum presumption in favour of the authenticity, genuineness, correctness and truthfulness of their declarations, work as well as the said footage which was at the basis of their reports'*.

55. More importantly in the **Muka** ruling it was also laid down as follows:

- i. These reports were filed during the proceedings before the Court of Magistrates (Malta) as a Court of Criminal Inquiry. If Defence had any doubts relating to the declared provenance of the footage, or the authenticity of the same, they had the opportunity to question it at that stage. Yet it did not result that any such questions or issues were raised at that compilation of evidence stage.
- ii. While it was true that Maltese Law of Criminal Procedure made it incumbent on the Prosecution to prove its case beyond a reasonable doubt, and that Defence was not obliged to prove anything in a criminal trial, on the other hand, Maltese Law of Criminal Procedure provided a compilation of evidence stage which served an instructory function in relation to that same evidence. This function envisaged all parties to the criminal proceedings having the possibility to engage actively in that process. The accused had the right - and power - to summon any person or witness he deemed fit to prove any point in his favour, or to confute any issue, document or witness, or challenge the same - using the means available to the State, and at the expense of the State, in terms of article 405(5) of the Criminal Code. If the accused thought that a piece of evidence was not properly brought in the case by the Prosecution, or had doubts as to its authenticity, the accused had the right to act immediately at source and challenge that piece of evidence through the means available to him so that he could also produce that challenging evidence later on during the trial.

iii. If Defence had any doubts about the correct provenance or authenticity of the said footage - despite what was mentioned by the experts in their report - Defence had all the opportunity open to it to raise that point and contest the said provenance by summoning the actual owners of the footages as their witnesses through the means provided to them during the said inquiry proceedings in terms of article 405(5) of the Criminal Code or even in their note filed in terms of article 438 of the Criminal Code. Yet no such course of action was taken by the accused at that stage and Defence did not summon any such witness in their article 438 note. From what transpired in the record of the proceedings there was nothing that showed the experts obtained the footage by resorting to illegal means.

56. This Court agrees with the Attorney General's submission that the downloading of the CCTV footage does not require any particular expertise and did not need to be carried out by the court appointed experts. Also, as pointed out in the Muka judgement quoted above, if the Defence had any doubts about the provenance or authenticity of the said footage, despite what was said in the experts' reports, they had every opportunity to raise the issue during the compilatroy stage of the proceedings but they failed to do so. In any case, the Police Officers who downloadwd the footage as well as the experts who analysed the said footage have been summoned as part of the list of witnesses of the Prosecution and will testify during the trial by jury and the Defence will have every opportunity to cross examine them in relation to all the work carried out by them involving the said footage.

57. In the light of these considerations the tenth preliminary plea is also being rejected.

Considered further:

58. That preliminary pleas eleven and twelve will be considered together since they are based on the same point of law.

59. The eleventh preliminary plea addresses the inadmissability of all documents pertaining to Interpol (exhibited at folio 1214 to 1219) and the

testimony of Inspector Bernard Charles Spiteri (at folio 1568 to 1576) which have nothing to do with the case per se but only serve the purpose of tarnishing the image of the accused and could negatively impress the jurors and by analogy this is the reason why proof of recidivism and antecedents of the accused are never submitted as evidence.

60. In the twelfth and final preliminary plea the accused in fact raises the issue of the inadmissibility of all judgements presented as a proof of recidivism by Dr. Mary Debono Borg on the 30th. September 2022 and the 21st. October 2022 and consequently requests their removal from the acts of these proceedings since he also retains that they have nothing to do with the facts of the case and would only serve to tarnish the image of the accused and negatively impress the jurors.

61. The Attorney General pointed out vis a vis the Interpol documents mentioned in the eleventh preliminary plea that the said documents were submitted by the Prosecution to strengthen their opposition to the request for bail made by the accused and whilst he agrees that they should not be shown to the jurors he also submits that they should not be removed from the acts. Likewise with regard to the documents pertaining to the proof of recidivism.

62. As to the procedure to be adopted in a situation where the accused was also indicted by the Attorney General as a recidivist in terms of Articles 49 and 50 of the Criminal Code this Court refers to a ruling **dated 27th. April 2009** in **Ir-Repubblika ta' Malta vs Gamil Abu Bakr** where the Criminal Court held as follows;

“Id-decizjoni jekk l-akkuzat - una volta misjub hati - hux recidiv jew le għall-fini tal-artikolu 49 u 50 jew xi wiehed biss minn dawn l-artikoli, hija decizjoni ta' fatt li tispetta biss lill-gurija w dana wara li jkunu taw verdett ta' htija kontra l-akkuzat u b' verdett separat, stante li kif jiddisponi l-artikolu 489 tal-Kodici Kriminali, meta l-ligi, minnhabba r-recidiva, tkabbar il-piena għar-reat li jsir wara, l-kawza għandha

titmexxa bhallikieku fl-att ta' l-akkuza ma kienx hemm migjub li, qabel, l-akkuzat kien gie misjub hati w ikkundannat u m'ghandux jinghad lill-guri li l-akkuzat kien gie qabel misjub hati w ikkundannat, hlief wara u jekk il-guri ikun iddikjara l-akkuzat hati tal-ahhar reat. In osservanza ta' din id-dispozizzjoni l-prassi minn dejjem kienet li l-Imhallef li jippresjedi l-guri, wara verdett ta' htija w wara li jinqara lill-gurati l-addebitu tar-recidiva ghall-ewwel darba w jingiebu l-provi dwar ir-recidiva - fejn dan l-addebitu ikun kontestat mill-akkuzat - u wara sottomissionijiet mill-avukati, jindirizza mill-gdid lill-gurati w "inter alia" jispjegalhom il-punti ta' dritt li jkun jirregolaw l-applikazzjoni tar-recidiva, mbaghad jitlobhom jirtiraw mill-gdid biex jaghtu verdett ulterjuri dwar l-addebitu tar-recidiva kontenut fl-Att ta' l-Akkuza. Ghalhekk jekk il-Qorti, kif issa komposta, b' Imhallef togat biss, tiddeciedi hi jekk l-addebitu tar-recidiva jirrizultax f' dan il-kaz, tkun qed tuzurpa l-funzjoni tal-gurija li hi biss kompetenti li tiddeciedi dan wara li tigi "properly addressed" mill-Imhallef togat fl-istadju oportun u cioe' wara li u jekk ikun hemm verdett ta' htija kontra l-akkuza. Konsegwentement f' dan l-istadju din il-Qorti ma tista' bl-ebda mod tesprimi ruha w tiddeciedi jekk it-termini kontemplat fl-artikolu 50 skadiex jew le f' dan il-kaz u tista' tirrizerva li taghmel dan biss waqt xi indirizz ulterjuri lill-gurati fl-istadju opportun jekk u wara li jkun hemm xi verdett ta' htija.

63. The same was held in this regard by the Court of Criminal Appeal (Superior Jurisdiction) in the ruling in the appeal lodged by the **Degiorgios and Muscat** mentioned above:

Il-Qorti hija perfettament konkordi mad-decizjoni tal-ewwel Qorti li apparti c-cahda tal-eccezzjoni ghamlitha cara li ghandu jkun hemm ottemperanza shiha mal-ligi li tipprojbixxi kwalunke xhud milli jirreferi ghall-possibbli passat tal-akkuzati hlief fejn hu hekk koncess. Dan huwa dritt sagrosant tal-akkuzati u din il-Qorti ghandha serhan il-mohh illi l-Imhallef togat, kif invariabilment isir f'kull guri, ser jiggerantixxi dan id-dritt bid-debiti twissijiet u censurazzjoni f'kaz li xhud jazzarda jaghmel dak li hu espressament projbit mil-ligi. Ventilat dan, l-akkuzati ma huma prekluzi bl-ebda mod li qabel l-inizzju jew waqt ic-celebrazzjoni tal-guri fl-assenza tal-gurati jigbdu l-attenzjoni tal-Qorti dwar fejn fit-traskrizzjonijiet tax-xiehda tirrizulta tali referenza sabiex il-Qorti tkun tista' preventivament tilqa' ghal dik ic-cirkostanza.

64. Based on the rulings in **Ir-Repubblika ta' Malta vs Gamil Abu Bakr** and **Repubblika ta' Malta vs George Degiorgio et** quoted above this Court cannot declare that the judgements exhibited by Dr. Mary Debono Borg as a proof of recidivism as inadmissable at this stage of the proceedings and

cannot order their removal from the acts of the proceedings. The Court however orders that they shall only be shown to the jurors only if and after a final verdict establishing guilt has been reached so that they can at that stage also give a verdict on the recidivism charges.

65. On the other hand the Court declares that the documents exhibited by Inspector Bernard Spiteri at folio 1214 to 1219 as inadmissible because they relate to a previous conviction of the accused in Serbia and would only serve to tarnish the image of the accused and may potentially influence the jurors and consequently orders their removal from the acts of these proceedings. At this stage the Court shall not declare the references made by Inspector Bernard Spiteri before the Court of Magistrates as a Court of Criminal Inquiry as inadmissible seeing that the general rule is that the transcripts of the deposition given by the witnesses at compulsory stage of the proceedings are not passed on to the jurors (except when requested by either of the parties for the purpose of exercising control over a witness).

66. This Court is acceding to the eleventh preliminary plea in part in the sense that it is declaring as inadmissible and consequently ordering the removal from the acts of the documents inserted at folios 1214 to 1219 and also ordering that no reference to such documents and to the past criminal conduct of the accused can be made by Inspector Bernard Spiteri during the course of his testimony unless this is rendered necessary by any one of the circumstances required by Articles 459A and 489 of the Criminal Code.

67. This Court is acceding to the twelfth preliminary plea in part in the sense that it cannot declare the judgements exhibited by Dr. Mary Debono Borg on the 30th. September 2022 and the 21st. October 2022 as inadmissible nor can it order their removal from the acts of these proceedings but orders that these judgements are not shown to the jurors unless the jurors arrive to a verdict of guilt in relation to the accused in which case proof relating to the first, second, third and

fourth accusations would have to be produced by the Prosecution unless the accused would exempt them from so doing at that stage.

Considers further;

68. In his note of the 6th. March 2023 the Attorney General raised three pleas regarding the admissibility of evidence which the accused intends to produce in terms of Article 438 of the Criminal Code. The first plea refers to the first three bullet points of point number three (3) of the list of witnesses of the note of preliminary pleas filed by the accused where the Attorney General raised the issue of inadmissibility since the accused had not indicated the proof he intends to establish with such evidence namely which judgements the accused is referring to and the names of the accused/defendants in relation to whom the judgements have been given. In his reply of the 15th. March 2023 the accused after submitting that Article 328(2) of the Criminal Code did not require the accused to specify the purpose and reasons why he intends to summon any particular witness, proceeded to indicate and explain the purpose and reasons for indicating the witnesses in the first three bullet points of point number three of the list of witnesses of his note of preliminary pleas. This Court noted that the Attorney General did not make any further submissions in relation to the inadmissibility of the said witnesses in his oral submissions relating to the preliminary pleas raised by the accused and it is therefore being understood that the objection no longer subsists once the accused has now indicated what he intends to establish by producing the said evidence. This Court is therefore rejecting this plea raised by the Attorney General.

69. The Attorney General also raised the plea of inadmissability in relation to the sworn testimony of Inspector Colin Sheldon as indicated in the sixth bullet point of point number three of the list of witnesses of the note of preliminary pleas filed by the accused because this testimony refers to ongoing investigations and could therefore preudice the said investigations. This Court agrees with the submission made by the Defence in this regard

that the issue is not one of admissibility but **rather of relevance and must** therefore be decided by the Judge presiding the trial by jury when the matter is raised during the hearing of the trial by jury. This plea raised by the Attorney General is also hereby being rejected.

70. The Attorney General finally raises an objection in relation to point number four of the list of witnesses of the note of preliminary pleas filed by the accused where the Attorney General is again raising the issue of inadmissibility since the accused has not indicated any particular witness or document he intends to produce and the proof he intends to establish with such witnesses in accordance with Article 438 of the Criminal Code because such statements of a general nature regarding witnesses are not admissible in accordance with the law. The Defence acknowledged that this objection regarding any other competent and admissible witness at law is justified and explained that the accused put down this premise *ex abundanzia cautela* and as a formality whilst fully aware that if the need arises he would have to request special permission from the presiding judge to be able to produce any other witness or evidence which was not specifically indicated in the list of witnesses in the note of preliminary pleas filed by the accused. This Court acceding to this objection raised by the attorney General.

71. Decide

Consequently:

This Court is rejecting the first preliminary plea.

This Court is rejecting the second preliminary plea.

This Court is rejecting the third preliminary plea.

This Court is rejecting the fourth preliminary plea.

This Court is hereby abstaining from taking further cognisance of the fifth preliminary plea which plea was withdrawn by the accused on the 25th. July 2023.

This Court is rejecting the sixth preliminary plea.

This Court is partially acceding to the seventh preliminary plea on the lines of what was laid down in Ir-Repubblika ta' Malta vs. Carmel Saliba as quoted above in the sense that there is nothing which precludes Dr. Daniel Calleja being produced as an ordinary witness in order to ascertain and establish the facts that resulted during the site inspections carried out by him and to confirm the correctness of the declarations made to him as reproduced in his report so that both the Prosecution and the Defence can use these declarations as a means of exercising control over the witnesses who also gave evidence during the compulsory stage of the proceedings and will also give viva voce evidence during the trial by jury. Therefore and save what is provided in the first proviso to subarticle (2) of Article 646 of the Criminal Code Dr. Daniel Calleja's report should remain in the acts of the proceedings but shall not be passed on to the jurors (except when requested by either of the parties for the purpose of exercising control over a witness).

This Court is rejecting the eighth preliminary plea.

This Court is rejecting the ninth preliminary plea.

This Court is rejecting the tenth preliminary plea.

This Court is acceding to the eleventh preliminary plea in part in the sense that it is declaring as inadmissible and consequently ordering the removal from the acts of the documents inserted at folios 1214 to 1219 and also ordering that no reference to such documents and to

the past criminal conduct of the accused can be made by Inspector Bernard Spiteri during the course of his testimony unless this is rendered necessary by any one of the circumstances required by Articles 459A and 489 of the Criminal Code.

This Court is acceding to the twelfth preliminary plea in part in the sense that it cannot declare the judgements exhibited by Dr. Mary Debono Borg on the 30th. September 2022 and the 21st. October 2022 as inadmissible nor can it order their removal from the acts of these proceedings but orders instead that these judgements are not shown to the jurors unless the jurors arrive to a verdict of guilt in relation to the accused in which case proof relating to the first, second, third and fourth accusations would have to be produced by the Prosecution unless the accused would exempt them from so doing at that stage.

This Court is rejecting the first and second plea raised by the Attorney General in his note of the 6th. March 2023 and acceding to the third plea made by the Attorney General and declaring that statements of a general nature such as that made in point four of the list of witnesses in the note of preliminary pleas of the accused regarding witnesses are not admissible according to law.

The case is being therefore adjourned 'sine die' until the outcome of any appeal lodged or/and until such time as it is appointed for the trial by jury to take place before this Court depending if an appeal is lodged therefrom or not.

**Audrey Demicoli
Judge**

ⁱ The Republic of Malta vs Daniel Muka decided by the Criminal Court on the 18th October 2022.