CRIMINAL COURT

Hon. Mr. Justice Dr. Neville Camilleri
B.A., M.A. (Fin. Serv.), LL.D., Dip. Trib. Eccles. Melit.

Bill of Indictment Number 45/2023/1

The Republic of Malta

vs.

Goran Dimovski

Today 3rd. of October 2024

The Court,

1. Having seen the Bill of Indictment filed against the accused **Goran Dimovski**, holder of Identity Card Number 231221(A), wherein he was accused by the Attorney General in the name of the Republic of Malta of:

THE FIRST COUNT

Having, on the twenty-first (21st.) day of April of the year two thousand and twenty-two (2022) and during the previous days, with criminal intent, imported, or

caused to be imported any dangerous drug (*Cannabis Grass*) into Malta in breach of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta).

THE SECOND COUNT

Having, on the twenty-first (21st.) day of April of the year two thousand and twenty-two (2022) and during the previous days, with criminal intent, with another one or more persons in Malta, or outside Malta, conspired for the purpose of selling or dealing in drugs (*Cannabis Grass*) in the Maltese Islands against the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or by promoting, constituting, organizing or financing such conspiracy.

2. Having seen the Note of Preliminary Pleas filed by the accused Goran Dimovski together with the List of Witnesses and Documents filed on the 20th. of October 2023.[1]

3. Having seen the Note of the Attorney General filed on the 27th. of October 2023[2] in terms of Article 438(3) of Chapter 9 of the Laws of Malta, by virtue of which he brought forth preliminary pleas regarding the admissibility of evidence indicated by the accused.

4. Having seen the Reply of the Attorney General filed on the 29th. of November 2023[3] to the Note of Preliminary Pleas filed by the accused Goran Dimovski.

5. Having seen all the acts of the proceedings, including those in front of the Court of Magistrates in order to decide upon the pleas that need to be decided upon.

[1] *A fol.* 10 *et seq.*
[2] *A fol.* 16 *et seq.*
[3] *A fol.* 19 *et seq.*

6. Having heard the final oral submissions.

Considers

CONSIDERATIONS REGARDING THE PRELIMINARY PLEAS FILED BY THE ACCUSED

The First Preliminary Plea of the Accused

7. That by means of the first plea the accused complains that the evidence obtained from him during the interrogation and any verbal declaration given by him should be omitted from the acts of the proceedings. He affirms that this plea is limited to the right of having legal assistance which in this case has not been observed and that consequently this renders the statements and declarations inadmissible.

8. That during the final oral submissions the accused stressed that he was in a vulnerable state during the interrogation. In particular, the accused mentions that he had never before been involved in such matters.

9. That the Attorney General rejects the statement made by the accused that his right for legal assistance had not been observed. In this respect the Attorney General refers to the testimony tendered by Inspector Marshal Mallia who confirmed under oath that the accused had been given the right to consult with his lawyer both before and during the interrogation.

10. That this Court starts by noting that by means of the testimony given by Inspector Marshal Mallia on the 11th. of August 2023 (*a fol.* 236 *et seq.*) it transpires that the accused was given his rights by PS 66 Jonathan Pace. Inspector Mallia explains that he had personally spoken with the legal aid lawyer and given her the disclosure. Furthermore, from the transcript of the statement given by the accused it also transpires that the latter had been given his rights including his right to speak to a lawyer prior to an interrogation. From the same statement it transpires that the accused spoke to the legal aid lawyer. During the same

testimony mentioned above, Inspector Mallia also states that he had given the accused the right to have a lawyer during the statement but for some reason the legal aid lawyer was not present during the statement. Given the above, this Court deems it noteworthy to point out that from the transcript of the same interrogation the Inspector states that beforehand he had given the accused other rights. Hence it results that everything was done according to law.

11. That regarding the inadmissibility or otherwise of the statement given by the accused, this Court makes reference to the judgment delivered on the 4th. of October 2023 in the names **The Republic of Malta vs. Omar Bah** (Number 10/2018) where the Court of Criminal Appeal (Superior Jurisdiction) noted the following:

> "11. Now although it is amply clear from the evidence found in the acts that accused was administered his rights at law as applicable at the time, and although it is also uncontested that he availed himself of such right before being questioned by the police, however there is no evidence in writing of this request as outlined in article 355AT. This being premised, however, as the Attorney General rightly points out respondent's plea is directed towards the lack of legal assistance during interrogation and not prior to being questioned, the manner and duration of the exercise of this right not being put into question by accused himself.
>
> 12. Now, accused in this case, as in the other cases cited by the Criminal Court in its judgment, does not attack the probative value of the statements on any particular rule of penal law empowering the Court to reject it, but relies solely on the presumption that admitting this piece of evidence would prejudice his right to a fair hearing, having been denied the right to have his lawyer present during interrogation, resulting therefore, in his opinion,

to a denial of his right to mount a defence in a situation where incriminating statements were made to the police.

13. Reference is being made to two recent judgments which, in this Court's opinion, shed a clear light on the correct interpretation of how a statement released by a suspect without legal assistance at interrogation stage should be considered, when assessing the weight to be given to this piece of evidence.

14. "**Farrugia vs. Malta**" (63041/13) decided on the 7th. October 2019 and "**Stephens vs. Malta**" (35989/14) decided on the 14th. January 2020, set out the principle that 'systematic restrictions on the right of access to a lawyer did not lead to an *ab initio* violation of the right to a fair hearing'. These judgments confirmed the position taken by the Grand Chamber in the *Beuze* (9th. November 2018) case that in order to establish whether a statement taken without the assistance of a lawyer is deemed to violate the accused's constitutional right to a fair hearing, one must apply a two-stage test, namely whether there are compelling reasons to justify the restriction, together with an examination of the overall fairness of the proceedings, the Court thus establishing a test to be carried out on a case-by case basis, rather than laying out general rules and principles which are to govern this alleged violation where the right to legal assistance has been withheld. Each case, thus, has to be examined on its own merits by applying the *Beuze* guidelines to the specific facts presented in every individual case being assessed

15. Regarding the first test relating to the concept of 'compelling reasons' the European Court in the above-mentioned cases stated that:

"***The fact that there is a general and mandatory restriction on the right of access to a lawyer, having a***

statutory basis, does not remove the need for the national authorities to ascertain, through an individual and case-specific assessment, whether there are any compelling reasons. Where a respondent Government have convincingly demonstrated the existence of an urgent need to avert serious adverse consequences for life, liberty or physical integrity in a given case, this can amount to a compelling reason to restrict access to legal advice for the purposes of Article 6 of the Convention".

16. Referring to the domestic case in issue, it is clear that this test has not been satisfied, since no compelling reason was put forward to justify the lack of the presence of a lawyer during interrogation, other than the fact that it was not permissible by law at the time when it was released by accused.

17. However this test alone does not automatically render such a statement inadmissible at law since the second test laid out by the ECtHR has to be overcome when deciding whether a statement should or should not be expunged from the records of the proceedings. The 'overall fairness' assessment of the proceedings must be examined in order to assess the weight which is to be given to the statement released at interrogation stage, as a piece of evidence when reaching judgement. The ECtHR provided the following non exhaustive list of factors to be taken into account.

> *(a) whether the applicant was particularly vulnerable, for example by reason of age or mental capacity;*
>
> *(b) the legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with – where an exclusionary rule applied, it is particularly*

unlikely that the proceedings as a whole would be considered unfair;

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

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

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

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

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

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

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

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

18. Since in the present case the proceedings are still at pretrial stage it would be outside the remit of this Court, at this juncture, to examine whether these criteria have been satisfied since the trial has not taken place, and also because the Court cannot, at this stage enter into the merits of the case and comment on the weight to be given to any evidence found in the acts, such exercise entrusted solely to the jury at the trial, with this Court also precluded from addressing any matter having constitutional ramifications. Having thus premised, however, if at this stage of the proceedings it results to the Court that any one or more of the criteria laid out by the ECtHR constitute a serious and blatant prejudice to the administration of justice then this would justify the expunging of the statement released by the accused from the acts prior to the celebration of the trial by jury, and this in the supreme interest of justice.

19. In this particular case, however, during committal proceedings, accused did not allege that the police had exerted pressure on him during interrogation, or that his statement was obtained by means of promises or suggestions of favour. He did not allege that he was in a vulnerable state prior to releasing his statement, nor did he allege that he was not explained his rights at law, foremost amongst which his right to silence. Moreover, it does not appear that accused is alleging that his statement was released in violation of article 658 of the Criminal Code. Neither did accused, during committal proceedings, request to bring forward any evidence suggesting otherwise and this as was his right in terms of article 405(5) of the Criminal Code.

[…]

22. The Court thus concludes that each and every case has to be examined on its own merits taking into account the particular circumstances in which the statement was released by the accused. In this case accused failed to show, at this stage of the proceedings, the manner in which his statement released during interrogation is going to seriously prejudice his right to a fair hearing. The fact that the statement was given in the absence of a lawyer does not in itself, in the light of the circumstances relevant to this case, render this evidence inadmissible at law."

12. That this Court refers also to the judgment delivered on the 4th. October 2023 in the names **Ir-Repubblika ta' Malta vs. Matthew Zarb et** (Number 17/2013) where the Court of Criminal Appeal (Superior Jurisdiction) stated the following:

"19. "**Farrugia vs. Malta**" (63041/13 deċiża fis-7 ta' Ottubru 2019) u "**Stephens vs. Malta**" (35989/14) deċiża fl-14 ta' Jannar 2020, fasslu il-prinċipju illi '***systematic restrictions on the right of access to a lawyer did not lead to an ab initio violation of the right to a fair hearing***'. Dawn is-sentenzi jikkonfermaw il-ħsieb adottat preċedentement mill-QEDB fil-każ *Beuze* fejn kien stabbilit illi sabiex ikun determinat jekk l-istqarrija rilaxxata mingħajr l-assistenza ta' avukat twassalx għal vjolazzjoni tad-drittijiet tal-akkużat għal smigħ xieraq, irid ikun investigat jekk kienx hemm raġunijiet impellenti li jiġġustifikaw din ir-restrizzjoni, u ukoll għandu jkun mistħarreġ il-kriterju tal-hekk imsejjaħ *"overall fairness"* tal-proċeduri fl-intier tagħhom. Illi allura l-QEDB dejjem saħħqet illi l-evalwazzjoni dwar jekk seħħitx din il-vjolazzjoni ssir in bażi għaċ-ċirkostanzi fattwali u legali partikolari għall-kull każ u li għalhekk mhux possibbli li jittieħed approċċ uniku u uniformi b'mod ġenerali applikabbli għal każijiet kollha billi kull każ irid ikun eżaminat għalih, kif ingħad.

[....]

23. Issa ġaldarba f'dan il-każ, il-proċeduri għadhom fi stadju bikri fejn għad irid jkun iċċelebrat il-ġuri, il-Qorti, ma għandhiex is-setgħa li teżamina Hi jekk dawn il-kriterji hawn fuq iċċitati humiex sodisfatti u dan għaliex, kif ingħad, il-ġuri għadu ma seħħx, b'din il-Qorti, u il-Qorti Kriminali, qabilha ma tistax f'dan l-istadju tidħol biex teżamina il-mertu tal-każ u tikkumenta fuq l-evidenza ikkumpilata, billi dan l-eżerċizzju għandu ikun rimess unikament f'idejn il-ġurija popolari, kif lanqas tista' din il-Qorti tidħol biex teżamina vjolazzjonijiet ta' xejra kostituzzjonali. Magħmula dawn il-konsiderazzjonijiet, din il-Qorti hija tal-fehma illi huwa biss fis-sitwazzjoni fejn jirriżultalha, f'dan l-istadju, li huwa evidenti li xi waħda jew aktar mill-kriterji hawn fuq stabbiliti ma jistgħux ikunu sodisfatti, u li allura jkun hemm il-periklu li jseħħ preġudizzju serju lejn l-amministrazzjoni tal-ġustizzja, illi jista' jkun ġustifikat it-twarrib tal-istqarrija mill-atti u dan qabel ma jkun ċċelebrat il-ġuri.

[....]

30. Għalhekk magħmula dawn il-konsiderazzjonijiet, l-aggravju sollevat mill-Avukat Ġenerali jistħoqqlu akkoljiment b'dan illi fil-kors taċ-ċelebrazzjoni tal-ġuri, wara li jinstemgħu il-provi kollha, fl-indirizz finali, l-Imħallef togat għandu jagħti dik id-direzzjoni opportuna lil ġurati dwar il-valur probatorju tal-istqarrijiet rilaxxati mill-appellati odjerni jekk jirriżulta illi dawn ma ttieħdux skont il-liġi, jew jekk javveraw irwieħhom dawk iċ-ċirkostanzi elenkati fil-linji gwida stabbiliti fid-deċiżjoni *Beuze* hawn fuq iċċitata. Fuq kollox, għall-appellati dejjem jibqgħalhom id-dritt li jitolbu reviżjoni tal-verdett u s-sentenza tal-Qorti Kriminali fl-eventwalita' li jkun hemm dikjarazzjoni ta' ħtija fil-konfront tagħhom."

13. That this Court also refers to the judgment delivered on the 31st. of May 2023 in the names **Emmanuele Spagnol v. L-Avukat Ġenerali et** (Number 16/2018/1) where the Constitutional Court held that:

> "10. Il-Qorti tagħraf li kemm fil-ġurisprudenza ta' din il-Qorti u kif ukoll fil-ġurisprudenza tal-Qorti Ewropea, il-fatt waħdu li s-suspettat ma kellux il-possibilità li jkun assistit minn avukat waqt l-interrogazzjoni ma jfissirx awtomatikament li l-użu ta' dik l-istqarrija fil-proċeduri kriminali kontra tiegħu illeda, jew x'aktarx ser jilledi, id-dritt fundamentali tiegħu għal smigħ xieraq. Dan fil-fatt jaċċettah l-attur stess.
>
> [...]
>
> 15. Essenzjalment din id-difiża hija msejsa fuq il-premessa illi allegazzjoni ta' nuqqas smigħ xieraq teħtieg li l-proċess li minnu jkun qed isir l-ilment jiġi eżaminat fit-totalita' tiegħu u mhux jiġi maqsum u jsir enfasi fuq inċident wieħed partikolari.
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> 16. Naturalment ladarba f'dan il-każ il-proċess kriminali għadu ma ġiex mitmum, għadu mhux magħruf kif u taħt liema ċirkostanzi l-appellant ser jiġi żvantaġġjat. Huwa ċertament barra minn loku illi l-ilment *de quo agitur* jiġu diskussi f'dan l-istadju *in vacuo*. Il-Qorti Kriminali għadha trid tevalwa l-istqarrijiet li saru u jekk saru jkunx hemm vjolazzjoni tad-dritt ta' smigħ xieraq minħabba l-mod kif ittieħdu tenut kont iċ-ċirkostanzi partikolari tal-każ li jvarjaw minn każ għall-ieħor. Hemmx leżjoni tad-dritt għalhekk ser jiddependi mill-mod kif il-Qorti Kriminali tkun trattat l-istqarrijiet u l-piż mogħtija lilhom fl-assjem tal-provi kollha. Għal dak li jiswa jista' jkun il-każ li l-Qorti Kriminali fl-aħħar mill-aħħar ma ssibux ħati u għalhekk ħafna mill-preokupazzjonijiet tiegħu dwar l-istqarrijiet jisfaw fix-xejn. Dan biex ma jingħadx ukoll li anke wara s-sentenza tal-Qorti

> Kriminali hemm il-possibbilita' li jsir appell quddiem il-Qorti tal-Appell Kriminali, li għandha s-setgħa li ddawwar l-affarijiet. Jiġi b'hekk, li l-ilment jekk seħħx virtwalment xi ksur ta' drittijiet fundamentali f'dan l-istadju huwa għal kollox prematur.
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> 17. L-appellant ma jistax jagħmilha bħala fatta li huwa mhuwiex sejjer ikollu smigħ xieraq minħabba l-mod ta' kif ittieħdet l-istqarrija tiegħu. Ladarba l-proċeduri kriminali għadhom mexjin, allura huwa jgawdi mill-preżunzjoni tal-innoċenza. Tassew il-prosekuzzjoni għad trid tipprova l-akkuzi tagħha kontra tiegħu u l-istess akkużat għad għandu kull opportunita' li jiddefendi lilu nnifsu.
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> 18. Għalhekk il-fatt waħdu li saru stqarrijiet ma ssostnix l-ilment ta' ksur ta' jedd ta' smigħ xieraq għaliex din waħidha mhijiex determinanti tal-kwistjoni minnu sollevata, b'dana li l-ilment huwa għal kollox intempestiv u prematur."

14. That this Court refers to the judgment delivered on the 22nd. of November 2023 in the names **Ir-Repubblika ta' Malta vs. Clayton Azzopardi** (Number 28/2022) where the Court with reference to the judgment in the names **Ir-Repubblika ta' Malta vs. Rosario Militello** decided by the Constitutional Court on the 22nd. of June 2023 stated that:

> "26. Illi l-Qorti Kostituzzjonali, għalhekk, kienet tal-fehma illi f'dan l-istadju bikri tal-proċeduri ma kellhiex tużurpa l-funzjoni tal-qrati ta' kompetenza penali li f'idejhom hija fl-aħħar mill-aħħar fdata s-setgħa li jiddeċidu dwar il-valur probatorju tal-evidenza u li għalhekk ma għandhomx jkunu diretti, filwaqt li l-każ ikun għadu ma ntemmx, sabiex iwarrbu prova li sa dan l-istadju għadha prova valida mhux mittiefsa minn ebda difett proċedurali."

15. That taking into consideration what has been noted above, this Court notes that the law at the time of the alleged crime established that the accused had the right to have a lawyer present during the questioning by the Police. This Court notes that when the accused was charged in Court he was nearly 39 years of age and it also results that in Malta he had no other criminal convictions. In addition, the accused had been given his rights by the Police including the right not to answer to any question. It is also clear that the accused contacted a legal aid lawyer before the interrogation. At this stage this Court is not in a position to ascertain the use which the Prosecution will make of the statement and in particular whether the evidence will form an integral or significant part of the probative evidence upon which the decision will be based.

16. That taking all elements into consideration including the text of the statement, this Court is of the opinion that there is no reason why the statement given by the accused should be declared inadmissible. However, this Court will explain clearly to the jury the validity or otherwise of the interrogation text and the weight that is to be given to such a document.

17. As a consequence, the first preliminary plea of the accused is being rejected.

The Second Preliminary Plea of the Accused

18. That by means of the second plea the accused complains that the report drawn by expert Scientist Gilbert Mercieca pertaining to the analysis of the substance found in the delivered package breaches the best evidence rule since the chain of evidence has been broken.

19. That with regards to this plea the Attorney General states that there was no breach in the chain of evidence. Reference is made to the testimony of Danica Fenech (*a fol.* 38 *et seq.*) who confirms that the packet was handed over to Inspector Mallia who handed it to Scientist Gilbert Mercieca. In addition, the Attorney General

states that even if the chain of evidence is broken our Courts have maintained that this does not render the evidence inadmissible.

20. That with regards to the plea under examination this Court agrees with what is stated by the Attorney General namely that from the acts of the case it transpires that the chain of evidence had not been breached.

21. That, in particular, reference is made to the testimony of Danica Fenech given on the 4th. of July 2022 (*a fol.* 38 *et seq.*) wherein she states the following:

> "Upon opening the package, we noticed that the package contained then green grass. Where, then immediately we informed the Anti Drugs Squad, where Inspector Marshal Mallia arrived on site and we handed over the parcel."

22. That in addition, in his report Scientist Gilbert Mercieca explicitly mentions that he received the exhibits from Inspector Mallia (*a fol.* 218). He also states that the exhibits were forwarded to PS 844 Carl Micallef for further analysis (*a fol.* 224). Hence this Court is of the opinion that the chain of evidence had not been compromised.

23. That even if this was not the case, the breach of the chain of evidence does not effect the admissibility of the proof but rather its value as evidence. In this respect reference is made to the judgment delivered on the 20th. of June 2023 in the names **Ir-Repubblika ta' Malta vs. Darren Mizzi** (Number 21/2022) where this Court stated the following:

> "103. Il-prinċipju taċ-*'chain of custody'* daqskemm iċ-*'chain of evidence'*, huma fundamentali fi proċeduri kriminali in kwantu jservu ta' garanzija tal-awtentiċita' kif ukoll tal-oriġini tal-provi preżentati mill-Prosekuzzjoni, kif ukoll ta' x'movimenti dawn setgħu għamlu u tal-mod kif dawn ikunu ġew ippreżervati mill-

> mument illi tali provi nstabu u/jew ġew ikkompilati sal-mument illi l-istess ġew ippreżentati bħala evidenza fil-proċeduri quddiem il-Qorti. Tali evidenza tista' tieħu x-xejra ta' evidenza forensika bħal per eżempju l-ġbir ta' kampjuni ta' demm minn fuq ix-xena tar-reat f'każ ta' omiċidju jew inkella tkun tat-tip kartaċeja bħal fil-kawża in diżamina.
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> 104. Il-Prosekuzzjoni ma tridx tħalli dubju f'moħħ minn irid jiġġudika l-fatti dwar it-traċċjabbilita', integrita' u awtentiċita' ta' dawk il-provi. Il-Prosekuzzjoni trid turi li dik l-evidenza li ġiet miġbura u maħżuna kienet awtentika u miżmuma b'mod integru sa minn meta nġabret sakemm tkun ġiet prodotta bħala evidenza fil-Qorti.
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> [....]
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> 114. Din il-Qorti tista' biss tiddikjara inammissibbli dawk il-provi li hija l-Liġi stess li teskludi l-produċibilita' tagħhom. Dan mhux il-każ hawnhekk. F'dan il-punt jekk il-ġurati jemmnux lil Dr. Godwin Sammut u lil Dr. Marisa Cassar dwar min irċieva xiex u meta, hija kwistjoni ta' fatt rimessa lil ġurati. Huma l-ġurati li jridu jikkonkludu, wara li jisimgħu x-xiehda tal-esperti Dr. Marisa Cassar u Godwin Sammut li jiddeċiedu fattwalment fuq il-prinċipju tal-kontinwita' tal-evidenza daqskemm fuq l-analiżi mwettqa mill-esperti relattivi u l-validita' tar-riżultanzi tagħhom." [emfażi miżjuda]

24. That what has been quoted above has been confirmed by the Court of Criminal Appeal (Superior Jurisdicion) where in its judgment delivered on the 24th. of January 2024 in the case here above-mentioned (Number 21/2022) the following was affirmed:

> "64. Illi din il-Qorti taderixxi ruħha ma' din il-konsiderazzjoni tal-Qorti Kriminali. Iżżid illi l-prova dwar il-kontinwita' tal-evidenza toħroġ mir-relazzjoni li

dawn l-istess esperti ħejjew. Illi fuq kollox kemm Godwin Sammut, kif ukoll, Dr. Marisa Cassar u PC 813 Clinton Vella huma kollha indikati bħala xhieda fil-Lista tax-Xhieda annessa mal-Att tal-Akkuża. Għalhekk waqt id-depożizzjoni tagħhom, waqt iċ-ċelebrazzjoni tal-ġuri, ser ikunu f'pożizzjoni jixhdu dwar l-inkarigu lilhom mogħti, kif ġew elevati l-oġġetti, minn min ġew elevati, fil-presenza ta' min, min issiġġilla din l-evidenza materjali, min għamel l-eżamijiet forensiċi u finalment lil min ġew mgħoddija l-oġġetti wara li l-inkarigu tagħhom kien espletat. B'hekk il-katina tal-evidenza tiġi determinata mill-provi li ser jingħiebu mill-Prosekuzjoni waqt il-ġuri u mħollija għad-deċiżjoni tal-ġurati dwar il-validita' tal-evidenza hekk miġjuba u dan wara li l-istess jiġu ndirizzati mill-Imħallef togat u mgħotija d-direzzjoni opportuna. Għalhekk ikun prematur li f'dan l-istadju li fih jinsabu l-proċeduri l-evidenza tiġi sfilzata meta, kif tajjeb ikkonkludiet il-Qorti Kriminali, l-kwistjoni dwar it-traċċabbilita' tal-evidenza għad trid tiġi mistħarrġa u determinata mill-ġurati. Għaldaqstant dan l-aggravju wkoll qed jiġi miċħud."

25. That taking all the above into consideration, the second preliminary plea of the accused is also being rejected.

The Third Preliminary Plea of the Accused

26. That by means of the third plea the accused complains that the findings by Scientist Mercieca should be dismissed because the laboratory that made the analysis is not an accredited laboratory.

27. That the Attorney General stated that it was untrue that the laboratory is not accredited. He continues that the testing is carried out in accordance with ISO/EC17025 and that this is confirmed in the expert report (*a fol.* 217). Without prejudice to this, the Attorney General states that there is no requirement at law requesting that the laboratory be accredited and that such accreditation is requested only in respect to DNA tests.

28. That this Court starts by stating that even if a test is carried out in line with ISO Standards this does not mean that the laboratory carrying out such tests is an accredited laboratory in respect to such a test.

29. That this Court deems that there is no requirement at law whereby the tests carried out by Scientist Mercieca need to be done by an accredited laboratory. In this respect this Court refers to the judgment delivered on the 28th. of July 2023 in the names **Il-Pulizija vs. Theresa Agius** (Number 524/2013) where the Court of Criminal Appeal (Inferior Jurisdiction) stated the following:

> "Illi l-Artikolu 3 tal-Liġi Sussidjarja 460.31 jispeċifika b'mod ċar l-għan wara l-Liġi Sussidjarja:–
>
> > **"Dan l-Ordni jimplimenta d-dispożizzjonijiet tad-Deċiżjoni Qafas tal-Kunsill 2009/905/ĠAI tat-30 ta' Novembru 2009 dwar l-Akkreditament tal-Fornituri ta' Servizzi Forensiċi li jwettqu Attivitajiet tal-Laboratorji u għandu japplika għal attivitajiet tal-laboratorji li jirriżultaw fi:**
> >
> > **(a) profil tad-DNA; u**
> >
> > **(b) data dattiloskopika**".
>
> Illi, l-istess Liġi Sussidjarja, kif intqal aktar 'il fuq ġiet trasposta mid-Deċiżjoni Qafas tal-Kunsill Ewropew fuq imsemmija, fejn l-oġġettivi ta' l-istess jistabbilixxu li dan il-qafas regolatorju għandu jkopri unikament ***"DNA profiles and dactyloscopic data"*** **għaliex l-istess** ***"are not only used in criminal proceedings but are also crucial for the identification of victims, particularly after disasters"***. Dan għaliex ***(8) Pursuant to Article 7(4) of Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of crossborder cooperation, particularly in***

combating terrorism and cross-border crime, Member States shall take the necessary measures to guarantee the integrity of DNA profiles made available or sent for comparison to other Member States and to ensure that these measures comply with international standards, such as EN ISO/IEC 17025 'General requirements for the competence of testing and calibration laboratories' (hereinafter 'EN ISO/IEC 17025'). Jikkonsegwi għalhekk li l-akkreditar huwa meħtieġ biss għat-teħid tal-impronti tas-swaba' u l-elevazzjoni tat-traċċi ta' DNA u xejn aktar.

Illi huwa minnu ukoll li b'referenza għall-istandards EN ISO/IEC 17025, l-Artikolu 4 tal-LS 460.31 jistipola li –

> **"L-għan ta' dan l-Ordni huwa sabiex:**
>
> **(a) jiġi żgurat li r-riżultati tal-attivitajiet tal-laboratorji mwettqa minn fornituri ta' servizzi forensiċi akkreditati fi Stati Membri oħrajn tal-Unjoni Ewropea jiġu rikonoxxuti mill-awtoritajiet Maltin responsabbli għall-prevenzjoni, il-kxif u l-investigazzjoni ta' reati kriminali bħala ugwalment affidabbli daqs ir-riżultati tal-attivitajiet tal-laboratorji mwettqin minn forniturita' servizzi forensiċi domestiċi akkreditati għall-ENISO/IEC 17025;**
>
> **(b) li jiġi żgurat li fornituri ta' servizzi forensiċi li jwettqu attivitajiet tal-laboratorji f'Malta jiġu akkreditati b'konformita' mal-EN ISO/IEC 17025".**

Illi dina l-Qorti tisħaq li dan kollu għandu jittieħed fil-kuntest tal-Qafas u ta' dak li speċifikament l-istess qed jirregola. Di fatti l-Qafas jispjega li:–

> **"That objective is to be achieved by preventing and combating crime through**

> **closer cooperation between law enforcement authorities in the Member States, while respecting the principles and rules relating to human rights, fundamental freedoms and the rule of law on which the Union is founded and which are common to the Member States."**"

30. That what is being challenged in the plea under examination is in effect the probatory validity of the evidence in question. Considering what has been stated above, this Court notes that this plea should not be acceded to and hence it is being rejected.

The Fourth Preliminary Plea of the Accused

31. That by means of the fourth plea the accused states that the proceedings are defective because the directive on the right to interpretation and translation in criminal proceedings (Directive 2010/64/EU) and its relative transposition and indirect effect on domestic Courts had not been observed.

32. That the Attorney General contends that this plea is vague. In addition, he states that the proceedings were held in English which is a language understood by the accused. Furthermore, the Attorney General contends that the accused had the right during the compilation stage to ask for the translation of any document. He also points out that even at this stage this Court can ask the Court Registrar to produce the translation of any document which the accused deems necessary for his defence.

33. That this Court agrees with what is stated by the Attorney General in respect to the vagueness of the plea under examination. Given that this Court is not in a position to guess which point or points the accused deems that have not been respected, the fourth plea is also being rejected.

The Fifth Preliminary Plea of the Accused

34. That by means of the fifth preliminary plea the accused states that the controlled delivery lacked the permission of the duty Magistrate.

35. That the Attorney General rebuts the accused's plea under examination and states that the necessary permits had been granted by the Magistrate.

36. That the plea under examination is clearly frivolous given that the approval of the Magistrate is amply clear on the second page of the request made by the Police to carry out such controlled delivery (Doc. "MMX" – *a fol.* 202 *et seq.*). Hence this plea is also being rejected.

The Sixth Preliminary Plea of the Accused

37. That by means of the sixth plea, the accused laments that the Police who carried out the controlled delivery were not independent and impartial experts.

38. That the Attorney General refers to the fact that the persons taking part in the controlled delivery do not need to be court experts. He further claims that in accordance with Article 30B of Chapter 101 of the Laws of Malta such delivery is to be made under the supervision of the police and with the consent of the Magistrate. He maintains that the conditions established by law were respected.

39. That this Court refers to Article 30B(3) of Chapter 101 of the Laws of Malta which establishes the following:

> "It shall also be lawful for the Executive Police or for a person under the supervision or direction of the Executive Police, with a view to identifying persons involved in the commission of offences under this Ordinance, and with the consent of the Attorney General or of a Magistrate, to acquire or procure a dangerous drug (as defined in article 12) or a suspect consignment

of money, property or proceeds as referred to in article 22(1C)(a) from any person or place." [emphasis added]

40. That even from a cursory look of the above sub-article it appears evident that the law empowers the Police to carry out such controlled delivery. In addition, Article 30B(1) of Chapter 101 of the Laws of Malta establishes that it applies irrespective of any other law. Hence the right of the Police to carry out such controlled delivery is to take precedence to what is established under any other law. Consequently, even the sixth plea deserves to be rejected.

The Seventh Preliminary Plea of the Accused

41. That by means of the seventh plea the accused states that when translating from the Maltese language to the English language and vice-versa the interpreters were not submitted the necessary oath.

42. That the Attorney General stated that there was no need for an interpreter to be appointed since the proceedings were carried out in the English language.

43. That this Court notes that the proceedings in this case were carried in a language that was comprehensible to the accused, i.e. English. In particular, during the sitting of the 22nd. of April 2022 (*a fol.* 5 *et seq.*) the lawyer of the accused informed the Court of Magistrates that the accused did not understand the Maltese language but he could understand the English language and asked that the proceedings be carried out in the English language. The Court of Magistrates acceded to this request and effectively the proceedings were carried out in the English language. Hence no interpreter needed to be appointed. In view of this even the seventh preliminary plea is also being rejected.

Considers

CONSIDERATIONS REGARDING THE PLEAS OF THE ATTORNEY GENERAL REGARDING THE ADMISSIBILITY OF EVIDENCE OF THE ACCUSED IN HIS NOTE OF PRELIMINARY PLEAS, WHICH PLEAS OF THE ATTORNEY GENERAL WERE FILED ON THE 27th. OF OCTOBER 2023 (*a fol.* 16 *et seq.*)

44. That by means of a Note filed on the 27th. of October 2023 (*a fol.* 16 *et seq.*) the Attorney General gave notice of the pleas regarding the admissibility of the evidence that he intended to raise in terms of Article 438(3) of Chapter 9 of the Laws of Malta. The pleas raised by the Attorney General are the following:

- in point 2 of the List of Witnesses and Documents of the accused, the accused reserved the right to cross-examine witnesses indicated by the Attorney General who may not testify in the jury;

- the accused cannot cross-examine a witness which would not be called to testify by the Prosecution in the first place;

- Article 459 of Chapter 9 of the Laws of Malta stipulates that the cross-examination of a witness can be done after and only if the other party calls the witness and examines him first and that should the accused want to call as a witness a person indicated by the Attorney General, he can do so however as his own witness and thus under such a circumstance the defence can only proceed with the examination-in-chief and not the cross-examination;

- the accused failed to mention who the witnesses indicated by him in point three (3) are and failed to provide the purpose behind their testimony, particularly:

    - the owner of the property situated and indicated by the Prosecution as 33, Epcot Court, Flat 2, Triq l-Iktar, Marsascala;

- any possessor of the same property situated in Marsascala; and

- representatives of DHL, FedEx or any other courier services which have provided their services to the same address.

The first three points of the Attorney General

45. That the first three points raised by the Attorney General (i.e. those regarding cross-examination) are linked and address the same plea namely the fact that in point 2 (two) of the List of Witnesses and Documents filed by the accused, the accused stated the following:

> "Moreover, the accused reserves the right to cross-examine the witnesses indicated by the Attorney General who may not testify during this Honourable Court in the Jury."

46. That this Court shall address these first three points of the Attorney General together since they are linked. This Court agrees with these first three points of the Attorney General namely:

- that a witness who has not been called to testify cannot be cross-examined;

- in the case where the accused wishes to cross-examine a witness that has been indicated by the Prosecution he can do so only if such a witness is actually called upon to testify;

- in the case where such a witness is not called upon to testify, the accused can still request that such a witness be called upon to testify as his witness, but obviously this applies in the case where he has identified such a witness in his List of Witnesses. In such a case the accused would still have to respect the rules associated with the type of questions that

can be made to such a witness. This is being stated since in point one (1) of his List of Witnesses and Documents, the accused included all the witnesses indicated by the Attorney General. Hence, if the Attorney General does not call any of his indicated witnesses, the accused can do so himself and proceed with the examination-in-chief of such a witness.

47. That as per Article 459 of Chapter 9 of the Laws of Malta, the cross-examination of a witness can only be carried out after the examination-in-chief.

48. That given the above this Court will accede to the pleas raised by the Attorney General in respect to point two (2) indicated in the List of Witnesses and Documents filed by the accused and will declare the request made by the accused as inadmissible.

The fourth point of the Attorney General

49. That in his fourth point, the Attorney General raises another plea which refers to point three (3) indicated by the accused in the List of Witnesses and Documents attached to his preliminary pleas. The Attorney General objects to a number of witnesses indicated under point three (3) of the List of Witnesses of the accused because according to the Attorney General the accused failed to indicate the name of the witness and the reason for which he is being called to testify.

50. That the Attorney General limits his plea to the following:

- the owner of the property situated and indicated by the Prosecution as 33, Epcot Court, Flat 2, Triq l-Ikħal, Marsascala;

- any possessor of the same property situated in Marsascala; and

- representatives of DHL, FedEx or any other courier services which have provided their services to the same address.

51. That with regards to the owner of the property situated and indicated in Marsascala, theoretically such a witness can easily be ascertained hence this Court considers that such a witness is clear. However, in this case the request is too vague and such owner may still change from time to time hence in view of the vagueness of the witness, this Court orders that such witness be limited to the owner at the time of the alleged crime.

52. That in respect to any possessor of the same property situated in Marsascala, since the possessor can easily change and cannot be determined and since there is no indication of a time-frame of such possessor, this Court will uphold the plea by the Attorney General in that the possessor mentioned is to be declared inadmissible.

53. That as regards the representatives of DHL, FedEx or any other courier services which have provided their services to the same address, this Court deems that the representatives of DHL or FedEx constitute a clear indication of the witness requested. The same does not apply to the part where the accused says *"any other courier services which have provided their services to the same address"*. The latter is too vague. Hence this Court will limit the witnesses requested in the third (3) bullet of the third (3) point in the List of Witnesses filed by the accused to representatives of DHL or FedEx.

Decide

54. Consequently, for all the above-mentioned reasons, this Court:

- rejects all the preliminary pleas of the accused Goran Dimovski;

- accedes partially to the pleas of the Attorney General in the sense that:

- the reservation made by the accused in point two (2) of his List of Witnesses is being considered as being inadmissible;

- in respect to the owner of the property situated at 33, Epcot Court, Flat 2, Triq l-Ikħal, Marsascala indicated by the accused, this is to be limited only to the owner of the property at the time of the crime;

- in respect to any possessor of the same property mentioned in Marsacala indicated by the accused, this request is being considered as being inadmissible; and

- in respect to the representatives of DHL or FedEx and other courier services which have provided their services to the same address as indicated by the accused, this is to be limited only to representatives of DHL or FedEx.

55. Finally, the Court adjourns the case *sine die* until the outcome of any appeal filed according to law.

_____

Dr. Neville Camilleri
Hon. Mr. Justice

_____

Alexia Attard
Deputy Registrar