



## **CRIMINAL COURT**

**HON. MADAM JUSTICE NATASHA GALEA SCIBERRAS B.A., LL.D**

**Bill of Indictment: 6/2021**

**The Republic of Malta**

**vs**

**Ahmad AZIZ**

Today, 23rd October 2024

The Court,

1. Having seen the bill of indictment filed against **Ahmad AZIZ** registered as being the son of Imdad Ullah and Sherri nee Maiorana, born in Sliema on the 1<sup>st</sup> November 1983, of 37 years, and holder of identity card number 392507(L), who stands accused before this Court of having:

**FIRST COUNT – Having unlawfully made gains to the detriment of the Government of Malta**

**The Facts of the Case:**

In the year two thousand and sixteen (2016), the police received reports that there was an individual going by the name Ahmad Aziz who was pretending to be a Maltese diplomat and to be an envoy of the Maltese state to Pakistan in order to promote trade between the two countries, from investigations carried out, it emerged that his identity

was made up and that he was not in actual fact who he claimed to be. However the accused was not in Malta for a while and therefore he could not be questioned and investigated before he was arrested on the third (03) of May two thousand and eighteen (2018) at the Malta International Airport upon entering the country.

**Ahmad Aziz**, registered as being the son of Imdad Ullah and Sherri nee Maiorana, born in Sliema on the 1st November 1983, of 37 years, residing at 2, Dingli Mansions, Flat 6, Sir Adrian Dingli Street, Sliema, holder of identity card number 392507L (from here on referred to as ‘the accused’), is the person who over the years, forged documents, created an identity, created a personality, which he used in order to defraud the Government of Malta, he is the person whom the police started receiving reports about.

In fact, the accused created a scenario and forged the necessary documents needed in order to obtain Maltese Citizenship and be given a Maltese passport and a Maltese Identity, including a Maltese identity card with the number 392507L. It was through this Maltese Identity which was obtained through the use of forged documents such as his birth certificate that the accused obtained Maltese citizenship and unlawfully made gains to his own personal benefit and to the detriment of the government of Malta.

One of the manners in which the accused made this benefit for himself to the detriment of the Maltese Government is through the use of the Maltese Identity card at Mater Dei Hospital. It has been pointed out by the person in charge of the billing section at Mater Dei that Maltese citizens are entitled to free healthcare and if they present their identity card upon entry to hospital and that same Maltese identity card ends with the letters ‘M’, ‘L’ or ‘P’, then that person is not scrutinised to make a payment for the services they receive from the hospital.

By means of this Maltese citizenship, he was given access to Mater Dei hospital using a Maltese Identity card which had an identification number ending with the letter ‘L’. It is because of this that he was not scrutinized for payment. The accused in fact made use of the hospital

on 4 occasions and if he were to be billed for each and every occasion on which he made use of the hospital, then he would have an outstanding bill of four hundred and twenty-two euro and seventy-eight cents (€422.78).

### **The Consequences**

By committing the above mentioned acts, with criminal intent, in the Maltese Islands, the accused Ahmad Aziz, rendered himself guilty on the 3rd of May 2018 and in the preceding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made gain, to the detriment of the government of Malta.

### **The Accusation:**

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses **Ahmad Aziz** of being guilty of having in the Maltese Islands on the 3rd of May 2018 and in the preceding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made gain, to the detriment of the government of Malta which does not exceed five hundred euro (€500)

### **The Punishment Demanded:**

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused **Ahmad Aziz** be proceeded against according to law, and that he be punished with imprisonment for a term not exceeding one (01) year as laid down in articles 17, 18, 31, 308, 310, 310B and 533 of the Criminal Code, Chapter 9 of the laws of Malta.

### **SECOND COUNT – Having made fraudulent gain to the detriment of others**

#### **The Facts of the Case:**

That as explained in the first count of this bill of indictment, the accused Ahmad Aziz, is the person who over the years, forged documents, created an identity, created a personality, which he used in order to defraud the Government of Malta and others and the police started receiving a number of reports with regard to this.

There was a time when the accused, as a result of the citizenship he acquired through deceit, was acting on behalf of the Maltese Government as an envoy to promote trade between Malta and Pakistan, however he was never a diplomat.

The police started receiving reports about a person impersonating a Maltese diplomat and having created a whole new identity following which they carried out their investigations which led them to the accused who was eventually arrested upon entry in Malta on the third (03) day of May of the year two thousand and eighteen (2018).

In order to create the identity as explained in the previous Count, the accused made use of an address in Gzira, to be more specific the address is 125, The Strand, Gzira. This address was used on his forged birth certificate as the address in which his mother gave birth to him. However, following searches in the public registry, and after having heard Yvonne Elizabeth Borg and Tanya Butters, it resulted that in the abovementioned address the accused or his mother never lived in that

address and that the Borg family has been there since the 1960s. Therefore, in 1983, it was not possible for him to have been born there as stated on the birth certificate. Over and above this, when the woman whose name he gave as his mother, Sherri Maiorana, testified, she confirmed that she has never been to Malta, even less so given birth in Malta.

### **The Consequences**

By committing the above mentioned acts, with criminal intent, in the Maltese Islands, the accused Ahmad Aziz, rendered himself guilty on the 3rd of May 2018 and in the preceeding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having made to the prejudice of any other person, any other fraudulent gain.

### **The Accusation:**

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses, Ahmad Aziz, of being guilty, of having in the Maltese Islands on the 3rd of May 2018 and in the preceeding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having made to the prejudice of any other person, any other fraudulent gain.

### **The Punishment Demanded:**

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused **Ahmad Aziz** be proceeded against according to law, and that he be punished with imprisonment for a term from two (02) months to a maximum of four (04) years as laid down in articles 17, 18, 31, 309, 310, 310B and 533 of the Criminal Code, Chapter 9 of the laws of Malta.

### **THIRD COUNT – Having forged authentic documents**

#### **The Facts of the Case:**

In the year two thousand and sixteen (2016), the police received reports that there was an individual going by the name Ahmad Aziz who was pretending to be a Maltese diplomat and to be an envoy of the Maltese state to Pakistan in order to promote trade between the two countries, from investigations carried out, it emerged that his identity was made up and that he was not in actual fact who he claimed to be. However the accused was not in Malta for a while and therefore could not be arrested, he was arrested on the third (03) of May two thousand and eighteen (2018) at the Malta International Airport upon entering the country.

That as explained in the first two counts of this Bill of Indictment the accused Ahmad Aziz, is the person who over the years, forged documents, created an identity, created a personality, which he used in order to defraud the Government of Malta, he is the person whom the police started receiving reports about.

The accused underwent a meticulous plan which would enable him to obtain Maltese Citizenship. This plan included the creation and forging of official documents which he would use and present to the authorities such as the public registry in order to be eligible for citizenship. The first document which the accused forged and used in order to obtain citizenship was his birth certificate, in fact the expert appointed by the court noted that the calligraphy (handwriting) on the statement of birth certificate was very similar, if not identical to the calligraphy of the accused himself. Over and above the statement of birth certificate, through investigations, it resulted that the accused also forged and used the alleged marriage certificate of his parents. In fact, the court appointed expert found that the calligraphy on the marriage certificate too was near identical to the calligraphy of the accused.

With regard to the birth certificate, investigations were carried out in relation to the alleged midwife of the birth, a certain Louise McDonald, however, after having heard from the registrar of Nurses and Midwives,

it transpired that there was never a midwife or nurse who went by that name who was registered in Malta.

From the investigations it also resulted that the alleged notary appearing on the abovementioned documents, a certain John R. Ewing from the state of Texas does not exist on any American registry, even though it is made to look as though there is a notary going by that name in America. This was confirmed by the American authorities too who stated that there was no one going by that name or any names similar to that same name. Therefore, the accused also created and forged the stamp and signature of this alleged notary.

As outlined in the previous count, the accused's alleged mother, Sherri Maiorana, was also asked to testify and she confirmed that she had never been to Malta, let alone having given birth in Malta, she also confirmed she did not know anyone who went by the name of Ahmad Aziz and neither having ever been married to an Indad Allah as per the marriage certificate used by the accused in order to register as a Maltese citizen, which certificate was forged.

The accused, created these documents and forged the signatures found on these same documents in order to create a statement of his birth and a marriage which allowed for the right circumstances in order for him to obtain Maltese Citizenship and come off as a Maltese citizen, benefiting from the same things Maltese citizens benefit from.

### **The Consequences**

By committing the above mentioned acts, with criminal intent, in the Maltese Islands, the accused Ahmad Aziz, rendered himself guilty on the 3rd of May 2018 and in the preceding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having committed forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation or discharge

in any of the said instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instrument or document were intended to contain or prove.

**The Accusation:**

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses, Ahmad Aziz, of being guilty, of having in the Maltese Islands on the 3rd of May 2018 and in the preceding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having committed forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instrument or document were intended to contain or prove.

**The Punishment Demanded:**

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Ahmad Aziz be proceeded against according to law, and that he be punished with imprisonment for a term from thirteen (13) months to a maximum of six (06) years as laid down in articles 17, 18, 31, 183 and 533 of the Criminal Code, Chapter 9 of the laws of Malta.

**FOURTH COUNT – Knowingly having made use of false documents**

**The Facts of the Case:**

As explained in the first three counts of this bill of indictment the accused, Ahmad Aziz, is an individual who chose to defraud the



government and others by forging and making use of documents which were falsified.

The accused was arrested on the 03rd of May 2018 when entering Malta, following investigation by the police which led them to the discovery that the accused was making use of false and forged documentation in order to obtain Maltese Citizenship.

As a matter of fact, the accused was fully aware that the documentation he was using in order to obtain citizenship, was entirely forged as it was he himself who forged and falsified the documents as clearly outlined in the previous counts. The accused knowingly passed on this documentation to the relevant Maltese authorities in order to obtain his citizenship and therefore he was knowingly making use of documents which he knew were false or forged.

### **The Consequences**

By committing the above mentioned acts, with criminal intent, in the Maltese Islands, the accused Ahmad Aziz, rendered himself guilty, on the 3rd of May 2018 and in the preceeding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having knowingly made use of false acts, writings, instruments or documents.

### **The Accusation:**

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses, Ahmad Aziz, of being guilty, of having in the Maltese Islands on the 3rd of May 2018 and in the preceeding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having knowingly made use of false acts, writings, instruments or documents.

### **The Punishment Demanded:**

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Ahmad Aziz be proceeded against according to law, and that he be punished with imprisonment for a term from thirteen (13) months to a maximum of six (06) years as laid down in articles 17, 18, 31, 183, 184 and 533 of the Criminal Code, Chapter 9 of the laws of Malta.

### **FIFTH COUNT – Falsely having made or issued a certificate or declaration**

#### **The Facts of the Case:**

As explained in the first four counts of this bill of indictment the accused, Ahmad Aziz, is an individual who chose to defraud the government and others by forging and making use of documents which were falsified. The accused was arrested upon entering Malta on the 03rd of May 2018 following the investigation carried out by the police.

The accused created and falsified his birth certificate as well as his parents marriage certificate in order to achieve his goal of obtaining Maltese citizenship. Without the authority to do so, the accused issued the mentioned certificates and made them look authentic through the use of fake stamps and signatures.

He falsified these documents in numerous ways, including by making use of false signatures and stamps, as was also confirmed by the court appointed expert who stated that the calligraphy of the accused was extremely similar to the calligraphy used on the certificates, such as for example the signature of the alleged notary John R. Ewing. In fact, as pointed out in previous counts of indictment, the notary John R. Ewing does not exist as clarified by the American authorities too. In so doing and in trying to certify the documents as certified true copies by this same notary, in creating and forging the birth and marriage

certificates, the accused issued certificates and declarations without having the authority to do so.

### **The Consequences**

By committing the above mentioned acts, with criminal intent, in the Maltese Islands, the accused Ahmad Aziz, rendered himself guilty, on the 3rd of May 2018 and in the preceding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having, other than a public officer or servant acting with abuse of authority, falsely made or issued a declaration or certificate.

### **The Accusation:**

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses, Ahmad Aziz, of being guilty, of having in the Maltese Islands on the 3rd of May 2018 and in the preceding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having, other than a public officer or servant acting with abuse of authority, falsely made or issued a declaration or certificate.

### **The Punishment Demanded:**

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Ahmad Aziz be proceeded against according to law, and that he be punished with imprisonment for a term from seven (07) months to a maximum of four (04) years as laid down in articles 17, 18, 31, 185(2) and 533 of the Criminal Code, Chapter 9 of the laws of Malta.

### **SIXTH COUNT – Having made use of documents, declarations and certificates which he himself falsified**

## **The Facts of the Case:**

As has been explained in the prior counts to this bill of indictment the accused Ahmad Aziz, is an individual who chose to defraud the government and others by forging and making use of documents which were falsified. The accused was arrested upon entering Malta on the 03rd of May 2018 following the investigation carried out by the police.

The accused created and falsified his birth certificate as well as his parents marriage certificate in order to achieve his goal of obtaining Maltese citizenship. Without the authority to do so, the accused issued the mentioned certificates and made them look authentic through the use of fake stamps and signatures. After having falsified and forged these documents, he made use of them with the Maltese authorities, he actually presented these documents to the Maltese authorities in order to obtain Maltese Citizenship, to get hold of a Maltese Identity card and a Maltese passport. Therefore in reality, the accused made use of documents, declarations and certificates which he himself forged and issued without the authority to issue them.

It was in fact confirmed by the court appointed expert that the calligraphy on the documents used by the accused was near to identical with the calligraphy of the accused. Over and above that, it was also confirmed from the American authorities that the Notary John R. Ewing or anyone with a similar name did not exist in the state of Texas, neither was there anyone registered under that name as a notary in the United States of America.

Therefore, the accused made use of documents, declarations and certificates which he himself knew were falsified and which he knew were issued without the authority to be issued.

## **The Consequences**

By committing the above mentioned acts, with criminal intent, in the Maltese Islands, the accused Ahmad Aziz, rendered himself guilty, on

the 3rd of May 2018 and in the preceeding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having knowingly made use of falsely issued declarations or certificates by a person other than a public officer or servant acting with abuse of authority.

**The Accusations:**

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses, Ahmad Aziz, of being guilty, of having in the Maltese Islands on the 3rd of May 2018 and in the preceeding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having knowingly made use of falsely issued declarations or certificates by a person other than a public officer or servant acting with abuse of authority.

**The Punishment Demanded:**

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Ahmad Aziz be proceeded against according to law, and that he be punished with imprisonment for a term from seven (07) months to a maximum of four (04) years as laid down in articles 17, 18, 31, 185(2), 186 and 533 of the Criminal Code, Chapter 9 of the laws of Malta.

**SEVENTH COUNT – For his own advantage, making and giving false declarations and statements or gave false information**

**The Facts of the Case:**

As has been explained in the previous counts of this bill of indictment the accused, Ahmad Aziz, is an individual who chose to defraud the government and others by forging and making use of documents which

were falsified. The accused was arrested upon entering Malta on the 03rd of May 2018 following the investigation carried out by the police.

The accused wanted to acquire Maltese Citizenship and in order to do so, forged and falsified numerous documents, including his birth certificate and his parents marriage certificate. He then went on to use these documents and present them to the Maltese authorities in order to obtain the said citizenship. His first step was to be recognised as a Maltese national and after being recognised as a Maltese national, he went on to obtain a Maltese Passport and a Maltese Identity card. When presenting these documents to the authorities, he was providing them with false information seeing as the documents he was presenting to them were forged and falsified documents.

It was in fact in 2007 that the accused was attempting to obtain citizenship and eventually obtained it after presenting the necessary, forged and falsified, documents. After having been issued with citizenship, he applied to have a passport issued on two separate occasion, he obtained that passport after having provided the false information to the relevant authorities. The accused was eventually also issued with a Maltese Identification number and card.

Through the false information given to the authorities, the accused stood to gain personally as he acquired Maltese citizenship and therefore was entitled to the same rights as Maltese nationals. Through this citizenship, the accused also sought to find jobs with the government as a Maltese representative, a job he would not have been able to obtain had he not been a Maltese citizen.

### **The Consequences**

By committing the above mentioned acts, with criminal intent, in the Maltese Islands, the accused Ahmad Aziz, rendered himself guilty, on the 3rd of May 2018 and in the preceeding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having, in order to gain any advantage or benefit

for himself or others, in any document intended for any public authority, knowingly made a false declaration or statement or gave false information.

**The Accusation:**

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses, Ahmad Aziz, of being guilty, of having in the Maltese Islands on the 3rd of May 2018 and in the preceding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of having, in order to gain any advantage or benefit for himself or others, in any document intended for any public authority, knowingly made a false declaration or statement or gave false information.

**The Punishment Demanded:**

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Ahmad Aziz be proceeded against according to law, and that he be punished with imprisonment for a term not exceeding four (04) years or to a fine(multa) as laid down in articles 17, 18, 31, 188 and 533 of the Criminal Code, Chapter 9 of the laws of Malta.

**EIGHT COUNT – Continuing in his role as public officer or servant after having been dismissed**

**The Facts of the Case:**

As has been explained in the previous counts of this bill of indictment the accused Ahmad Aziz, is an individual who chose to defraud the government and others by forging and making use of documents which were falsified.

The police had received reports that the accused was putting on an act whereby he was making himself out to be a public officer, more precisely, he was making himself out to be a diplomat, after having been dismissed from the position of external consultant to promote trade between the Maltese government and Pakistan. After having obtained Maltese citizenship as explained in the previous counts of indictment, the accused went on to get a contract with the Maltese Government whereby he was made a representative to promote trade between the Maltese and Pakistani governments. This contract stated that he would be paid on a commission like basis, as has also been confirmed by the ministry representative. However, he failed to ever bring any business towards Malta and therefore he was never remunerated for anything. Over and above not being remunerated, due to the lack of performance, in 2013, around a year after having commenced, the contract was terminated and as a result of his termination he also had the official government card given to him withdrawn. Notwithstanding the termination, it resulted that as late as 2018, when the accused was giving his statement to the authorities, he continued insisting he was a diplomat serving the Government of Malta, a position he was not in. Following his termination, he continued sending emails to the authorities, claiming that he was in salary scale 3, the scale which diplomats are in, and that he was not being paid his wages. This was also confirmed from the Internal Audit department.

Following his termination from the role, the accused kept scheduling appointments with different representatives of the Maltese government and opposition and made himself out to be a Maltese diplomat to them, he continued attempting to work in the role of promoting trade between the Maltese Government and Pakistan notwithstanding that he was no longer a representative of the Maltese Government. In the year two thousand and sixteen (2016), the police received reports that there was an individual going by the name Ahmad Aziz who was pretending to be a Maltese diplomat and to be an envoy of the Maltese state to Pakistan in order to promote trade between the two countries. As explained above, in 2013 the government of Malta terminated all ties with the accused. Moreover, when he was arrested on the 3rd May 2018



and subsequent to investigations, it transpired that his identity was made up and that he was not in actual fact who he claimed to be.

### **The Consequences**

By committing the above mentioned acts, with criminal intent, in the Maltese Islands, the accused Ahmad Aziz, rendered himself guilty as a public officer or servant, on the 3rd of May 2018 and in the preceding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, who, having been dismissed, interdicted or suspended and having had due notice thereof, continued in the exercise of his office or employment.

### **The Accusation:**

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses, Ahmad Aziz, of being guilty as a public officer or servant, of having in the Maltese Islands on the 3rd of May 2018 and in the preceding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, who, having been dismissed, interdicted or suspended and having had due notice thereof, continued in the exercise of his office or employment.

### **The Punishment Demanded:**

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Ahmad Aziz be proceeded against according to law, and that he be punished with imprisonment for a term from one (01) month to one (01) year as laid down in articles 17, 18, 31, 134 and 533 of the Criminal Code, Chapter 9 of the laws of Malta.

## **NINTH COUNT – Having made a false statement and declaration in connection with the issuing or renewal of a passport**

### **The Facts of the Case:**

As has been explained in the previous counts of this bill of indictment the accused **Ahmad Aziz**, is an individual who chose to defraud the government and others by forging and making use of documents which were falsified.

The accused created false birth certificates and marriage certificates, he created a scenario whereby, as explained in the previous counts of this bill of indictment, he came across and made himself look like a Maltese national, like someone who was born in Malta and who therefore was entitled to be a Maltese citizen but who was unfortunately not registered as such. In so doing, the accused applied for a passport both in Malta and through the representation in China, as was confirmed by the representative from the Passport Office. In applying for these passports, as explained in the previous counts, he made false declarations to the relevant authorities, he presented false and forged documents and had he not made these false declarations, he would not have been granted the appropriate passport.

As a result of his actions in fact, the accused obtained a passport through numerous false statements and declarations made to the relevant authorities, an act which he did knowingly and willingly seeing as he was fully aware that the documents which were in his possession were forged and falsified.

### **The Consequences**

By committing the above mentioned acts, with criminal intent, in the Maltese Islands, the accused Ahmad Aziz, rendered himself guilty, on the 3rd of May 2018 and in the preceeding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of knowingly making any false statement in any

application or recommendation in connection with the issue or renewal of a passport.

**The Accusation:**

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses, Ahmad Aziz, of being guilty, of having in the Maltese Islands on the 3rd of May 2018 and in the preceding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provisions of the law, committed in pursuance of the same design, of knowingly making any false statement in any application or recommendation in connection with the issue or renewal of a passport.

**The Punishment Demanded:**

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Ahmad Aziz be proceeded against according to law, and that he be punished with imprisonment for a term not exceeding one (01) year as laid down in articles 6 and 11 of the Passports Ordinance, Chapter 61 of the Laws of Malta and Articles 17, 18, 31 and 533 of the Criminal Code, Chapter 9 of the laws of Malta.

2. Having seen the note of **preliminary pleas** filed by the accused Ahmad AZIZ on 4<sup>th</sup> June 2021, in virtue of which the following preliminary pleas were raised:
  1. the plea to the jurisdiction of the court;
  2. the plea of nullity of the indictment;
  3. the plea of extinguishment of the action;
  4. the plea of *autrefois acquit*;
  5. the plea of defect in the indictment and Police charge sheet;
  6. the plea of non-admissibility of evidence of the Prosecution;
  7. breach of the right to a fair hearing in a reasonable time;
  8. breach of the right to travel;
  9. breach of the right under Article 5.1 of the European Convention;

10. breach of the right to a fair hearing in a reasonable time when the bill of indictment was not issued in terms of Article 432(1) of the Criminal Code;
3. Having seen the document filed by accused on 14<sup>th</sup> February 2022, entitled “*Written statement of defence of accused person Ahmad Aziz*” (hereinafter “*Written Statement*”) together with the documents therewith annexed;
4. Having seen the minute of the sitting held before this Court, as differently presided, on 16<sup>th</sup> February 2022, during which the Court provisionally admitted the Written Statement as representing accused’s written submissions in relation to the preliminary pleas raised on 4<sup>th</sup> June 2021, whilst reserving its position in relation to the admissibility or otherwise of this document, or any part thereof, to a later stage, after having taken cognizance of the Attorney General’s submissions to the same;
5. Having seen the note of submissions filed by the Attorney General on 15<sup>th</sup> March 2022, objecting to the admissibility of the Written Statement, and furthermore, making submissions in respect of all the preliminary pleas raised by accused;
6. Having seen the records of the proceedings, including the records of the inquiry before the Court of Magistrates (Malta) as a Court of Criminal Inquiry.

**Considers that:**

7. This Court shall preliminarily address the issue relating to the admissibility or otherwise of the document presented by the accused on 14<sup>th</sup> February 2022 entitled ‘*Written statement of defence of accused person Ahmad Aziz*’.
8. From the records of the proceedings, it results that accused Ahmad AZIZ was first arraigned before the Court of Magistrates (Malta) as a Court of Criminal Inquiry on 5<sup>th</sup> May 2018 and charged with having

committed the offences laid down in Articles 308, 309, 183, 184, 185(2), 188 and 134 of the Criminal Code and the offences envisaged in Articles 6 and 11 of the Passports Ordinance.

In terms of Article 370(3) of the Criminal Code, the said offences may, on the demand of the Attorney General and in the absence of any objection by the accused, be tried summarily by the Court of Magistrates (Malta) as a Court of Criminal Judicature.

However, the accused registered his objection to be tried summarily by the Court of Magistrates as a Court of Criminal Judicature and by application of the provisions of Article 370(3)(d) of the Criminal Code, the Court of Magistrates (Malta) transmitted the records of the proceedings to the Attorney General, who then proceeded, on 15<sup>th</sup> March 2021, to file a bill of indictment against the accused in terms of Article 432(1) of the Criminal Code.

From the records of the proceedings, it further transpires that accused was duly served with a copy of the bill of indictment together with the list of witnesses, documents and exhibits required as evidence at the trial by the Attorney General on 3<sup>rd</sup> June 2021, as evidenced by the record of service.<sup>1</sup>

9. Article 438 (1) and (2) of the Criminal Code read as follows:

*(1) An official copy of the indictment and of the list referred to in article 590(2) shall be served on the accused.*

*(2) The accused shall, by means of a note to be filed in the registry of the court not later than fifteen working days from the date of such service –*

*(i) give notice of any pleas referred to in article 449 and any plea regarding the admissibility of evidence which he intends to raise, and*

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<sup>1</sup> *Vide* a fol. 55 of the records.

*(ii) indicate the witnesses and produce the documents and other exhibits which he intends to use at the trial, and an official copy of such note shall be served on the Attorney General.*

10. The Court further notes that in terms of Article 449 of the Criminal Code, it may authorise the accused to raise any of the preliminary pleas indicated in the said Article 449, following the lapse of the period of fifteen days specified in Article 438(2) of the said Code, where the reason for such pleas arises after the lapse of the said time.
11. It results from the records of the proceedings that the Written Statement was filed by the accused on 14th February 2022, and thus, after the expiration of the time contemplated in Article 438(2) of the Criminal Code. The Court observes, in addition, that the accused did not seek its prior authorisation as provided in Article 449 for the filing of the said Written Statement or of additional pleas, nor has the Court granted its authorisation for the filing thereof. Similarly, the accused has not indicated to the Court a reason which arose following the expiration of the time contemplated in Article 438(2) of the Criminal Code, to justify such filing. There appears to be no justifiable reason that arose after the lapse of the said time on the basis of which this Court may authorize the accused to raise any additional pleas or to produce additional documentation in support thereof<sup>2</sup> or in support of his Written Statement.

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<sup>2</sup> The Court notes that Doc. AA (ODPM) is irrelevant to the merits of the case and does not merit the exercise of the Court's discretion to allow or otherwise the production thereof. Doc. AA (GRTU), Doc. AA (ECP), Doc. AA (ECP1), Doc. AA (TA), Doc. AA (MPB), AA (NP) and AA (EC4), Doc. AA (MOM), Doc. AA (ETUK), Doc. AA (PR), Doc. AA(PETI), Doc. AA (EEAS-EDPS), Doc. AA (EDPS), Doc. AA(WILL), Doc. AA (LHC), Doc (TOM), Doc. AA (EEAS), Doc. AA (EEAS2) are all documents dating prior to the filing of the accused's note of preliminary pleas on 4<sup>th</sup> June 2021 and could have been thus filed therewith. The following documents are all documents obtained by the accused upon his various requests, all dating after the filing of the preliminary pleas of 4<sup>th</sup> June 2021, which requests could have been made by the accused prior to the said date: Doc. AA (EC1), Doc. AA (MGCS), Doc. AA (EC2), Doc. AA(EUO) and AA (EU01), Doc. AA (EC3), Doc. AA (FOI), Doc. AA (ECS), Doc. AA (EC-DATA), Doc. AA (EC6). In respect of Doc. AA (VS), the Court notes that although the testimony of Vincent Sladden, Director of the Public Registry, was given after the lapse of the time indicated in Article 438(2) of the Criminal Code, on 19<sup>th</sup> January 2022, the Director of the Public Registry has been indicated by the accused as a witness in his defence, together with the note of preliminary pleas of 4<sup>th</sup> June 2021. This means that the accused will have the opportunity to examine this witness during the trial by jury and to put to him any questions, which he may deem pertinent to his defence.

12. The Court notes that in the Written Statement, the accused reproduces the preliminary pleas, but then also delves into further arguments beyond the said pleas, whilst also raising additional pleas. As already indicated above, the Court further notes that in terms of the minute of the sitting held on 16th February 2022, this Court, as differently presided, provisionally admitted the said Written Statement as representing the accused's written submissions in relation to his preliminary pleas, whilst reserving its position in relation to the admissibility or otherwise of the said document, or any part thereof, to a later stage after having also taken cognizance of the submissions made by the Attorney General in respect thereof.
  
13. In line with the said minute, and after having also taken cognizance of the Attorney General's submissions of 15th March 2022, the Court shall be taking cognizance of and deem admissible, those parts of the Written Statement which may be considered to merely constitute written submissions on the preliminary pleas raised by the accused in his note of 4th June 2021. However, in view of the fact that no authorization was sought from this Court to file the said Written Statement, no authorization was likewise given to the accused to file additional preliminary pleas and documentation beyond the time stipulated in Article 438(2) of the Criminal Code, and there appears to be no justifiable reason that arose after the said time on the basis of which the Court may authorize the accused to raise any new arguments or additional pleas or to produce additional documentation, the Court deems inadmissible any arguments raised by the accused which go beyond the said pleas and cannot be deemed to constitute submissions thereon, as well as any further additional pleas raised, together with the entire documentation numbered 2 to 28 in the list of documents filed by the accused together with his Written Statement<sup>3</sup>, and in respect of which the Court orders the expunging thereof from the records of the proceedings.
  
14. The Court also cannot but note that the accused has insisted, in the course of these proceedings, on his right to provide for his own defence,

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<sup>3</sup> *Vide* fol. 364 and 365 of the records of these proceedings. The said documents are found at fol. 366 to fol. 488 of the records.

without the assistance of a lawyer, despite the fact that he is not sufficiently conversant with the applicable procedural laws governing a trial by jury. However this Court, *inter alia* by application of the universally accepted doctrine enshrined in the legal maxim *ignorantia legis neminem excusat*, cannot but apply the applicable procedural laws in an objective manner. The Court feels particularly duty bound to point out to the accused in clear language that the process of trial by jury for which he has opted, is governed by strict procedural rules, which must be observed both by the Prosecution and by the accused, the Court being itself an arbiter tasked with the duty to oversee compliance therewith.

**Considers further that:**

**First Preliminary Plea – Plea to the Jurisdiction of the Court**

15. In the first preliminary plea raised by the accused, he laments the lack of jurisdiction of the Maltese Courts in respect of the offences of which he is being accused, on the ground that the alleged offences were committed in Pakistan.
16. The Court notes that the jurisdiction of the Courts of criminal jurisdiction in Malta is mainly regulated by Article 5 of the Criminal Code. The said article, whilst listing specific instances and circumstances conferring jurisdiction upon the Courts of criminal jurisdiction of Malta, is also without prejudice to “*any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences*”.
17. The Court observes that although criminal law is by its very nature territorial, numerous are the provisions of penal law, including the said Article 5, that confer jurisdiction upon the Maltese Courts, despite the fact that an offence is alleged to having been committed beyond the territorial limits of Malta. The Court makes reference in this regard to



the teachings of Professor Sir Anthony Mamo<sup>4</sup> who, when addressing the subject of the limitations of the operation of the law by virtue of territoriality, challenged the absolute interpretation of the principle of territoriality:

*We have already pointed out that if the principle of the territorial nature of Criminal Law and Criminal Jurisdiction were absolute, the consequence would have been that the State could never try and punish any person who, outside the limits of its territorial jurisdiction, became guilty of any offence against its criminal law. But, as it has already been remarked, there are cases in which the State is justified in taking punitive action in respect of such offences.*

18. The Court refers to the judgement delivered by the Court of Criminal Appeal on 20th April 1995, in the names **Ir-Repubblika ta' Malta vs Ali Mohammed Ali Knajber**, wherein it was stated as follows:

*Illi pero' l-ligi tagħna, fil-materja ta' ġurisdizzjoni, għalkemm b'mod eċċezzjonali, ma tillimitax ruħha għall-prinċipju ta' territorjalita' biss. Fil-fatt l-istess artikolu 5 jestendi l-ġurisdizzjoni tal-Qrati Maltin ta' kriminal ġudikatura [recte: ġudikatura kriminali] għal ċerti ċirkostanzi oħra preċiżi, meta r-reat jiġi kommess barra minn dawn il-Gzejjer. Fil-fatt dan billi f'ċirkostanzi minnhom permezz ta' l-estenzjoni tat-territorju bħal fil-każ ta' reat kommess fuq vapur jew ajruplan Malti f'każi minnhom fejn l-akkużat hu ċittadin Malti jew hu resident permanenti f'Malta u f'każ minnhom meta wieħed fiż-żmien li jkun f'Malta jkun sar awtur jew kompliċi għad li d-delitt ikun sar barra minn Malta.*

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<sup>4</sup> Notes on Criminal Law, Volume 1, LL.B. I - First Year Criminal Law (Mamo Notes) Revamped by GhSL - Notes and Past Papers.

19. The Court observes in the first instance that each of the accusations brought against the accused Ahmad AZIZ are said to have been committed “*in the Maltese Islands*” ... “*on the 3rd of May 2018 and in the preceding months and years*”. This, in the opinion of this Court, suffices to establish the jurisdiction of this Court to try the accused before it and thus, for this Court to dismiss the plea of jurisdiction raised by the accused. In any eventuality, the determination as to whether the offences as charged have been committed by the accused, and if at all, whether these have been committed in Malta or elsewhere concerns the merits of these proceedings and is thus, a matter to be decided in the course of the trial by jury. In simple terms, the wording of the accusations brought against the accused in virtue of the bill of indictment suffices in this instance to confirm the jurisdiction of this Court to determine each and every count on the basis of Article 5(1)(a) of the Criminal Code.
20. In addition to the above considerations, however, the Court further observes, in connection with the first and second counts of the bill of indictment, that jurisdiction is specifically conferred on this Court in virtue of Article 310B of the Criminal Code which provides as follows:

*“The offences under this Sub-title shall be deemed to be offences **even when committed outside Malta** and, without prejudice to the provisions of article 5, the criminal action therefor may also be prosecuted in Malta according to the laws thereof against any person who commits or participates in the offence as provided in this Code –*

*(a) when the offence took place, even if only in part, in Malta or on the sea in any place within the territorial jurisdiction of Malta; or*

*(b) when the gain to the prejudice of another person has been received in Malta; or*

*(c) when a person in Malta knowingly assisted or induced another person to commit the offence; or*

*(d) when the offender is a Maltese citizen or a permanent resident in Malta and the fact also constitutes an offence according to the laws of the country where it took place*

21. As regards the ninth count of the bill of indictment, based on Article 6 of Chapter 61 of the Laws of Malta, the offender may be prosecuted, tried and punished in the same manner and to the same extent as if the offence had been committed in Malta, despite the fact that the offence may have been committed outside of Malta in relation to a passport issued to a citizen of Malta, in terms of Article 11 of the said Chapter 61.
22. In view of the above considerations, the Court hereby rejects the first preliminary plea raised by the accused.

### **Second Preliminary Plea – Plea of Nullity of Indictment**

23. In virtue of the **second preliminary plea**, the accused pleads the nullity of the indictment. The Court cannot but express its frustration at the unconventional fashion and the legally illogical manner in which the accused has sought to address this plea, which, considering the note of preliminary pleas in its totality, cannot but be considered to be yet another frivolous attempt by an untrained individual to address highly complex procedural issues.
24. The Court cannot fail to point out in the first place that the plea referred to in Article 449(1)(b) of the Criminal Code refers to the nullity or to a defect in the bill of indictment. In other words, the cited sub-article contemplates a defect on the face of the bill of indictment rendering the bill of indictment itself, either wholly or partially, ineffective. The said article does not refer to procedural defects before another Court, most notably the Court of Magistrates (Malta) as a Court of Criminal

Inquiry, unless the defect is one of those mentioned in Article 597(4) of the Criminal Code, which states as follows:

*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 the production, at the trial, of any act tendered in evidence which is not according to law.*  
[emphasis of this Court]

From the records of the proceedings, it cannot be stated that there result any of the defects indicated in the sub-article above cited. Nor does Article 449(1)(b) refer to alleged breaches of the accused's fundamental human rights, which matters must necessarily be addressed, not by this Court, but before the Court of competent jurisdiction on the behest of the person claiming such breaches.

25. A judgement often cited in connection with the plea raised in terms of Article 449(1)(b) is that in the names **Rex vs Strickland**<sup>5</sup> of 21st March 1923, wherein it was said that:

*Tanto secondo la nostra giurisprudenza quanto secondo quella inglese, la nullita' dell'atto d'accusa non si accorda per ragioni nel merito ma per difetti sostanziali recanti un pregiudizio, non altrimenti rimediabile nell'accusato, risultanti dalla faccia dello stesso atto che si impugna ..... Da altre sentenze stampate risulta che quando si e' trattato della nullita' o meno dell'atto*

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<sup>5</sup> Vol. XXV , p.iv., p.833.

*d'accusa, tale atto e' stato sempre esaminato per se stesso, indipendentemente dal merito e dalle prove.*

The teachings of the Court in **Rex vs Strickland** and others have been upheld even in more recent judgements of the Maltese Courts. Thus, the Court of Criminal Appeal, in a judgement delivered on 28th October 2008, in the names **The Republic of Malta vs Steven John Lewis Marsden** reiterated that:

*when the nullity of the bill of indictment is put forward ... (omissis)... the Criminal Court and the Court of Criminal Appeal can only look at the formal requirements of the said indictment or of one or more counts in the indictment*

Similarly, this Court as differently presided, in its judgement of 1st February 2023, in the names **The Republic of Malta vs Jesper Gejl Kristiansen** asserted as follows:

*The nullity of a bill of indictment takes place only if the bill of indictment contains a substantial defect of form which cannot be cured by an amendment. So, any defects or errors that can be amended in the course of the trial cannot lead to the nullity of the bill of indictment.*

In other words, the bill of indictment may only be annulled for reasons which result from the bill of indictment itself, and this by reference to the provisions of Article 588 *et seq* of the Criminal Code, regulating the bill of indictment.

26. The Court further observes that, notwithstanding the fact that the note of preliminary pleas filed by the accused is riddled with allegations of breaches of his fundamental human rights, the accused does not declare or explain the manner in which the alleged breaches impinge on the validity of the bill of indictment. This Court holds that the alleged breaches of the fundamental human rights of the accused, in the course

of the investigation and/or trial, particularly in the absence of a clear indication by the accused, cannot be considered to constitute a defect in the bill of indictment. This Court cannot but fail to emphasise, as it has done on numerous occasions in the course of these proceedings, that it is not vested with the competence to decide on matters as those raised by the accused.

27. According to the accused, in the point referred to as 2.1, there has been a breach of Article 392 of the Criminal Code during the proceedings held before the Court of Magistrates (Malta) as a Court of Criminal Inquiry, since the said Court failed to explain his right to silence. In terms of Article 392(1) of the Criminal Code:

*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.*

Article 392(2) and (3) of the Criminal Code state as follows:

*(2) Before asking any of the above questions, the court shall explain to the accused the nature of the charge preferred against him and shall inform him that he is not obliged to answer any question nor to incriminate himself; that he may, if he so desires, be assisted by advocates or legal procurators and that whatever he says may be received in evidence against him.*

*(3)The court shall note down at the head of the examination that the requirements of the last preceding sub-article have been complied with.*

28. The Court notes that from the minutes of the sitting held on 5th May 2018, when the accused was arraigned under arrest before the Court of Magistrates (Malta) as a Court of Criminal Inquiry, there results the following:

*The defendant was questioned in terms of law and answered not guilty to the charges brought against him. (emphasis of this Court)*

The Court further notes that the examination of the accused, at fol. 15 of the records, clearly states the following:

*The Court,*

*Having explained to the accused the nature of the charge/s proffered against him and informed him that he is not obliged to answer any question, nor to incriminate himself, that he may, if he so desires, be assisted by advocates or legal procurators and that whatever he says, may be received in evidence against him, examined without threat or promise, and without oath, the accused according to law who, in reply to the following questions, answered in English. (emphasis of this Court)*

29. Furthermore, on the date of his arraignment, the accused was legally assisted by defence counsel of his choice. During the said sitting, he failed to raise the objection being raised at this stage. There is, therefore, no reason for this Court to doubt the records of the proceedings before the Court of Magistrates (Malta) as a Court of Criminal Inquiry, as minuted during the said sitting.<sup>6</sup> The Court further

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<sup>6</sup> As held by the Court of Criminal Appeal in the judgement in the names **Il-Pulizija vs Favez Akil**, decided on 23rd January 2020, “*Din il-Qorti taghti importanza kbira lill-verbali tal-Qorti tal-Magistrati ghaliex dawn ikun fihom spjegazzjoni ta’ kif dik il-Qorti tkun qeghda tmexxi l-proċeduri quddiemha. Dawn il-verbali huma l-akbar salvagwardja għal dik il-parti mill-operat tal-Qrati tal-Magistrati u għar-retta amministrazzjoni tal-*

notes that, as stated above, in terms of Article 597(4) of the Criminal Code, it is the total absence of the examination of the accused, which allows the indictment to be impugned on the ground of a defect in the record of the inquiry. This part of the second preliminary plea is therefore being dismissed.

30. In point 2.2, under the heading, ‘Plea of Nullity of Indictment’, the accused pleads that his right to silence has been breached, whilst he refers to what the Court understands to be the civil proceedings initiated against him by the Director of the Public Registry by means of sworn application 421/2018 before the First Hall of the Civil Court in the names ‘Id-Direttur tar-Registru Pubbliku vs Ahmad Aziz’. The accused argues that the filing of civil proceedings during the pendency of criminal proceedings amount to a violation of his right to silence and of his right to a fair hearing. Furthermore, since he testified in those proceedings, this amounts to a breach of his right to remain silent, particularly because both the civil and the present criminal proceedings are concerned with the same facts.
  
31. In this respect, as already stated above, firstly, this Court is not competent to decide on issues of fundamental human rights, but limits itself to decisions from a criminal law point of view. The Court notes secondly, that this argument does not in any way impinge upon the validity or otherwise of the bill of indictment. Thirdly, the accused’s testimony does not form part of the evidence brought forward by the Prosecution during the compulsory stage of the evidence before the Court of Magistrates (Malta) as a Court of Criminal Inquiry, and that indeed, it was accused himself who sought to exhibit his testimony in the records of these proceedings with his Written Statement of Defence of 14th February 2022, as Doc. AA(TA)<sup>7</sup>, which document has already been declared inadmissible by this Court in this judgement. Fourthly, the accused’s grievance regarding his testimony breaching his right to silence does not concern the present proceedings, but separate and distinct proceedings brought against him by the Director of the Public Registry before the Courts of civil jurisdiction. Fifthly, as stated by the

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*Ġustizzja. Dawn għandhom ikunu miktuba b’mod ċar, dettaljat u spjegattiv dwar dak li jkun seħħ matul il-proċeduri*”. (emphasis of this Court)

<sup>7</sup> Vide a fol. 411 of the records.



First Hall of the Civil Court (in its Constitutional Jurisdiction) in its judgement of 26th September 2023, following the institution of proceedings by the accused himself in the names ‘Ahmad Aziz vs L-Avukat tal-Istat u d-Direttur tar-Registru Pubbliku’, wherein the said Court rejected the accused’s complaint of a breach of his right to a fair hearing on the grounds of the existence of concurrent proceedings in the civil and criminal fora:

*8. L-ewwel u qabel kollox, il-proċedura kriminali bl-Att t’Akkuża bin-numru 6/21 u l-proċeduri ċivili biċ-ċitazzjoni bin-numru 421/2018 huma kompletament distinti u separati. Dan jidher ċar mill-fatt li r-rikorrenti fiż-żewġ azzjonijiet, l-Avukat Ġenerali u d-Direttur tar-Registru Pubbliku, huma kompletament distinti minn xulxin. In oltre, ħarsa waħda lejn ir-riżultati li qed jintalbu mill-Avukat Ġenerali bhala prosekutur u mid-Direttur tar-Registru Pubbliku jgħid li anki it-talbiet mitluba fiż-żewġ azzjonijiet huma totalment differenti għaliex filwaqt li l-Avukat Ġenerali qed jitlob għas-sejbien ta’ htija u l-kundanna xierqa, id-Direttur tar-Registru Pubbliku kull m’hu jitlob hu li ssir il-kanċellazzjoni taċ-Ċertifikat tat-Twelid tar-rikorrent minħabba li l-informazzjoni u d-dokumenti li gie provdut mir-rikorrent huma foloz u fallaċi;*

*9. Dawn id-distinzjonijiet sopraċitati huma loġiċi stante li huwa stat ta’ fatt li n-natura legali taż-żewġ azzjonijiet imsemmija hija differenti għaliex waħda hija intrinsikament kriminali filwaqt li l-oħra hija intrinsikament ċivili. Din hija konfermata mir-ratio legis espressa fl-Artikoli 3 u 6 tal-Kodiċi Kriminali, u ċjoe`, li reat kriminali jista’ jwassal għal żewġ azzjonijiet legali li huma distinti u separati minn xulxin u li jiġu ntavolti indipendentement quddiem qradi ta’ kompetenzi differenti. Dan gie espressament konfermat fis-sentenza fl-ismijiet **Maurice Meli Bugeja pro et noe vs Francis Vella** (deċiża mill-Prim’Awla tal-Qorti*

Ċivili fis-26 ta' Jannar 2001) fejn ingħad li “**Il-proċeduri kriminali u dawk ċivili huma distinti u separati u ma hemm xejn li jżomm lill-atturi biex jintavolaw din il-kawża fil-mori tal-proċeduri kriminali...**”;

10. Terġa' u tghid fis-sentenza fl-ismijiet **Il-Pulizija vs Paul Gladwish** deċiża fit 12 ta' Diċembru 2018, il-Qorti tal-Appell Kriminali stqarret:

**“Il-Liġi tagħna tagħmel distinzjoni netta bejn iż-żewġ tipi ta' azzjoni li jitnisslu mill-istess reat iżda jimxu indipendentament minn xulxin, bi kriterji differenti li japplikaw għall-piż probatorju. Fil-kamp kriminali l-prova trid tkun oltre kull dubju raġjonevoli filwaqt li fil-kamp ċivili huwa biżżejjed li l-prova ssir skont il-grad inqas rigoruż tal-bilanċ ta' probabilita'.**

Fir-rigward tad-differenzi bejn proċeduri kriminali u dawk ċivili ippronunzjat ruħha l-Qorti Kostituzzjonali fil-kawża **Francis Vella vs. Avukat Ġenerali** tal-25 ta' Mejju 2010 fejn intqal is-segwenti:

Din il-Qorti tara li ma hemm xejn illoġiku jew kontra d-drittijiet fundamentali tal-bniedem fil-prinċipju li l-proċess kriminali u dak ċivili għandhom jitqiesu separati u distinti minn xulxin, għax proċess kriminali jitmexxa, fil-parti l-kbira, mill-istat, għandu regoli partikolari għalih u immirat għall-imposizzjoni ta' piena f'isem il kollettività. Il-proċess ċivili, min-naħa l-oħra, jitmexxa mill-individwu fl-interess tiegħu biss, u hu immirat mhux għall-imposizzjoni ta' piena, iżda għar-restituzzjoni in integro tad-drittijiet tiegħu. Fil-proċess kriminali, il-htija trid tirriżulta mingħajr l-iċken dubju, u l-akkużat jista' jibqa' sieket tul il-proċess kollu u ma jistax jiġi mgiegħel jagħti x-xhieda tiegħu. Minħabba dawn ir-restrizzjonijiet fil-proċess kriminali,

gieli jìgri li akkużat jinħeles minn kull imputazzjoni minħabba nuqqas ta' provi, pero`, dan m'għandux iċaħhad liċ-ċittadin milqut ħażin bl-aġir tal-akkużat li fi proċedura differenti, jitlob "just satisfaction" għall-ħsara li garrab. Id-dritt tal-vittma li jersaq lejn il-Qorti u jmexxi hu proċedura għar-rimedju opportun, ma jistax jiġi mwarrab a bażi tal-fatt li l-istat, bil-proċedura partikolari tiegħu, ma rnexxielux issib lill-istess persuna kriminalment ħatja. Kull ċittadin għandu dritt għall-aċċess għall-Qorti biex jitlob rimedju għal-lanjanzi tiegħu, u ma jistax ikun ta' ostakolu għal dan id-dritt proċess li fih hu ma jistax jieħu parti wisq attiva, u fejn ir-regoli proċedurali jagħtu, ffit jew wisq, vantaġġ lill-parti l-oħra.

Dan huwa minnu għas-sitwazzjoni odjerna fejn għandna żewġ azzjonijiet legali kompletament distinti, tant hu hekk li l-kawża ċivili ġiet intavolata fl-2018 qabel l-att t'akkuża tal-2021, għaliex waħda taqa' fil-kamp kriminali, filwaqt li l-oħra taqa' fil-kamp ċivili u għalhekk anki l-onus tal-prova huwa differenti, kif diġa' ingħad (ara **Eucaristico Żammi vs. Eustrachio Petrocchino** deċiża mill-Qorti tal-Appell fil-25 ta' Frar 1952, **Antoine Spiteri vs Mario Vella** et deċiża mill-Prim'Awla tal-Qorti Ċivili fid-29 ta' Novembru 2017, Rks Nru 475/13LM, **Paul Vassallo vs Carmelo Pace** deċiża mill-Qorti tal-Appell fil-5 ta' Marzu 1986 u **Group 4 Securitas (Malta vi Limited) vs Godfrey Lopez et** deċiża mill-Prim'Awla tal-Qorti Ċivili fil-25 ta' Novembru 2013);

32. Lastly, this Court further notes that the argument raised by the accused in his note of preliminary pleas were also considered in the judgement delivered by the Constitutional Court on 10th June 2024, in the names 'Ahmad Aziz vs L-Avukat tal-Istat et', in which case, the Court noted *inter alia* that prior to testifying before the First Hall of the Civil Court,

the accused had been duly cautioned in terms of law. In that case, the Court also held as follows:

*“13. F’kull każ jekk fil-kawża kriminali l-Avukat Ġenerali tippreżenta kopja tat-traskrizzjoni tad-depożizzjoni li ta fil-kawża ċivili 421/2018, m’hemm xejn x’iżomm lill-attur milli joġġezzjona għall-preżentata ta’ dak id-dokument. Imbagħad hi l-Qorti Kriminali li trid tiddeċiedi jekk hijiex ammissibbli bħala prova, u hekk tiċhad l-oġġezzjoni u tiddeċiedi jekk għandhiex tagħti direzzjoni lill-ġurati. Il-Qorti żgur li mhux ser toqgħod tispekula fl-astratt.”*

Indeed as already held above, the accused’s testimony in those proceedings were not exhibited in the present proceedings. Thus, in view of the above considerations, this part of accused’s plea is also being rejected.

33. In points 2.3 and 2.4, also under the heading ‘Plea of Nullity of Indictment’, the accused again laments of a breach of his right to silence on the ground that in the course of the proceedings before the Court of Magistrates (Malta) as a Court of Criminal Inquiry, the Prosecution produced as a witness, a representative of the Internal Audit and Investigations Department, with which department the accused had filed a complaint. Furthermore, the Prosecution exhibited emails of and complaints submitted by the accused. Again, the Court notes that this does not impinge on the validity or otherwise of the bill of indictment against the accused. Furthermore, the production of evidence by the Prosecution in the form of correspondence sent by the accused to several individuals, departments or authorities, does not impinge on the accused’s right to remain silent and not to incriminate himself. It is the Prosecution’s prerogative to decide on the evidence to tender in support of its case against the accused, though the Prosecution is duty-bound to produce evidence both in favour and against the accused, as much as it is the accused’s right to tender such evidence as he may deem necessary in his defence. This prerogative is merely limited by operation of the law itself, in those cases where the law expressly excludes the admissibility thereof in criminal

proceedings. The Court notes that the evidence to which the accused refers is not inadmissible, as there is no exclusionary rule of evidence, which renders such evidence inadmissible. As held in the judgement delivered by the Court of Criminal Appeal (in its Superior Jurisdiction) in the names **Ir-Repubblika ta' Malta vs Ibrahim Ramandan Ghamber Shnishah** decided on 26th April 2001:

*Kull dokument (u kull prova) li permezz tieghu (jew tagħha) parti jew ohra tista' tagħmel prova ta' dak li gara jew ma garax riferibbilment għall- "facts in issue" – jigifieri kull dokument (jew prova) li jagħmel (jew tagħmel) "more or less probable a fact in issue" – hu (hi) ammissibbli in kwantu relevanti, kemm-il darba ma jkunx hemm xi regola tal-ligi, jigifieri "an exclusionary rule of evidence", li jirrendi dak id-dokument (jew dik il-prova) inammissibbli.*

34. As also held in the judgement delivered by the Court of Criminal Appeal on 27th October 2016, in the names **Il-Pulizija vs Moumen Troure**:

*Issa meta il-Qorti tqis illi prova hija inammissibbli u għalhekk tiskartaha, dik il-prova trid tkun tali illi tippresupponi xi dispożizzjoni tal-ligi li teskludieha milli tingieb 'il quddiem fil-proċess. Illi allura il-Qorti trid timxi b'ċirkospezzjoni kbira sabiex tqis jekk il-prova li l-akkuzat qed ifittex li jxejjen tmurx kontra l-ispirtu tal-ligi li tirregola l-valur probatorju u l-ammissibbiltà tagħha.*

35. Thus, this part of accused's second plea is also being rejected.
36. In point 2.5, again under the heading 'Plea of Nullity of Indictment', the accused complains of ill-treatment at the hands of the Executive Police during his interrogation, alleging that he was harassed and forced to accept the allegations made, against threats that he would face nine years imprisonment. Again, were this to be the case, it does not

affect the validity or otherwise of the bill of indictment. However, there is nothing in the records of the proceedings which indicates that the accused suffered any harassment or pressure at the hands of the Executive Police, or at least no more pressure than that normally expected during an interrogation. In this respect, the Court notes that the accused released two statements to the Executive Police – one on 4th May 2018 and another on 5th May 2018. As to the accused’s interrogation held on 4th May 2018, it results that he was cautioned in terms of law, and given the letter of rights, which he declared to have understood, he consulted his lawyer, Dr. Joseph Pace, prior to his interrogation, and furthermore was assisted by the said lawyer during the said interrogation. As to the interrogation held on 5th May 2018, it results that he was again cautioned in terms of law and informed of his rights. Furthermore, at the end of his statement he declared that “*this statement that I just released is the real truth, and it was made without any threats, favours, fears or obligations*”.<sup>8</sup> This part of the plea is thus also being dismissed. These considerations also apply in relation to the arguments made by the accused in point 2.12.

37. In point 2.6, the accused argues that there has been a breach of Article 6 of the European Convention on Human Rights, since the Executive Police commenced investigations in his regard on the basis of his emails and not on the basis of a report or complaint as provided in Articles 535, 536, 537 and 542 of the Criminal Code. Again, the Court makes it clear that it is not the competent forum to address alleged breaches of the accused’s human rights under the European Convention on Human Rights and/or under the Constitution of Malta. Thus, this plea will only be entertained insofar as it refers to the rules of criminal procedure and the observance thereof. The accused is here attacking the legal basis of the criminal action in connection with the offences as proffered in the bill of indictment issued against him. In this regard, reference is made to the testimony provided by Inspectors George Cremona and Omar Zammit, who stated that investigations commenced following complaints that the accused was still allegedly purporting to be a trade representative of Malta in Pakistan, when he was not. This investigation then led to investigations regarding the

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<sup>8</sup> *Vide* a fol. 65UU of the records.

accused's Maltese nationality and citizenship. Accused's argument is thus, factually incorrect. In any case, Article 543(a) of the Criminal Code states that:

*543. It shall be lawful for the Police to institute proceedings even without the complaint of the private party in any of the following cases:*

*(a) in the case of crimes for which the law does not expressly provide that the complaint of the private party is requisite*

38. The offences of which the accused stands charged in all nine counts of the bill of indictment pertain to that category of offences which may be prosecuted without the complaint or report of the injured party. Thus, were there to be no report or complaint in respect of the accused – which as stated above, was nonetheless not the case – this does not render the prosecution of the criminal action against the accused irregular or contrary to the law of criminal procedure, which means that the Executive Police had the power vested at law to institute proceedings against the accused for the offences of which he is accused. This part of accused's plea is thus likewise being dismissed.
39. In point 2.7<sup>9</sup>, the accused argues that the bill of indictment is defective due to the non-observance of the provisions of Article 360(2) of the Criminal Code, on the basis of there being a discrepancy between the information indicated in the charge sheet and the evidence which emerged from the compilatory stages of these proceedings in respect of the period of time when the alleged offences were committed.
40. It appears necessary to point out that from the moment that the Attorney General issues the bill of indictment in terms of the provisions of Article 432 of the Criminal Code, it is the bill of indictment which becomes the basis of the criminal action against the accused. Thus, where the offences fall within the jurisdiction of the Criminal Court or where the accused does not submit to the jurisdiction of the Court of

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<sup>9</sup> As also in the fifth preliminary plea raised by the accused.

Magistrates as a Court of Criminal Judicature, in terms of the provisions of Article 370(3)(d) of the Criminal Code, the charge sheet filed against the accused in the Court of Magistrates as Court of Criminal Inquiry does not serve as the basis of the indictment, but merely defines the parameters within which the compilation of evidence takes place before the said Court. Thus, before the Criminal Court, it is the bill of indictment alone which serves as the basis of the criminal action against the accused, the contents of which are regulated by the provisions of Article 589 of the Criminal Code, and not by the provisions of Article 360(2) of the said Code. Article 589(c) of the Criminal Code reads as follows:

*The indictment shall be made in the name of the Republic of Malta and shall –*

*(c) state the facts constituting the offence with such particulars as can be given relating to the time and place in which the facts took place and to the person against whom the offence was committed, together with all such circumstances as, according to law and in the opinion of the Attorney General, may increase or diminish the punishment for the offence;*

41. Having examined the records of these proceedings, the Court notes that the facts as narrated by the Attorney General in each count of the bill of indictment are the facts as understood by the said Attorney General on the basis of the evidence gathered in the compilatory stages of the proceedings, including those particulars relating to the time and place of the alleged offences. The facts as included by the Attorney General are in conformity with the requisites of Article 589(c) of the Criminal Code. It will however remain a matter to be determined by the impanelled jury during the trial, after hearing all the evidence produced before them by the parties, whether the alleged offences took place during the timeframes indicated by the Attorney General in the bill of indictment and whether such offences are proved beyond a reasonable doubt. As held by the Court of Criminal Appeal (in its Superior Jurisdiction) in its judgement of 23rd June 2021, in the names **Ir-Repubblika ta' Malta vs Grazio Azzopardi**:



*Illi skont l-artikolu 588 tal-Kodici Kriminali 'l-att tal-akkuza ghandu jigi maghmul bil-miktub u ghandu jigi iffirmit mill-Avukat Generali' u skont l-artikolu 589 tal-istess Kodici 'L-att tal-akkuza jsir fl-isem tar-Repubblika ta' Malta'. Ghalhekk, meta fl-artikolu 589 tal-istess Kodici jinghad li l-att tal-akkuza ghandu jfisser il-fatt li jikkonstitwixxi r-reat u l-partikolaritajiet l-ohra msemmija fl-istess artikolu dan ma jistax ifisser hliet li l-att tal-akkuza ghandu jfisser il-fatt u partikolaritajiet l-ohra msemmija skont kif jifhimhom li graw l-Avukat Generali f'isem ir-Repubblika ta' Malta. Il-provi in sostenn tal-fatt li jikkonstitwixxi r-reat u tal-partikolaritajiet l-ohra skont l-att tal-akkuza, imbaghad, jingiebu mill-Avukat Generali fil-kors tal-process fl-istadju opportun – **Ir-Repubblika ta' Malta vs. Stiano Agius u Eleanor Tracy Agius**.<sup>10</sup>*

*Dan ghaliex: "l-Avukat Generali jista' jibbaza l-att ta' l-akkuza fuq provi li ma ngibux fil-kumpilazzjoni. Dan ma jgibx in-nullita` ta' l-att ta' l-akkuza (jew kap ta' l-att ta' l-akkuza) stante ukoll dak li jipprovdi l-artikolu 435 tal-Kodici Kriminali.<sup>11</sup> Fl-istadju ta' l-eccezzjonijiet preliminari l-Qorti Kriminali ma taghmilx apprezzament tal-provi kollha migjuba fil-kors tal-kumpilazzjoni biex tara jekk prova partikolari tirrizultax sodisfacentement jew le; din hija haga merament ta' prova messa ultimament f'idejn min irid jiddeciedi dwar il-provi." – **Ir-Repubblika ta' Malta vs. Charles Steven Muscat**.<sup>12</sup>*

42. This part of the second plea raised by accused is therefore being dismissed.

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<sup>10</sup> Decided on 9th January 2014.

<sup>11</sup> Article 435 of the Criminal Code provides that: "435. (1) It shall be lawful for the Attorney General to collect and produce further evidence besides that resulting from the inquiry: Provided that he may not include in the indictment any charge for any offence, not founded on the said inquiry."

<sup>12</sup> Decided on 13th May 1998.

43. In point 2.8, the accused argues that he was not provided with the letter of rights during his interrogation by the Executive Police, and this in breach of his fundamental human rights and of Article 534AB of the Criminal Code. Again, here the Court reiterates that it is not competent to deal with alleged breaches of fundamental human rights, but will merely consider this argument raised by the accused from a criminal law perspective. It further reiterates that even here, although this point has been raised under the heading ‘Plea of Nullity of Indictment’, if the failure as alleged by the accused were to result, this would not bring about the nullity of the bill of indictment.
44. The Court notes that Article 534AB(3) of the Criminal Code was introduced in the Criminal Code by virtue of Act IV of 2014, and was thus in force on 3rd May 2018, when accused was arrested. In terms of the said article of law, the Police have the duty to provide a person arrested or detained, promptly with the Letter of Rights set out in Schedule E of the Criminal Code and shall give the said person, an opportunity to read it and to retain it in his possession throughout the time that he spends in detention. The said Letter must be written in a language that such person understands. In the proviso to the said article, the law allows for the rights contained in the said Schedule E to be administered orally to the said person in a language which he understands, where this is not immediately available in the appropriate language, so however that, the Police shall, without undue delay, provide the said person with such letter in a language which he understands.
45. In this respect, the Court notes that from the transcribed statement released by the accused on 4th May 2018, it results that the accused was indeed given his Letter of Rights in terms of law, and thus, accused’s assertion is factually incorrect. Indeed, the said statement reads as follows:

*Inspector: So yesterday upon your arrest you confirm you were given your rights your legal rights?*

*AHMAD AZIZ: Yes*

*Inspector: You confirm?*

*AHMAD AZIZ: Yes*

*Inspector: You confirm you were also give a letter of rights?*

*AHMAD AZIZ: Yes they gave me this letter yes.*

*Inspector: Is there anything you did not understand from that letter?*

*AHMAD AZIZ: Because I have a right to challenge the arrest.*

*Inspector: Ehe*

*AHMAD AZIZ: And I have a right for the ... and all this things my advocate is here with me and I think he will do better.*

*Inspector: Ehe besides those there was anything you didn't understand about your rights?*

*AHMAD AZIZ: I cannot say, I read each and everything.*

*Inspector: Ehe and you read it well?*

*AHMAD AZIZ: Yes I read it well<sup>13</sup>*

46. This part of accused's second preliminary plea is thus also being dismissed.
47. In point 2.9, albeit in different terms, the accused essentially submits that the provisions of Article 534AB(c) and (d) of the Criminal Code<sup>14</sup>

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<sup>13</sup> Vide a fol. 582 of the records.

<sup>14</sup> Article 534AB (c) refers to "the right to be informed, in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of his rights of defence, of the offence he is suspected or accused

have not been complied with. In this respect, the Court again notes that if this were to be the case, this would not bring about the nullity of the bill of indictment. The Court further notes that the warrant of arrest issued against the accused on 3rd May 2018 and executed against him on the said date, refers specifically to the offences of falsification of documents and false oaths, as well as to the commission of ancillary offences<sup>15</sup> and that the declaration at fol 65B of the records, by means of which the accused declared that he was forfeiting his right to consult privately with a lawyer prior to being interrogated, indicates that he had been arrested in connection with investigations “*into crimes of abusing of authority, and breach of duties and/or any other ancillary crime/s which may result in the course of the investigation*”.<sup>16</sup> In this respect the Court considers that although both the warrant of arrest and the said declaration could have been drafted in a manner as to gather all the offences in respect of which the accused was being investigated by the Executive Police at that point in time, yet both the warrant of arrest and the subsequent declaration indeed refer to the offences which the Executive Police were investigating in relation to the accused. Furthermore, although the warrant exhibited is in the Maltese language, from the records of the proceedings there is nothing to indicate that accused was not informed, in a language which he understood, or did not understand, the facts in respect of which he was being investigated. Indeed, the interrogation of 4th May 2018, during which he was assisted by his lawyer, touched upon the two aspects of the investigation, and neither the accused nor his lawyer complained that the accused was not aware of any facet of the investigation. This part of the second plea raised by accused is thus also being dismissed.

48. In point 2.10, the accused submits that the criminal action is in breach of his right to private life in terms of Article 8 of the European Convention on Human Rights. Again, this is not a matter for this Court

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*of having committed: Provided that the suspect or accused shall be promptly informed of any changes in the information given in accordance with this article where this is necessary to safeguard the fairness of the proceedings*”. Article 534AB (d) refers to “*the right to interpretation and translation*”.

<sup>15</sup> *Vide* a fol. 65A of the records.

<sup>16</sup> Indeed, in point 2.17 of the preliminary pleas, accused acknowledges that he was informed by the Executive Police that he had been arrested on the basis of allegations of abuse of authority and breach of duties (*vide* a fol. 61 of the records).

to consider as it falls outside its competence and thus, it abstains from taking further cognizance thereof.

49. In point 2.11, the accused again pleads a breach of the right to a fair hearing due to a breach of the *audi alteram partem* rule and that “*no one should be condemned unheard*”. Here the accused refers to the stage in which the Court of Magistrates (Malta) as a Court of Criminal Inquiry, found that there were sufficient grounds for his trial on indictment, and consequently committed him to be tried before the competent court, known as the *prima facie* decree.<sup>17</sup> This Court understands that in this regard, accused’s complaint revolves around the fact that the Court of Magistrates (Malta) as a Court of Criminal Inquiry did not hear submissions on his behalf, before issuing the said decree. The Court notes, however, that from the minutes of the sitting held before that Court on 23rd May 2015<sup>18</sup>, it results that the accused was assisted by two defence lawyers, and that the Court proceeded with the stated decree, after having heard submissions about the accused’s request to be released from preventive custody. There is nothing in the records of the proceedings to indicate that accused’s defence counsel attempted to make submissions in relation to whether there were sufficient grounds for the accused’s trial on indictment, but were not authorised by the said Court to do so, or that any minute was registered, at any stage in the proceedings, on behalf of the accused, suggesting that there was anything irregular in the manner in which the said Court proceeded with issuing the said decree. Thus, this part of the second preliminary plea raised by the accused is also being rejected.
50. In point 2.13, the accused laments that on 5th May 2018, he was interrogated by the Executive Police, in the absence of a lawyer. As above stated, the accused released two statements to the Executive Police on 4th May 2018 and 5th May 2018 respectively. On both occasions, the accused was cautioned in terms of law. It also transpires that on 3rd May 2018, and on 5th May 2018, the accused was given the right to consult privately with a lawyer or legal procurator of his choice, prior to being interrogated, and that reference was made to the rule of

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<sup>17</sup> *Vide* a fol. 470 of the records.

<sup>18</sup> *Vide* a fol. 101 of the records.

inference in this regard.<sup>19</sup> Indeed, as results from the declaration found at fol. 65C of the records of the proceedings, on 3rd May 2018, the accused consulted Dr. Joseph Pace *via* telephone, and this after having previously declared that he was forfeiting his right to consult his lawyer of choice.<sup>20</sup> The Court further notes that although it does not specifically result from the records of the proceedings, that the accused was given the right to be legally assisted during the interrogation of 4th May 2018, yet it results that he was so assisted and that his lawyer of choice, Dr. Joseph Pace, was present during this interrogation. In respect of the interrogation held on 5th May 2018, it also transpires that the accused confirmed that he had again been informed of his rights on that day.

51. The Court notes that although the records indicate that the right to legal assistance as given to the accused on 3rd May 2018 and 5th May 2018 was restricted merely to the right to consult with a lawyer prior to being interrogated, as it therefore stood before the introduction of Article 355AUA of the Criminal Code through Act LI of 2016, and although it appears that the Executive Police referred to the rule of inference at a time when any such rule had already been removed from law, it is nonetheless evident that the accused had been informed of his right to legal assistance during his questioning, once his lawyer Dr. Joseph Pace, was indeed present during the interrogation held on 4th May 2018. Furthermore, such right to legal assistance during questioning is also indicated in the Letter of Rights, as per Schedule E of the Criminal Code, which Letter of Rights accused confirmed to have received during his interrogation of 4th May 2018. Thus, although the templates used by the Executive Police, both in the declaration at fol. 65B of the records and in the introductory part of his statement of 5th May 2018 did not refer to accused's right to be assisted by a lawyer during questioning, yet it is evident that such right was indeed given to the accused prior to said questioning.
  
52. Thus, at this stage the Court deems that the statement released by the accused was valid in terms of law and cannot therefore be declared

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<sup>19</sup> *Vide* a fol. 65B and 65TT of the records of the proceedings.

<sup>20</sup> *Vide* a fol. 65B.

inadmissible. Whether the accused has been given his right to legal assistance prior to questioning and in so far as the probative value of the said statement is concerned, it will remain to be determined by the jurors, namely, the judges of fact, during the trial by jury, after having heard the evidence brought before them and the submissions made by the parties and following the judge's address in terms of Article 465 of the Criminal Code. As held in the judgement delivered by the Court of Criminal Appeal (in its Superior Jurisdiction) on 27th January 2021, in the names **Hassan Ali Mohammed Abdel Raouf u Josephine Wadi**:

*23. Għaldaqstant magħmula dawn il-konsiderazzjonijiet, l-aggravji sollevati mill-Avukat Ġenerali jisthoqqilhom 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 ta' l-istqarrijiet rilaxxati mill-akkużati jekk jirrizulta illi dawn ma ttieħdux skont il-liġi, jew jekk javveraw irwieħhom dawk iċ-ċirkostanzi elenkati fil-linji gwida stabbiliti fid-deċiżjoni Beuze<sup>21</sup> hawn fuq*

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<sup>21</sup> **Philippe Beuze vs Belgium**, decided by the *Grand Chamber* of the European Court of Human Rights on 9th November 2018, wherein it was stated that in order to consider whether there is a breach of Article 6 of the European Convention, where the right of access to a lawyer has not been granted to a suspect or an arrested person, the Court must analyse the circumstances of the particular case, taking into consideration a number of non-exhaustive criteria, indicated in its decision. The Court held the following in this respect:

*“(y) Relevant factors for the overall fairness assessment*

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

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

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

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

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

*iċċitata. Fuq kollox, għall-appellati dejjem jibqa' id-dritt tagħhom li jitolbu reviżjoni tal-verdett u s-sentenza tal-Qorti Kriminali fl-eventwalita' li jkun hemm dikjarazzjoni ta' htija fil-konfront tagħhom.*

53. Thus, this part of the second preliminary plea is also being dismissed.
54. As regards point 2.14 raised by the accused, whereby he pleads that the bill of indictment is null due to the difference between the offences envisaged in the charge sheet and the accusations in the bill of indictment, the Court refers to its considerations above, in respect of point 2.7 raised by the accused, and dismisses also this part of the second preliminary plea.
55. In point 2.15, the accused again pleads the nullity of the bill of indictment. He argues that the “*facts as alleged and the consequent charge do not constitute the offence*” of which he has been accused. On the basis of his Written Statement of Defence, it seems to the Court that the accused is here referring to the First Count of the bill of indictment. Again the Court here reiterates that ultimately, it is for the judges of fact, namely, the jurors, who will determine, on the basis of the evidence tendered before them during the trial, whether the facts alleged and narrated by the Attorney General in the bill of indictment are proved to the degree required by law and whether the facts as proved, give rise to the offence indicated by the said Attorney General in the accusation. In the judgement delivered by this Court, as

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*(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.”*



differently presided, in the names **Ir-Repubblika ta' Malta vs Malcolm Joseph Falzon** of 19th May 2022, it was stated as follows:

*4. Illi din il-Qorti ma taqbilx mal-argument imressaq mill-appellant. Fl-Artikolu 589 il-Kodiċi Kriminali jelenka x'għandu jkun fih l-Att ta' Akkuża. Fosthom hemm l-obbligu tal-Avukat Ġenerali li jagħmel l-espożizzjoni tal-fatti billi jfisser il-fatt li jikkostitwixxi r-reat, bil-partikularitajiet li jkunu jistgħu jingħataw dwar iż-żmien u l-lok li fihom ikun sar il-fatt u dwar il-persuna li kontra tagħha r-reat ikun sar, flimkien maċ-ċirkostanzi kollha li, skont il-liġi u fil-fehma tal-Avukat Ġenerali, jistgħu jkabbbru jew inaqqsu l-piena. F'din l-esposizzjoni tal-fatt, l-Avukat Ġenerali hu konċess ċertu grad ta' liberta dwar kif jesponi dawn il-fatti, li pero jrid jirrifletti l-mod kif ikun fehem il-provi miġbura matul il-kors tal-proċess istrutturju. Biss din in-narrativa tiegħu ma tikkostitwix "il-prova" tal-fatt. Il-prova hija msejsa fuq dak li oġġettivament jirriżulta mill-evidenza li tkun giet miġbura matul l-istrutturja u li eventwalment jiġi preżentat fil-kors tal-ġuri għall-ġudizzju tal-Ġurija. Din il-Qorti għalhekk f'din l-analiżi tagħha ma tistax tinoltra ruħha fuq dan l-aspett in kwantu mhix vestita bis-setgħa tal-ġudizzju dwar il-fatti tal-każ. L-anqas tista' tistharreġ jekk dik in-narrattiva tal-Avukat Ġenerali tirriżultax imsejsa jew imsahħa mill-provi prodotti fl-istrutturja. Dik hija setgħa riżervata għall-ġudizzju tal-Ġurija. Fl-aħhar mill-aħhar dak li jghodd u jorbot lil ġurati hija l-evidenza li tkun miġjuba lilhom u li toħroġ matul il-kors tal-ġuri.*

56. Thus, this part of the second preliminary plea is also being dismissed.
57. In point 2.16, the accused alleges a breach of Article 6(3) of the European Convention on Human Rights, since he was not afforded the right to disclosure, or the right of access to the materials of the case, in terms of Article 534AF(2) of the Criminal Code. Again, the Court will

not consider this alleged breach of the European Convention as it has no competence to do so, but will merely consider accused's argument on the basis of the said Article 534AF(2). In this respect, the Court notes that the failure of the Executive Police to comply with this duty at law does not lead to the nullity of the bill of indictment, or to the nullity of the proceedings held before the Court of Magistrates (Malta) as a Court of Criminal Inquiry or to the inadmissibility of the evidence tendered by the Prosecution before the said Court. The position adopted by the Maltese Courts in this respect is that which results from the judgement delivered by the Court of Criminal Appeal (in its Superior Jurisdiction) on 22nd Novembru 2023 in the names **Ir-Repubblika ta' Malta vs Clayton Azzopardi**, wherein it was held as follows:

*43. ... Illi l-għan wara d-dritt tal-aċċess għal materjal u l-evidenza huwa li l-persuna suspettata jew akkużata ikollha żmien biżżejjed mhux biss biex tissindika l-validita' tal-arrest tagħha, fil-każ li dik il-persuna tinsab arrestata u/jew detenuta, iżda ukoll sabiex ikollha żmien biżżejjed biex tipprepara id-difiża tagħha, u dan kif hemm imfisser fis-subartikoli (2) u (3) għall-artikolu 534AF tal-Kodiċi Kriminali. Illi dan id-dritt ta' l-aċċess kif imfisser fil-liġi għandu jingħata "mas-sottomissjoni tal-merti tal-kawża." Issa żgur u mhux forsi illi matul il-kumpilazzjoni tal-każ, l-evidenza kollha li kellha l-Prosekuzzjoni giet imressqa fil-qorti, tant illi l-appellant għandu f'idejh, qabel il-mument taċ-ċelebrazzjoni tal-ġuri, u allura meta ser isiru s-sottomissjonijiet fuq il-merti tal-kawża, l-materjal kollu li l-Prosekuzzjoni għandha f'idejha biex b'hekk huwa għandu żmien biżżejjed biex jipprepara id-difiża tiegħu. Dan ifisser illi ser jibqgħu mhux mittiefsa l-jeddijiet tiegħu għal smiġh xieraq u skont il-liġi. Jikonsegwi għalhekk, illi ma hemm ebda lok li jkun hemm l-isfilz ta' ebda evidenza billi din giet ikkumpilata bil-għan, fuq kollox, li l-appellant ikollu a full disclosure tal-provi kollha li l-Prosekuzzjoni bi hsiebha tressaq waqt il-ġuri, f'liema mument allura l-mertu tal-każ ser ikun dibattut.*

*44. Illi magħmula dawn il-konsiderazzjonijiet jingħad ukoll illi ebda prova ma titqiesx li hija inammissibbli diment li ma jkunx hemm disposizzjoni espressa tal-ligi li teskludi dik il-prova milli tingieb 'il quddiem. Issa huwa ndubitat illi ma hemm ebda disposizzjoni tal-ligi li għib xi nullita' tal-kumpilazzjoni jew addirittura tal-investigazzjonijiet kondotti mill-pulizija għaliex il-persuna suspettata ma tkunx ingħatat aċċess għal xi evidenza, kif lanqas hemm xi disposizzjoni tal-ligi li tirrendi inammissibbli xi evidenza materjali li ma tkunx giet svelata lis-suspettata mal-arrest tiegħu. Fuq kollox, kif ingħad, l-appellant llum għandu f'idejh l-evidenza kollha li ser tinstema' fil-guri. Ma jistax jingħad għalhekk illi kien hemm xi vjolazzjoni tal-jedd mogħti fl-artikolu 534AF tal-Kodiċi Kriminali, għalkemm din id-disposizzjoni tal-ligi ma kenitx viġenti fiż-żmien tal-arrest tiegħu, billi l-evidenza kollha hija f'idejh u f'idejn id-difensuri tiegħu bil-għan illi "tigi salvagwardjata proċedura ġusta u sabiex jipprepara għad-difiża tagħhom." Lanqas ma jista' jingħad illi l-aċċess għall-evidenza materjali ma ingħatax fi żmien xieraq "sabiex ikun hemm eżerċizzju effettiv tad-dritt għal difiża u tal-inqas għandu jingħata mas-sottomissjoni tal-merti tal-kawża", iktar u iktar meta l-proċess ġudizzjarju għad irid jiġi ċċelebrat. Għal dawn il-motivi dan l-aggravju qed jiġi miċħud.*

58. This part of the second preliminary plea is thus being rejected.
59. The Court notes that point 2.17 has already been dealt with by the Court in the considerations above under point 2.9. Again the Court reiterates that it cannot deal with alleged human rights breaches under Article 6 of the European Convention. In any case, as regards accused's argument from a criminal law aspect, this is also being dismissed in line with its considerations regarding point 2.9.
60. In point 2.18, the accused states that the Attorney General failed to file the bill of indictment in the time stipulated in Article 432 of the

Criminal Code. This is also the tenth preliminary plea raised by the accused. Article 432(1) of the Criminal Code states as follows:

*The Attorney General shall be allowed the term of one month for the filing of the indictment, to run from the day the Attorney General is granted access by electronic means to the record<sup>22</sup> referred to in the last preceding article ...*

61. The Court notes that from an examination of the records of the proceedings, it results that the accused refused to give his consent to subject himself to the jurisdiction of the Court of Magistrates (Malta) as a Court of Criminal Judicature in the course of the sitting held before the Court of Magistrates (Malta) on 16<sup>th</sup> February 2021 and that the bill of indictment was subsequently issued by the Attorney General in terms of Article 432(1) of the Criminal Code, on 15<sup>th</sup> March 2021. The claim of the accused is thus, unfounded and this part of the second preliminary plea and the tenth preliminary plea are thus being rejected.

62. Finally, in point 2.19, the accused pleads the nullity of the bill of indictment on the ground that the Attorney General did not provide him with a copy of the records of the inquiry made by the Court of Magistrates.

63. This plea is legally unfounded. The Attorney General, as Prosecutur and hence a party to the proceedings, is not bound at law to provide the counter-party, namely, the accused, with a copy of the said record. Article 440(1) of the Criminal Code provides that:

*The record of the inquiry, documents and exhibits filed in the registry of the court by the Attorney General or the accused shall be accessible to the Attorney General and to the accused or his advocate or legal procurator. [emphasis of this Court]*

64. Having made the above considerations, this Court is hereby rejecting also this part of the second preliminary plea.

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<sup>22</sup> In terms of Article 431 of the Criminal Code, this is the record of the inquiry made by the Court of Magistrates.

### **The Third Preliminary Plea – The Criminal Action is Time-Barred**

65. The accused argues that the criminal action with regard to all offences as contained in the nine counts of the bill of indictment is time-barred, stating that the facts as narrated have been committed in 2007. The Court notes that the Attorney General has defined the year 2018 and the preceding months and years as the temporal parameters of the criminal action. The Court further notes that the Attorney General has also imputed Article 18 of the Criminal Code to the offences as charged in the various counts of the bill of indictment and that, according to the provisions of Article 691(1) of the Criminal Code, in the case of a continuous offence, prescription shall be reckoned from the day on which the last violation took place.
66. It so however remains to be seen and determined at the trial by jury whether the accused AZIZ committed, if at all, the offences of which he is being accused, in the period indicated by the Attorney General in the bill of indictment, and this after having heard all the evidence that the parties shall produce at the trial. The accused shall also have the opportunity to challenge that evidence as brought forth by the Prosecution and to make his defence.
67. Having made the above considerations, this Court is hereby rejecting the third preliminary plea.

### **The Fourth Preliminary Plea – Plea of ‘Autrefois Acquit’ and ‘Double Jeopardy’**

68. In virtue of the fourth preliminary plea, the accused alleges a breach of the provisions of Article 527 of the Criminal Code on two grounds, these being:
- (i) that he has already been subjected to civil proceedings bearing number 421/2018 before the First Hall of the Civil Court on the same facts as those in these criminal proceedings;

- (ii) that he has already been tried and acquitted in Pakistan for offences arising from the same fact.

69. Article 527 of the Criminal Code reads as follows:

*Where in a trial, judgment is given acquitting the person charged or accused, it shall not be lawful to subject such person to another trial for the same fact.*

70. The principle *ne bis in idem* is embodied in Article 527 of the Criminal Code and in Article 39(9) of the Constitution of the Republic of Malta, as well as in the European Convention on Human Rights. Further protection against the universally accepted principle of double jeopardy within the European Union is afforded to all European Union citizens both in virtue of statutory provisions, namely Article 50 of the Charter of Fundamental Rights of the European Union and in virtue of Article 54 of the 1985 Convention for the Implementation of the Schengen Agreement, as well as in virtue of jurisprudence which has extended the application of the cited provisions to third country nationals (*vide* Grand Chamber decision C-435/22 PPU (HF/Generalstaatsanwaltschaft Munchen) decided on 28<sup>th</sup> October 2022 which followed the landmark ruling C-505/19 WS vs. Germany<sup>23</sup>).

71. The Court observes that it has been established through jurisprudence that the plea of *ne bis in idem* under Article 527 of the Criminal Code may only be successfully raised if the following criteria are satisfied, that is: (i) there must be a judgement; (ii) acquitting (or convicting) the person charged or accused; (iii) on the same fact.

72. With regard to the first ground raised by the accused in support of the fourth preliminary plea, the Court refers to Article 3(1) of the Criminal Codes, which provides as follows:

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<sup>23</sup> CJEU: EU's Double Jeopardy Ban also Applies to Non-EU Citizens and Blocks Extradition to Third Countries - eucrim accessed: 28th November 2023

*Every offence gives rise to a criminal action and a civil action.*

Article 3(2) and (3) further provide that the criminal action is prosecuted before the courts of criminal jurisdiction, whereas the civil action is prosecuted before the courts of civil jurisdiction.

73. The Maltese Courts have already had the opportunity to determine the matter raised by the accused. Thus, in the judgement delivered by the Constitutional Court on 25th May 2010, in the names **Francis Vella vs Avukat Ġenerali**, it was held as follows:

*Din il-Qorti tara li ma hemm xejn illoġiku jew kontra d-drittijiet fundamentali tal-bniedem fil-prinċipju li l-proċess kriminali u dak ċivili għandhom jitqiesu separati u distinti minn xulxin, għax proċess kriminali jitmexxa, fil-parti l-kbira, mill-istat, għandu regoli partikolari għalih u immirat għall-imposizzjoni ta' piena f'isem il-kollektivita`. Il-proċess ċivili, min-naħa l-oħra, jitmexxa mill-individwu fl-interess tiegħu biss, u hu immirat mhux għall-imposizzjoni ta' piena, iżda għar-restituzzjoni in integro tad-drittijiet tiegħu. Fil-proċess kriminali, il-ħtija trid tirriżulta mingħajr l-iċken dubju, u l-akkużat jista' jibqa' sieket tul il-proċess kollu u ma jistax jiġi mgieghel jaghti x-xhieda tiegħu. Minħabba dawn ir-restrizzjonijiet fil-proċess kriminali, ġieli jiġri li akkużat jinheles minn kull imputazzjoni minħabba nuqqas ta' provi, pero`, dan m'għandux iċaħhad liċ-ċittadin milqut hażin bl-aġir tal-akkużat li fi proċedura differenti, jitlob "just satisfaction" għall-ħsara li garrab. Id-dritt tal-vittma li jersaq lejn il-Qorti u jmexxi hu proċedura għar-rimedju opportun, ma jistax jiġi mwarrab a bażi tal-fatt li l-istat, bil-proċedura partikolari tiegħu, ma rnexxielux issib lill-istess persuna kriminalment hatja. Kull ċittadin għandu dritt għall-aċċess għall-Qorti biex jitlob rimedju għal-lanjanzi tiegħu, u ma jistax ikun ta' ostakolu għal dan id-dritt proċess li fih hu ma jistax jieħu parti wisq attiva, u fejn*

*ir-regoli procedurali jagħtu, f'it jew wisq, vantaġġ lill-parti l-oħra.*

On similar lines is the judgement in the names **Il-Pulizija vs Paul Gladwish** of 12th December 2018, in which case the Court of Criminal Appeal held as follows:

*Il-Ligi tagħna tagħmel distinzjoni netta bejn iz-zewg tipi ta' azzjoni li jitnisslu mill-istess reat izda jimxu indipendentament minn xulxin, bi kriterji differenti li japplikaw għall-piz probatorju. Fil-kamp kriminali l-prova trid tkun oltre kull dubbju ragjonevoli filwaqt li fil-kamp civili huwa bizzejjed li l-prova ssir skont il-grad inqas rigoruz tal-bilanc ta' probabilita'.*

*Għaldaqstant hija wisq possibbli li akkuzat li jinheles mill-akkuzi migjuba kontrih fil-forum kriminali minhabba li l-prosekuzzjoni ma tkunx ippruvat il-kaz sal-grad rikjest xorta jinstab li hu responsabbli għadanni fil-forum civili.*

74. Although it results that the accused was the subject of civil proceedings initiated by application number 421/2018 before the Civil Court, First Hall in the names 'Id-Direttur tar-Registru Pubbliku vs Ahmad Aziz', it is evident that the outcome of those proceedings did not lead to the imposition of a penalty or of any other disciplinary action that may be classified as a 'criminal action' or a 'criminal punishment'. This particular action instituted by the Director of the Public Registry dealt with the cancellation of the accused's act of birth at the Public Registry. For the sake of completeness, in respect of the test as to whether an action may be categorised as a criminal action, reference is being made to the European Court of Human Rights ruling in the names **Routsalainen vs Finland**<sup>24</sup> where the following was held:

*The Court's established case-law sets out three criteria, commonly known as the "Engel criteria" (see Engel and*

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<sup>24</sup> Decided on 16th June 2009 and became final on 16th September 2009.



*Others v. the Netherlands*, 8 June 1976, Series A no. 22), to be considered in determining whether or not there was a “criminal charge”. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence and the third is the degree of severity of the penalty that the person concerned risks incurring.

75. Identical criteria were adopted in the European Court of Human Rights rulings in the names **A and B vs Norway**<sup>25</sup>, **Bjarni Armannsson vs Iceland**<sup>26</sup> and in **Johannesson and others vs Iceland**<sup>27</sup>, amongst others. Reference is also being made to the judgement of the Court of Criminal Appeal of 26th September 2019, in the names **Il-Pulizija vs Christopher Aquilina**, in which reference was made to the following extract from the judgement of the Court of Criminal Appeal in the names **Il-Pulizija vs Daniel Farrugia**:

*“... il-punti kruċjali li għandhom jigu ezaminati sabiex jigi determinat jekk il-proceduri kriminali mehuda fil-konfront tar-rikorrent humiex leżivi tad-dritt tiegħu kontemplat fl-artikolu fuq citat huma, [a] jekk il-multi amministrattivi humiex ta’ certu entità li jikkwalifikaw bhala ta’ natura penali imposti bl-iskop punittiv sabiex jservu bhala deterrent u, [b] jekk dawk il-multi kienux diga’ gew impost fuq ir-rikorrent u kienux għadhom pendenti meta ttiehdu l-proceduri kriminali kontra tiegħu.”*

*Illi allura it-taxpayer ikun qed jigi issentenzjat għat-tieni darba biss meta l-multa amministrattiva tkun tant għolja illi hija ekwivalenti għal multa taht id-dritt penali. Huwa hawnhekk biss allura illi:*

*‘229. ... .. administrative sanctions may, for the purposes of the application of the Convention, be*

<sup>25</sup> Decided on 15th November 2016.

<sup>26</sup> Decided on 16th April 2019.

<sup>27</sup> Decided on 18th May 2017.

*qualified as criminal sanctions [see paragraph 61 above]. Further, in its Åklagaren v. Hans Åkerberg Fransson judgment, on the subject of value-added tax, the ECJ stated that, under the ne bis in idem principle, a State can only impose a double penalty [fiscal and criminal] in respect of the same facts if the first penalty is not criminal in nature” – Grande Stevens vs Italy.*

*Dan ifisser illi sabiex ikun hemm il-vjolazzjoni infraskritta il-multa amministrattiva trid tkun f'ammont sostanzjali tant illi tigi tixbah “a criminal penalty” biex b'hekk allura t-tehid ta' proceduri penali mill-gdid wara l-imposizzjoni tal-multa amministrattiva tkun in vjolazzjoni ta'l-artikolu 4(1) tas-Seba Protokol fejn allura il-persuna tkun qed tigi issentenzjata darbtejn għall-istess nuqqas.*

76. In the light of the above jurisprudential teachings, this Court considers the accused's plea of *autrefois acquit* on the basis of the existence of civil proceedings on the same facts as those which gave rise to these criminal proceedings, as being unfounded at law.
77. The second ground in support of the accused's preliminary plea is based on the 'judgement', which the said accused produced together with the notice of preliminary pleas, marked as Dok AA1, which document he contends to constitute *a res judicata* judgement on the same facts.
78. In the first instance, in this regard it is noted that the accused did not produce a legalised copy of the said 'judgement' as provided in the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, despite his reliance thereon. The failure of the accused to produce a legalised copy of the purported 'judgement' of a competent court in the Islamic Republic of Pakistan, in itself, already leads this Court to reject this plea.

79. Furthermore, it appears from the face of the record itself that the decision in issue, is merely a preliminary decision as to whether criminal charges proposed in the name of the Islamic Republic of Pakistan should be pressed against Ahmad AZIZ in the said Islamic Republic.

This consideration is reinforced first by the contents of the application which appears to have been filed by the accused Ahmad AZIZ before a Judicial Magistrate in Lahore in the Islamic Republic of Pakistan to the extent that in those proceedings, he premised as follows:

*That FIR in hand is a result of misunderstanding and no offence of impersonation has been committed, petitioner is in toto innocent, FIR may very graciously be cancelled and even bare reading of the FIR makes it clear that from the language of the FIR, no offence is established and **if the trial is initiated** there would be no result which may cause any probability of any penalty as no offence has been committed.<sup>28</sup> [emphasis of this Court]*

Secondly, it is further reinforced by reference, in the said document exhibited by the accused, to the submissions made by Assistant District Public Prosecutor (ADPP) of the Islamic Republic of Pakistan in the name of the State:

*Converse to that, learned ADPP has vehemently opposed this application on the grounds that accused is named in the FIR **while formal charge is yet to be framed and evidence of the prosecution is also yet to be recorded**, without which, it cannot be termed that charge is groundless or there is no possibility of the accused being convicted in this case, as such, application is filed at premature stage, hence, the same is liable to be dismissed.<sup>29</sup> [emphasis of this Court]*

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<sup>28</sup> Vide a fol. 79 of the records.

<sup>29</sup> A fol. 80 of the records.

80. Having made the above considerations, this Court is hereby rejecting the fourth preliminary plea.

**Fifth Preliminary Plea – Defect in the Indictment or Charge Sheet of Police**

81. This plea has already been dealt with under point 2.7 above. Furthermore, in respect of point 5.2, the accused does not sustain his argument that in the bill of indictment, he has been accused of an offence that is not founded on the inquiry, contrary to the provisions of Article 435(1) of the Criminal Code. Neither do his arguments in his Written Statement of Defence in support of point 5.2, sustain this plea.
82. Furthermore, in respect of point 5.3, this Court notes that the plea of *ne bis in idem* has already been dealt with under the fourth preliminary plea. Alternative or multiple counts in a bill of indictment do not give rise to *ne bis in idem*.
83. This fifth preliminary plea is thus being dismissed.

**Sixth Preliminary Plea - Plea of Non-Admissibility of Evidence**

84. In the sixth preliminary plea, the accused AZIZ attacks the admissibility of the evidence produced by the Prosecution before the Court of Magistrates (Malta) as a Court of Criminal Inquiry, with particular reference to the following:
- i) The deposition given by witness Sherri Maiorana by letters rogatory in terms of the provisions of Article 399 of the Criminal Code on the ground *inter alia* that the Court of Magistrates (Malta) refused to allow accused to cross-examine the witness;
  - ii) The report filed by expert Joseph Mallia. According to accused, the said expert was not in possession of any signature or handwriting of the persons whose signature or handwriting he

was required to analyse, and that the said expert analysed handwriting through photocopied documents;

- iii) The video recording of accused's statement during the police interrogation, on the ground that he was not provided with a copy thereof;
- iv) The failure to exhibit the original forged documents on the ground that only the best evidence is admissible in criminal proceedings;
- v) The true copy of the documentation produced as evidence by the representative of Identity Malta, on the ground that the said true copy was issued without the said entity having been in possession of the original documents;
- vi) Replies to the letters rogatory by the Canadian and USA authorities are required to be confirmed on oath.

85. The Court notes that the accused has posed most of his arguments in terms of breaches of his right to a fair hearing in terms of Article 6 of the European Convention on Human Rights. Again, here the Court reiterates that it is not competent to decide on such matters, but it will merely limit itself to considering the arguments raised from a criminal law perspective.

86. In respect of the accused's argument that an irregular procedure was adopted in respect of Article 399 of the Criminal Code, the Court notes that once the letters rogatory to the United States and Canada were filed in the records of the proceedings by the Commissioner of Police<sup>30</sup>, during the sitting held thereafter on 11th July 2018, the Court of Magistrates (Malta) ordered that "*defence be notified with a copy of the letter of request filed by the prosecution. Defence is being given the time allotted as per article 399 of the Criminal Code to take any measures it deems warranted in terms of the said article*".<sup>31</sup> This latter decree was issued in the presence of the accused and his legal counsel.

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<sup>30</sup> *Vide* a fol. 466 of the records of the proceedings.

<sup>31</sup> *Vide* a fol. 477 of the records.

Yet no reply was forthcoming from the accused following this decree, and during the sitting held on 1st November 2018, the Court ordered the transmission of the letter of request to the Attorney General in terms of Article 399 of the Criminal Code so that the same is forwarded to the United States' competent Judicial Authorities for execution. Again the latter decree was issued by the Court in the presence of accused and his legal counsel. However, at no stage of the proceedings did the accused submit an additional request for the examination of any witness or any other process of the inquiry, and neither did he appoint any person to represent him at the examination or process, in terms of Article 399(2) of the Criminal Code.

87. In respect of the letters rogatory to the competent Judicial Authorities of Canada, following another application by the Commissioner of Police of 4th June 2020, by a decree of 8th June 2020, the Court of Magistrates (Malta) ordered that the same be served upon the defence lawyer, who was to reply within four days.<sup>32</sup> Indeed, the accused did reply on 15th June 2020<sup>33</sup>, and the Court decided the said application by its decree of 18th June 2020<sup>34</sup>, correctly noting that apart from the first submission, the observations of the accused all related to the merits of the charges brought against him, and were therefore, outside the scope of Article 399 of the Criminal Code, whilst ordering that the request for legal assistance be sent to the Attorney General for onward transmission to the Canadian Judicial Authorities. Again, at this stage the accused failed to submit an additional request for the examination of any witness or any other process of the inquiry, and neither did he appoint any person to represent him at the examination or process, in terms of Article 399(2) of the Criminal Code. This Court notes that it was only following this latter decree, on 16th July 2020, that accused submitted a set of questions to be made to the witness in Canada, who at that stage had already been heard. Indeed, in its decree of 17th July 2020, the Court of Magistrates (Malta) took note of the fact that the request had already been transmitted to the Canadian Authorities and directed accused, who at that time was legally assisted by defence counsel, to submit a new supplementary request in terms of Article 399

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<sup>32</sup> *Vide* a fol. 1034 of the records.

<sup>33</sup> A fol. 1035 of the records.

<sup>34</sup> A fol. 1040 of the records.

of the Criminal Code, whilst also notifying his application to the Attorney General to be transmitted to the Canadian Authorities forthwith, and “*at this tardy stage even simply by electronic means, a request that the witness cited in the request by the police be also asked the detail of her parents’ names and that of her husband, a Pakistan National Imdad Ullah.*”<sup>35</sup> The Court further notes that although another application was filed by the accused on 12th August 2020, requesting to cross-examine the said witness Sherri Maiorana under oath, the said application was rejected by the Court of Magistrates (Malta), since it was not made in terms of Article 399(7) of the Criminal Code.<sup>36</sup> However, despite being legally assisted, accused failed to file an appropriate application in terms of the said Article 399.

88. As to the testimony on oath given by the witness Sherri Maiorana, obtained through the letter of request, the Court notes that there is nothing irregular or inadmissible in respect of the said deposition, notwithstanding the fact that the provisions of Article 391 of the Criminal Code were not followed. Indeed, there is no exclusionary rule of evidence that renders the said deposition inadmissible, where it fails to follow the provisions of the said article. Furthermore, the procedure adopted to obtain the said deposition was in line with Article 399 of the Criminal Code, and thus valid, notwithstanding the fact that the Prosecution did not obtain this evidence through the means indicated in Article 647A of the Criminal Code.
89. In respect of the report filed by expert Joseph Mallia, the Court notes that no objection was raised by the accused to his appointment or to the manner in which he was to carry out his comparative analysis, during the proceedings before the Court of Magistrates (Malta), despite the fact that he was duly assisted. In any case, the findings of the said expert will be produced at the trial as part of the evidence to be tendered by the Prosecution, and the said expert will be required to testify. This means that the accused will have every opportunity to cross-examine the said expert and indeed, to challenge his findings during the said trial.

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<sup>35</sup> *Vide* a fol. 1044 of the records.

<sup>36</sup> *Vide* a fol. 1054 of the records.

90. The Court further notes that the allegation that the accused has not been provided with a copy of the video recording of his interrogation does not in any way render inadmissible the relevant statement released by accused during the said interrogation. Should accused not be in possession of such recording, the Court orders the Registrar of the Criminal Courts and Tribunals to provide the accused with a copy of the said recording, forming part of the records of the inquiry.
91. In respect of all other evidence which accused is challenging, the Court again refers to a cardinal rule of Maltese criminal procedure which advocates the admissibility of all evidence, which is not excluded by operation of the law itself. In any case, the evidence tendered before the Court of Magistrates (Malta) as a Court of Criminal Inquiry must be reproduced before the jurors in the course of the trial. It is the jurors, as the judges of fact, who will be called upon to decide on the probative value of the evidence, which the accused is attacking as inadmissible. It is thus premature at this stage for this Court to discard any evidence produced by the Prosecution, on the basis of the arguments raised by the accused, once the witnesses and experts are still required to testify during the trial by jury, and once the accused will have every opportunity to cross-examine the said witnesses and challenge the Prosecution's evidence in support of his defence.
92. Having made the above considerations, this Court is hereby rejecting the sixth preliminary plea.

**Seventh Preliminary Plea – The right to a fair hearing within a reasonable time Article 6 ECHR in the case of Police vs Ahmad Aziz in the court of Dr. Donatella Frendo Dimech Magistrate**

**Eighth Preliminary Plea – Breach of Article 2 Protocol 4 ECHR Breach of the right to travel**

**Ninth Preliminary Plea – Violation of Article 5.1 of ECHR to issue arrest warrant Ahmad Aziz when applicant was resident in Lahore Pakistan**



93. The seventh, eighth and ninth preliminary pleas shall be addressed together, on account of them being of the same nature.
94. This Court has already had the opportunity to observe, in other parts of this judgement, that matters relating strictly to allegations of human right breaches cannot be addressed or entertained in this forum and hence, the Court shall not take any further cognizance of the said preliminary pleas.

**Tenth Preliminary Plea - Breach of right to a fair hearing on reasonable time to issue bill of indictment without delay**

95. As held above, the tenth preliminary plea is rejected.<sup>37</sup>

**DECIDE**

Thus, this Court rejects the preliminary pleas raised by accused **Ahmad AZIZ**, save for the plea raised in point 2.10 and the seventh, eighth and ninth preliminary plea, in respect of which the Court abstains from taking any further cognizance thereof.

The Court hereby adjourns these proceedings *sine die* pending the outcome of any appeal which may be lodged and/or until such time as it is appointed for the trial by jury to take place before this Court.

In the meantime, the accused shall continue to benefit from the same bail conditions.

**Natasha Galea Sciberras**  
**Judge**

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<sup>37</sup> *Vide* par. 62 above.