



The Criminal Court

Hon Madame Justice Consuelo Scerri Herrera, LL.D., Ph.D.

**Bill of Indictment 11/2015**

**The Republic of Malta**

vs

**Izuchukwu Morgan Onourah**

**Today, 13<sup>th</sup> March, 2024**

The Court

Having seen the application of the accused Izuchukwu Morgan Onourah presented in the acts of these proceedings on the 29<sup>th</sup> January 2024 wherein he stated the following:

- 1. That the accused has raised several preliminary pleas, in terms of Article 438 of Chapter 9 of the Laws of Malta;*
- 2. That the accused makes reference to the lack of accreditation of the laboratory where the suspected drug substance was analysed and therefore in view of this deficiency requests for the analysis and conclusions in the same report by the pharmacist to be expunged;*
- 3. That this is being submitted in the light of the fact that a laboratory's accreditation is a technical process in order to certify that a laboratory produces reliable results and results which can be relied on as evidence*

*and failing of which, such evidence should not be admissible and this as will be widely explained;*

4. *That in view of the above, the applicant suffered a breach of his right to a fair trial owing to the fact that as the situation stands, there are no guarantees than the analysis on the suspected illicit substance was carried out and carried out correctly according to standard. This is being said in view of the fact that this analysis carried a great weight and impact in the final determination of this case.*
  
5. *That consequently the lack of accreditation of the lab where the substance was analysed was breaching the accused's fundamental right to a fair hearing as provided for in Article 39 of the Constitution of Malta and Article 6 of the European Convention of Human Rights.*

*Therefore, in view of the above, the accused humbly requests this Honourable Court to refer the question on this matter to the Civil Court, First Hall and this in terms of Article 46(3) of the Constitution of Malta so that the said Court shall give its decision on this question, and this under any conditions which this Honourable Court would deem appropriate and opportune in circumstances;*

That the Court took note of the application presented by the defence on the 29th of January, 2024 and ordered that the same is notified to the Attorney General.

Having heard the parties put forward their submissions on the 30th of January, 2024.

**Considers,**

Primarily, this Court points out that in cases involving issues of a Constitutional manner, the powers of this same Court are strictly restricted by the Constitution of Malta. In fact, Article 46(3) of the Constitution stipulates that:

*'in any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the provisions of the said articles 33 to 45 (inclusive), that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this sub-article and, subject to the provisions of sub-article (4) of this article, the court in which the question arose shall dispose of the question in accordance with that decision.'*

That this Court is not called upon to decide on the issue at stake itself nor is it competent to decide on this matter. It only needs to determine whether in its opinion the raising of the question is merely frivolous or vexatious. If this Court is of the opinion that the question raised is *prima facie* frivolous and vexatious, then it should reject the applicant's request. However, if this Court thinks that the question raised is *prima facie* not frivolous or vexatious, it should accept the applicant's request and subsequently order a Constitutional reference.

In the judgement in the names 'Alan Mifsud et versus L-Avukat Ġenerali et',<sup>1</sup> the Court considered that:

*"frivola" riferibbilment għall-kwistjoni Kostituzzjonali li tiġi sollevata quddiem xi qorti - barra l-Qorti Kostituzzjonali jew il-Prim'Awla tal-Qorti Ċivili - tfisser li dik il-kwistjoni hija, ta' ebda preġju jew valur, vana, nieqsa mis-serjeta' manifestament nieqsa mis-sens, li ma jistħoqqilhiex attenzjoni; waqt li "vessatorja" tfisser li l-kwistjoni giet sollevata mingħajr raġunijiet suffiċjenti u b-iskop li ddejjaq u tirrita lill-kontroparti;*

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<sup>1</sup> Decided on the 23<sup>rd</sup> November, 1990.

**Considers further,**

The accused is alleging that his right to a fair hearing, as provided for in Article 39 of the Constitution of Malta and Article 6 of the European Convention of Human Rights, has been breached due to the the lack of accreditation of the laboratory where the substance was analysed.

Primarily, this Court would like to make reference to its decision, in the names **The Republic of Malta vs Izuchukwu Morgan Onuorah** dated the 28th March, 2023 whereby it stated the following:

*‘The first Article of the Council Framework Decision 2009/905 JHA on Accreditation of forensic service providers carrying out laboratory activities dated 30th November 2009<sup>2</sup> stipulates that:*

*‘The purpose of this Framework Decision is to ensure that the results of laboratory activities carried out by accredited forensic service providers in one Member State are recognised by the authorities responsible for the prevention, detection and investigation of criminal offences as being equally reliable as the results of laboratory activities carried out by forensic service providers accredited to EN ISO/IEC 17025 within any other Member State.*

*This purpose is achieved by ensuring that forensic service providers carrying out laboratory activities are accredited by a national accreditation body as complying with EN ISO/IEC 17025.’*

*The Council Framework Decision mentioned above was transposed to Maltese law by means of Subsidiary Legislation 460.31 on the 29<sup>th</sup> March, 2016. Moreover, Article 2 of the Council Framework Decision*

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<sup>2</sup> Corresponding to Article 4 of Subsidiary Legislation 460.31.

and Article 3 of the aforementioned Subsidiary Legislation both provide that the framework decision shall apply to laboratory activities resulting in DNA-profile and dactyloscopic data, both of which have nothing to do with drugs analysis. When scientist Godwin Sammut testified before this Court on the 24<sup>th</sup> March, 2021<sup>3</sup> he confirmed this when asked by the defence why the laboratory was not accredited:

'There is no obligation till to date 2021 jigifieri for the government to accredit any forensic laboratory except for the council decision which states that DNA profiles and dactyloscopic data. The council decision I am referring to in 2009/905/JHA of the 30<sup>th</sup> November, 2009 which implements and sets out criteria for the government follow this council decision. I have performed a search with the European Union and Malta is in line with this council decision. In fact n 14<sup>th</sup> May, 2020 the European Union issued a security union to Belgium and Greece who were the only two states from the European Union which had not yet fully transposed and implemented this European Commission decision. However, Malta is in line with this decision, there is no obligation for the Government of laboratory to accredit their laboratory, except for DNA and fingerprints which Malta is line with.'

**The framework decision mentioned above applies only to laboratory activities resulting in DNA-profile and dactyloscopic data, and not drug analysis. Hence, drug analysis falls outside the scope of law.** As stated in the judgment of the Court of Criminal Appeal (Superior Jurisdiction) in the names **The Republic of Malta vs Izuchuku Morgan Onourah:**<sup>4</sup>

'17. This means that the scope of the law is clear, being that of

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<sup>4</sup> Decided on the 4<sup>th</sup> October, 2023

*establishing common standards applicable in all member states with regard to the detection of cross-border crimes and in combating terrorism, particularly with the sole aim of arriving at a common identification of the persons involved in the commission of such offences and their victims.*

*With Recital 16, then, clearly stating that This Framework Decision does not aim to harmonise national rules regarding the judicial assessment of forensic evidence.*

***Necessarily implying that the sole fact there is no adherence to these rules does not in any way affect the judicial assessment which is carried out in criminal proceedings of forensic evidence on a national basis, thus including even the assessment of DNA profiles and fingerprint reports.'***

This Court also refers to the judgment in the names **Christopher Bartolo vs l-Avukat tal-Istat**<sup>5</sup> where the First Hall Civil Court (Constitutional Jurisdiction) stated the following:

*'30. Sa fejn jirrigwarda dan l-ilment għalhekk il-Qorti taqbel ma' dak li intqal diġa' minn dawn il-Qrati u cioe' li din il-liġi 'applika esklussivament għall-attivitajiet tal-laboratorji li jirriżultaw fi (a) profil ta' DNA u (b) data dattiloskopika u mhux analiżi ta' droga, u dan kif imfisser fir-regolament 3 tal-Legislazzjoni Sussidjarja 460.31. Mhux biss iżda r-regolament 6 jiddisponi illi dan "l-Ordni huwa mingħajr ħsara għal dispożizzjonijiet legali li jikkonċernaw il-valutazzjoni gūidizzjarja tal-evidenza," biex b'hekk l-ammissibilita` o meno tal-prova li trid issir permezz tar-riżultanzi forseniċi magħmula mill-espert Mario Mifsud għandha issir fit-termini tal-dritt penali fir-rigward.'* (ara digriet tal-Qorti tal-Appell

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<sup>5</sup> Decided on the 22<sup>nd</sup> June, 2021.

*Kriminali Onor. Per Imħallef Dr. Edwina Grima LL.D. Appell  
Numru: 6/2014 Il-Pulizija (Spettur Johann Fenech) -vs- Mario  
Buhagiar tas-26 ta' Ġunju, 2020)*

The Court, in the abovementioned case, rejected the accused's claim that the lack of accreditation of the laboratory where the drugs were tested infringed his right to a fair hearing. In fact, it went further and stated the following:

*'...Din il-Qorti ma taqbel xejn mal-attitudni li f'kawzi ta' natura Kostituzzjonali, fejn dak li jkun dejjem jipprova joħroġ il-fenek mill-kappell meta diġa' jkollu aggravi oħrajn li jkunu ħafna aktar ta' sustanza. Dan l-element ta' sorpriża jew ta' tqanżiħ fil-kisba ta' xi raġuni li tkun bla fundament, kapaċi jnaqqas ħafna mill-koncentrazzjoni, enerġiji u spessur ta' ħsieb li jkun hemm bżonn, tant meħtiega fil-konsiderazzjonijiet ta' aggravi aktar serji.'*

For these reasons, the Court is rejecting the applicant's request to order a constitutional reference and this because his request is frivolous and vexatious.

**Consuelo Scerri Herrera**

**Madame Justice**