



QORTI ĊIVILI - PRIM' AWLA
SEDE KOSTITUZZJONALI

ONOR IMHALLEF
DR FRANCESCO DEPASQUALE
LL.D. LL.M. (IMLI)

Seduta ta' nhar it-Tlieta
Tmintax (18) ta' Frar 2025

Rikors Numru 198/2024 FDP

Fl-ismijiet

Bin Han (KI: 524413L) u
Jia Liu (KI:64215A)

Vs

L-Avukat tal-Istat u
L-Avukat Ġenerali

Il-Qorti:-

1. Rat ir-rikors datat 19 ta' April 2024, li permezz tiegħu r-rikorrenti talbu s-segweni:

Illi huma tressqu quddiem il-Qorti tal-Maġistrati (Malta) fid-19 ta' Novembru 2014 akkużati inter alia bir-reati kontemplati fl-Artikoli 17, 18, 31, 121D, 293, 294, 310(1)(a) tal-Kapitolu 9 tal-Liġijiet ta' Malta u Artikolu 13 tal-Kapitolu 249 tal-Liġijiet ta' Malta, Artikolu 2 tat-tieni parti tal-ewwel titolu u l-Artikoli 45(1)(2), 47 u 18 tal-Kapitolu 452 tal-Liġijiet ta' Malta, u r-Regolamenti 2, 3, 4, 5, 6, 7, 8, 12 u 22 tal-L.N. 247/2003 (L.S. 452.87), kif emendata bil-L.N. 427/2007 u L.N. 259/2012;

Illi b'sentenza tal-21 ta' Marzu 2022 il-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali, (i) illiberat lir-rikorrent Jia Liu mill-akkużi kollha, (ii) illiberat lir-rikorrent Bin Han mill-ewwel akkuża, u nstab ħati fuq l-akkużi l-oħra, u gie kkundannat sentejn (2) ħabs sospiża għall-perjodu t'erbgħa (4) snin u (iii) l-Qorti imponiet multa ta' mitejn elf Ewro (EUR200,000) fuq il-kumpanija Leisure Clothing Ltd;

Illi kemm ir-rikorrenti Bin Han u Jia Liu u l-Avukat Ġenerali appellaw din is-sentenza;

Illi l-Qorti tal-Appelli Kriminali permezz ta' sentenza mogħtija fis-6 ta' Jannar 2023, fil-waqt li rriġettat l-appell ta' Bin Han u Jia Liu, akkoljiet l-appell tal-Avukat Ġenerali, sabet lil Bin Han ħati tal-akkużi kollha dedotti, sabet ħati lil Jia Liu, u kkundannathom għal sitt (6) snin prigunerija, u kkonfermat dik il-parti tas-sentenza fejn il-kumpanija giet ikkundannata tħallas mitejn elf Ewro (Eur 200,000). Il-Qorti tal-Appelli Kriminali kkonfermat ukoll l-ordni tal-konfiska tal-assi tar-rikorrenti.

Illi rriżulta pero li kien hemm għal tal-inqas żewġ proċeduri kontra l-esponenti fuq l-istess fatti:

- 1) Ittieħdu proċeduri kontra l-esponenti b'referenza EP658/14 DIER 260/14, deċiża 29 ta' Settembru 2016 mill-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali preseduta mill-Maġistrat Donatella Frendo Dimech. Hawn l-esponenti ġew kkundannati EUR500 multa. Illi, l-atti flimkien mas-sentenza ta' dawn il-proċeduri qed jiġu eżebiti bħala **DOKA**.*
- 2) Ittieħdu l-proċeduri kriminali mertu ta' dan ir-rikors, ossia dawk deċiża mill-Qorti tal-Appelli Kriminali permezz ta' sentenza mogħtija fis-6 ta' Jannar 2023.*

Illi minn issa jiġi wkoll enfasizzat li s-sentenza mogħtija mill-Maġistrat Donatella Frendo Dimech su indikata kienet bbażata kompletament fuq l-istess fatti, l-istess akkużati de propio, u l-akkuża kienet ukoll identika għal waħda mill-akkużi li kienet mogħtija lill-esponenti.

Illi jirriżulta b'mod inekwivoku li l-kawża b'referenza EP654/14 DIER 260/14 giet finalment deċiża fid-29 ta' Settembru 2016, u jirriżulta manifestament mill-qari tal-atti ta' din il-kawża li qed jiġu, kif intqal qabel, eżebiti bħala dokument A, li din il-kawża hi bbażata fuq l-istess fatti.

Illi għalhekk l-esponent indubbjament gie ġġudikat fuq l-istess fatti żgur darbtejn f'żewġ proċeduri separati, dik tas-6 ta' Jannar 2023 tal-Qorti tal-Appelli Kriminali u dik deċiża fid-29 ta' Settembru 2016 mill-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali fejn l-esponenti ġew kkundannati multa ta' EUR500.

*Illi din is-sentenza tal-aħħar giet eżegwita tant li l-esponenti ħallsu l-multu, kopja ta' liema rċevuti qed jiġu eżebiti bħala **DOKB**.*

Illi l-kwistjoni ta' res judicata qed titqajjem fir-rigward tal-kawża deċiża mill-Qorti tal-Appelli Kriminali peress li din giet deċiża sussegwentement minn dik mogħtija mill-Qorti tal-Maġistrati.

Illi indubbjament l-esponenti qatt ma setgħu jiġu akkużati u ġġudikati mill-ġdid fuq l-istess fatti u dan anke skont il-Kodiċi Kriminali, il-Kostituzzjoni u l-Konvenzjoni Ewropea.

Illi l-Kostituzzjoni fl-artikolu 39(9) tagħha tipprovdi hekk:

“Ebda persuna li turi li tkun għaddiet proċeduri quddiem xi qorti kompetenti għal reat kriminali u jew tkun giet misjuba hatja jew liberata ma għandha terġa’ tghaddi proċeduri għal dak ir-reat jew għal xi reat kriminali ieħor li għalih setgħat tigi misjuba hatja fil-proċeduri għal dak ir-reat hlief wara ordni ta’ qorti superjuri mogħti matul il-kors ta’ appell jew proċeduri ta’ reviżjoni dwar id-dikjarazzjoni ta’ htija jew liberazzjoni; u ebda persuna ma għandha tghaddi proċeduri għal reat kriminali jekk turi li tkun ħadet il-maħfra għal dak ir-reat”

Illi l-Konvenzjoni Ewropea fl-artikolu 4 tal-Protokoll 7 tgħid:

“Hadd ma jista’ jkun ipproċessat jew jerġa’ jiġi kkastigat għal darb’ohra fi proċedimenti kriminali taħt il-gurisdizzjoni tal-istess Stat għal xi reat li dwaru jkun diġa’ gie finalment liberat jew misjub hati skont il-liġi u l-proċedura penali ta’ dak l-Istat.”

Illi l-artikolu 527 tal-Kap. 9 jgħid:

“Wara sentenza li f’kawża tillibera imputat jew akkużat, dan ma jistax għall-istess fatt ikun sugġett għal kawża ohra.”

Illi fis-sentenza **Ir-Repubblika ta’ Malta vs Christian Grech**¹ intqal hekk:

“L-Ewwel Eċċezzjoni – Ne bis in idem

“Qorti tal-Appell Kriminali

“Li l-pożizzjoni legali dwar in-ne bis in idem kif toħroġ mill-każistika tal-Qorti tal-Appell Kriminali hija s-segwenti:

“(a) Meta fatt jivvjola aktar minn provvediment wieħed tal-Liġi.

“Illi jista’ jiġri li l-istess fatt jista’ jivvjola aktar minn provvediment wieħed tal-liġi u għalhekk jista’ joħloq diversi raġunijiet għall-inkriminazzjoni. X’inhu fatt kien spjegat fil-każ ‘Rex versus Rosaria Portelli’ fil-każ deċiż fit-23 ta’ Frar, 1904 (Vol.XIX.P.IV p1). Il-Qorti kienet qalet hekk:

“‘La legge intende il fatto principale in quanto meritevole di pena, o come altri si esprime non intende semplicemente il fatto storico o naturale nei suoi diversi momenti ma il fatto giuridico nel suo complesso.’

“Dwar dan il-Professur Mamo fin-Noti tiegħu dwar il-Proċedura (página 45) jgħid hekk:

“‘In any such case if the agent is tried for any one of the several violations of the law arising out of that fact, be it even the least

¹ Deċiża fit-12 ta’ Diċembru, 2013 (Att ta’ Akkuża Nru. 6/2011).

serious, and a judgement is given, it shall not be lawful to subject the agent to another trial for the more serious violations. This principle, first expressly affirmed in 'Rex versus Rosaria Portelli' has now become settled law.'

*Illi in oltre fis-sentenza **Zolotukhin vs Russja**² mogħtija mill-Grand Chamber intqal hekk:*

"Accordingly, the Court takes the view that Article 4 of Protocol No. 7 must be understood as prohibiting the prosecution or trial of a second offence in so far as it arises from identical facts or facts which are substantially the same. The guarantee enshrined in Article 4 or Protocol 7 becomes relevant on commencement of new prosecution where prior acquittal or conviction has already acquired the force or res judicata. At this juncture, the available material will necessarily comprise the decision by which the first 'penal procedure' was concluded and the list of charges leveled against the applicant in the new proceedings."

Illi naturalment din hija kwistjoni serjissima għaliex ifisser li l-esponenti qatt ma misshom tressqu il-Qorti mill-ġdid aħseb u ara kkundannati sitta (6) snin prigunerija kull wieħed inkluż il-konfiska ta' l-assi tagħhom kollha.

Illi l-esponenti jhossu li l-prosekuzzjoni messha qajjmet dan l-istat ta' fatt hija stess għaliex il-prosekuzzjoni fil-kamp kriminali dejjem kienet meqjusa l-akbar ħabib ta' l-akkużat.

Illi konsegwentement l-esponenti qiegħdin isofru leżjoni manifesta u lampanti taħt l-artikolu 4 tal-Protokoll 7 u l-artikolu 39(9) tal-Kostituzzjoni.

Għaldaqstant l-esponenti jitolbu umilment li din l-Onorabbli Qorti joghġobha:

- 1. Tiddikjara illi l-fatt illi l-esponenti ġew ipproċessati fuq l-istess fatti żgur aktar minn darba ossia i) il-proċeduri deċiżi mill-Qorti tal-Appelli Kriminali permezz ta' sentenza mogħtija fis-6 ta' Jannar 2023 u ii) proċeduri deċiżi mill-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali presjeduta mill-Maġistrat Donatella Frendo Dimech fid-29 ta' Settembru 2016 (Każ numru 654/14), jilledi d-dritt tagħhom skont l-artikolu 4 tal-Protokoll 7 tal-Konvenzjoni Ewropea u l-artikolu 39(9) tal-Kostituzzjoni, u*
- 2. Tagħmel dawk l-ordnijiet, toħroġ dawk l-atti u tagħti dawk id-direttivi li tqis xierqa, sabiex twettaq, jew tiżgura t-twettiq tad-drittijiet fundamentali tar-rikorrenti, inkluż li tħassar u tikkancella s-sentenza mogħtija mill-Qorti tal-Appelli Kriminali fis-6 ta' Jannar 2023 u tordna l-iskarżerazzjoni tal-esponenti.*

² Deċiża mill-Qorti Ewropea għad-Drittijiet tal-Bniedem fl-10 February 2009 (Application no. 14939/03).

2. Rat illi fl-24 ta' April 2024 il-kawża giet appuntata għas-smiegh għat-3 ta' Ġunju 2024.
3. Rat illi fis-17 ta' Mejju 2024 l-**Avukat tal-Istat** u l-**Avukati Ġenerali** irrisponda għal dak mitlub billi qajjem is-segwenti difizi:

Illi l-lanjanza tar-rikorrenti hija bbażata fuq allegat ksur tal-artikolu 4 tal-Protokoll 7 tal-Konvenzjoni Ewropea għall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fundamentali u tal-artikolu 39 (9) tal-Kostituzzjoni ta' Malta u dan stante li skont ir-rikorrenti allegatament huma lkoll ġew ipproċessati fuq l-istess fatti darbtejn ossia i) il-proċeduri deċiżi mill-Qorti tal-Appelli Kriminali permezz ta' Sentenza fis-6 ta' Jannar 2023 u ii) proċeduri li kienu nbdew quddiem il-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali presjeduta l-Ewwel mill-Maġistrat Carol Peralta imbagħad mill-Maġistrat Dr Donatella Frendo Dimech fid-9 ta' Ottubru 2015 (Każ Numru EP658/14; DIER 260/14); u għalhekk qegħdin jitolbu lil dina l-Onorabbli Qorti tagħmel dawk l-ordnijiet, toħroġ dawk l-atti u tagħti dawk id-direttivi li tqis xierqa, sabiex twettaq, jew tiżgura t-twettiq tad-drittijiet fundamentali tar-rikorrent, inkluż li tħassar il-proċeduri kollha deċiżi mill-Qorti tal-Appelli Kriminali fis-6 ta' Jannar 2023 fil-konfront tal-esponenti u tordna s-skarċerazzjoni tal-esponenti;

Eċċezzjonijiet

1. *Illi l-esponenti jeċċepixxu illi t-talbiet tar-rikorrenti qegħdin jiġu kkontestati u qegħdin jiġu meqjusa bħala infondati fil-fatt u fid-dritt;*
2. *Illi l-esponenti jeċċepixxu n-nuqqas ta' eżawriment tar-rimedji ordinarji da parti tar-rikorrenti stante illi kemm quddiem il-Qorti tal-Maġistrati fil-proċeduri EP658/2014 DIER 260.14 u quddiem il-Qorti tal-Maġistrati u quddiem il-Qorti tal-Appell Kriminali fil-proċeduri 1128/2014 huma dejjem kellhom l-opportunità illi jqajmu d-difiża ta' 'Ne bis in idem' fi kwalsiasi stadju imma dan, għal xi raġuni jew oħra, m'għamlux. Għalhekk l-esponenti jistiednu lil dina l-Onorabbli Qorti sabiex tiddeklina milli teżerċita l-ġurisdizzjoni konvenzjonali tagħha ai termini tal-proviso għall-Artikolu 4 (2) tal-Att dwar il-Konvenzjoni Ewropeja (Kap. 319 tal-Liġijiet ta' Malta) u tal-Artikolu 46 (2) tal-Kostituzzjoni ta' Malta³;*
3. *Illi l-esponenti jeċċepixxu illi l-proċeduri odjerni huma abbuż tal-proċeduri ġudizzjarji stante illi r-rikorrenti diġa kienu niedu kawża kostituzzjonali dwar in-'ne bis in idem' (kawża numru 390/2023 u 390/2023/1) imma ċedew l-istess kawża ġimgħa qabel ma dik l-Onorabbli Qorti kif kienet presjeduta. Illi quddiem dik il-Qorti kif presjeduta saret talba fl-20 ta' Marzu 2024 sabiex isiru sottomissjonijiet ulterjuri għal dawk diġa pprezentati preċedentament liema talba giet*

³ Illi, minbarra dan, l-istħarriġ tal-allegazzjoni imqanqla minn parti mixlija b'reat li dik il-proċedura hija ripetizzjoni ta' proċedura bħalha li diġa kienet ittiegħet kontriha għall-istess reat għandu jsir mill-Qorti li quddiemha titqanqal l-imsemmija eċċezzjoni. Sakemm dan isir u l-fatt li dan isir, huwa meqjus bħala stadju proċedurali li jżomm milli jsehh ksur tal-artikolu 39(9) tal-Kostituzzjoni - P.A. (Kost) 10.5.1990 fil-kawża fl-ismijiet *Gauci vs Kummissarju tat-Taxxi Interni et* (Kollez. Vol: LXXIV.iii.525); U

Illi dak l-artikolu lanqas ma jżomm milli jittieghdu kontra l-istess persuna proċedimenti ta' għamla kriminali f'ġurisdizzjonijiet differenti dwar l-istess għamil. Fuq kollox, dak l-artikolu japplika biss dwar proċedimenti preċedenti li jkollhom it-timbru ta' ġudikat. Jidher li, għall-finijiet tal-Konvenzjoni, deċiżjoni titqies bħala ġudikat meta tkun irrevokabbli u meta ma jkun għad fadal l-ebda rimedju iehor disponibbli għall-partijiet li jista' jibdel dik id-deċiżjoni - Ara t-tifsira mogħtija fit-Tielet Skeda mehmūza mal-Att XIV tal-1987 li hija silta mir-Rapport Spjegattiv għas-Seba' Protokoll li hemm mal-Konvenzjoni, par. 22

miċħuda permezz ta' digriet tat-22 ta' Marzu 2024. Għaldaqstant, il-kawża odjerna m'hija xejn għajr tentattiv iehor ta' forum shopping da parti tar-rikorrenti u għandha tiġi dikjarata bħala tali;

4. *Illi l-esponenti huma tal-fehma illi l-provi li ġew prodotti fil-proċeduri 102/2023, 102/2023/1 u 390/2023/1AD u 390/2023AD fl-istess ismijiet għandhom jiġu annessi u għandom japplikaw għal vertenza odjerna u dana għas-speditezza tal-gudizzju u sabiex tiġi evitata ripetizzjoni odjuża;*
5. *Illi l-esponenti jirrilewaw illi meta wiehded jittellem dwar l-eċċezzjoni tan-'ne bis in idem' fil-qasam tad-dritt penali taħt l-ordinament ġuridiku tagħna, wiehded iqis li jeħtieġ jintwera li l-persuna li tkun tqiegħdet taħt akkuża oħra trid tkun l-istess waħda li kienet tqiegħdet taħt l-ewwel proċedura u wkoll li tkun hekk tressqet dwar l-istess fatt. Kif ingħad, "Bl-espressjoni 'l-istess fatt' wiehded għandu jifhem il-fatt fiżikament rigwardat, konsistenti għalhekk kemm fl-element materjali – att ta' kommissjoni jew ommissjoni – kif ukoll dak formali tiegħu. Mhux biżżejjed li l-fatt ikun jirrigwarda l-istess oġġett; hekk, per eżempju, min f'okkażjoni partikolari jagħmel ħsara volontarja fuq proprjeta' ta' haddiehor u f'okkażjoni oħra jerga' jagħmel l-istess tip ta' ħsara fuq l-istess proprjeta' ma jista' bl-ebda mod jeċepixxi r-res judicata" (App. Krim. Inf VDG 19.2.1999 fil-kawża fl-ismijiet **Il-Pulizija vs Anthony Vella et** (mhix pubblikata)). Madankollu, għall-finijiet ta' sħarriġ ta' ksur ta' jedd fundamentali – kif ingħad aktar qabel – tajjeb li wiehded iżomm quddiem għajnejh li, filwaqt li l-artikolu 527 tal-Kodiċi Kriminali jittellem dwar "l-istess fatt" (Ara App. Krim Inf. PV 12.12.2000 fil-kawża fl-ismijiet **Il-Pulizija vs Domenic Abela** (mhix pubblikata)), l-artikolu 39(9) tal-Kostituzzjoni jittellem dwar "(l-istess) reat";*
6. *Illi l-prinċipju tan-'ne bis in idem' jimplika, tabilfors, li tkun teżisti sentenza jew deċiżjoni li tiswa (għalkemm mhux bilfors tkun waħda li fiha l-akkużat ikun instab ħati) bħala ostaklu għal proċedura dwar l-istess reat warajha. Illi s-soluzzjoni tal-kwistjoni dwar jekk il-proċeduri pendenti quddiem il-Qorti tal-Maġistrati kontra l-akkużat jikkostitwux ksur tal-jedd tiegħu tan-ne bis in idem, tiddependi mill-isfera ta' applikazzjoni tal-artikolu 4 tas-Seba' Protokoll. Il-Qrati jidentifikaw dawn l-elementi biex jista' jingħad li tali jedd ikun inkiser: (i) teħid ta' proċeduri jew l-għoti ta' piena mill-ġdid; (ii) fi proċediment kriminali; (iii) għal reat li dwaru tkun diġà ngħatat **deċiżjoni finali**; (iv) fl-istess ġurisdizzjoni; u (v) skont il-ligi u l-proċedura ta' dak il-pajjiż. L-għan ewlieni ta' dan l-artikolu huwa għalhekk dak li jżomm milli ssir ripetizzjoni fl-istess Stat ta' proċeduri kriminali li jkun ntemmu qabel b'deċiżjoni finali (Ara **Gradinger vs Austria** (23.10.1995) (Applik. Nru. 15963/90), par. 53);*
7. *Illi fil-qasam tad-dritt penali jidher li huwa prinċipju aċċettat li, bi tħaddim tar-regola tan-'ne bis in idem', "The criminal action is extinguished ... when there has been one act on the part of the accused and he has already been convicted (or acquitted) of an offence founded on such act, and afterwards, he is again brought up for judgment on a different charge, but founded on the same act" (App. Krim. Inf.*

15.11.1941 fil-kawża fl-ismijiet **Giuseppe Baldacchino vs Giuseppe Buhagiar** (kif imsemmija fil-ktieb “Recent Criminal Cases Annotated” tal-Prof. W. Harding));

8. Illi l-esponenti jeċepixxu illi fil-każ in eżami ma jeżistux l-elementi tal-prinċipju ta’ ‘Ne bis in idem’;
9. Illi l-esponenti jeċepixxu illi t-talba tar-rikorrenti illi jithassru l-proċeduri 1128/2014 inkluż is-Sentenzi li ngħataw mill-Qorti tal-Maġistrati fil-21 ta’ Marzu 2022 u l-Qorti tal-Appell Kriminali (sede inferjuri) fis-6 ta’ Jannar 2023 kif ukoll is-skarċerazzjoni tar-rikorrent huma talbiet improponibbli u/jew sproporzjonati. Sabiex wieħed biss iġib eżempju, l-akkuża ta’ human trafficking u exploitation ta’ impjegati b’ebda mod ma tigi affetwata b’xi allegati deċiżjonijiet dwar akkużi minuri;
10. Għalhekk u fid-dawl tas-suespost l-allegazzjonijiet u t-talbiet tar-rikorrenti għandhom jiġu miċhuda bl-ispejjeż kontra tagħhom;
11. Salvi eċċezzjonijiet ulterjuri;
12. Bl-ispejjeż.

Provi

4. Rat id-dokumentazzjoni eżebita mir-rikorrenti flimkien mar-rikors promotur, ossija:
 - a. Dokumentazzjoni varja dwar proċeduri EP 658/14 DIER 260/14 deċiżi, fuq ammissjoni tar-rikorrenti fid-29 ta’ Settembru 2016;
 - b. Żewġ hlasjiet ta’ €250 kull wieħed, magħmula b’ċekkijiet maħruġa mill-kont bankarju tas-soċjeta’ Leisure Clothing Limited datati 29 ta’ Settembru 2016 għal hlas tal-multa Nru 2985/2016 inflitta fuq Bin Han u l-multa Nru 2986/2016 inflitta fuq Liu Jia.
5. Rat illi fis-seduta tat-3 ta’ Ġunju 2024, ir-rikorrenti għarrfu lill-Qorti illi kellhom bżonn seduta sabiex jipprezentaw il-provi tagħhom, u għalhekk il-kawża giet differita għall-provi rikorrenti għas-27 ta’ Novembru 2024.
6. Rat illi fis-6 ta’ Ġunju 2024, permezz ta’ nota debitament awtorizzata mill-Qorti, ir-Reġistratur tal-Qrati u Tribunali Kriminali ippreżenta kopja elettronika tal- Appell Nru 1128/2014 fl-ismijiet **Il-Pulizija vs Han Bin, Liu Jia**, deċiż fis-6 ta’ Jannar 2023, kif ukoll kopja elettronika tal-proċeduri sommarji DIER EP658/14260/2014 deċiżi fid-29 ta’ Settembru 2016.
7. Rat illi fil-25 ta’ Ġunju 2024, ir-rikorrenti reggħu pprezentaw kopji tal-hlasjiet ta’ €250 kull wieħed, għal hlas tal-multa Nru 2985/2016 inflitta fuq Bin Han u l-multa Nru 2986/2016 inflitta fuq Liu Jia.
8. Rat illi fil-25 ta’ Ġunju 2024, ir-rikorrenti intavolaw rikors fejn għarrfu lill-Qorti li jkun opportun illi jiġu allegati l-atti tal-kawża 390/2023AD, wara liema allegazzjoni, huma ma jikkollhomx aktar provi, u għalhekk talbu lil dina l-Qorti sabiex tirrikjama l-kawża

f'data aktar viċina sabiex l-intimati jipprezentaw il-provi tagħhom u l-kawża tithalla għas-sottomissjonijiet finali.

9. Rat illi fid-29 ta' Awissu 2024, l-intimati indikaw illi, apparti l-allegazzjoni tal-kawża 390/2023AD, huma riedu jressqu bħala xhieda lill-Spettur Joseph Busuttil.
10. Rat illi fis-27 ta' Novembru 2024, il-Qorti ordnat l-allegazzjoni tal-atti 390/2023 AD.
11. Semgħet ix-xhieda tas-Supretendent Joseph Busuttil, mressaq mill-intimati u mogħtija fis-27 ta' Novembru 2024.
12. Rat illi fis-27 ta' Novembru 2024, il-partijiet għarrfu illi ma kellhomx aktar provi w għalhekk il-kawża setgħet tithalla għas-sentenza bil-fakolta' tan-noti.
13. Rat illi fis-27 ta' Novembru 2024, il-kawża għet differita għas-sentenza għat-18 ta' Frar 2025.
14. Rat illi fit-23 ta' Diċembru 2024, għet ippreżentata n-nota ta' sottomissjonijiet bil-miktub tar-rikorrenti.
15. Rat illi fit-28 ta' Jannar 2025, għet ippreżentata n-nota ta' sottomissjonijiet bil-miktub ta' l-intimati.
16. Rat l-atti tal-proċeduri Kostituzzjonali 390/2023 AD fl-ismijiet '**Bin Han et vs l-Avukat tal-Istat et**' ċeduta mill-istess rikorrenti fit-2 ta' April 2024 "sabiex jirregolaw ruħhom aħjar stante li għet fil-pussess tagħhom dokumenti ulterjuri pertinenti l-lanjanzi tagħhom f'dan l-istadju tardiv" (fol 200), liema atti għew allegati mal-proċeduri odjerni fuq talba tar-rikorrenti.

Baži tal-Azzjoni

17. Jirrizulta, illi permezz tal-proċeduri odjerni, ir-rikorrenti qed jilmentaw illi deċiżjoni mogħtija fil-konfront tagħhom mill-Qorti tal-Appell Kriminali fis-6 ta' Jannar 2023 kienet tilledi d-dritt tagħhom skond l-Artikolu 4 tal-Protokol 7 tal-Konvenzjoni Ewropeja kif ukoll tal-Artikolu 39 (9) tal-Kostituzzjoni ta' Malta.
18. L-Artikolu 4 tal-Protokol 7 tal-Konvenzjoni Ewropeja jipprovdi dan li ġej:

Artikolu 4 - Id-dritt li persuna ma tiġix ipproċessata jew ikkastigata darbtejn.

1. Hadd ma jista' jkun ipproċessat jew jerga' jiġi kkastigat għal darb'ohra fi proċedimenti kriminali taħt il-gurisdizzjoni tal-Istess Stat għal xi reat li dwaru jkun diġà gie finalment liberat jew misjub hati skont il-liġi u l-proċedura penali ta' dak l-Istat.

2. Id-disposizzjonijiet tal-paragrafu preċedenti ma għandhomx iżommu milli l-każ jerga' jinfetaħ skont il-liġi u l-proċedura penali tal-Istat in kwistjoni, jekk ikun hemm provi ta' xi fatti godda jew li jkunu għadhom kif għew żvelati, jew inkella jekk ikun hemm xi vizzju fundamentali fil-proċedimenti ta' qabel, li jista' jkollhom effett fuq kif jiżvolgi l-każ.

3. *Ebda deroga minn dan l-artikolu ma għandha ssir taħt l-artikolu 15 tal-Konvenzjoni.*

19. L-Artikolu 39 (9) tal-Kostituzzjoni ta' Malta jipprovdi dan li ġej:

(9) Ebda persuna li turi li tkun għaddiet proċeduri quddiem xi qorti kompetenti għal reat kriminali u jew tkun giet misjuba hatja jew liberata ma għandha terġa' tghaddi proċeduri għal dak ir-reat jew għal xi reat kriminali iehor li għalih setgħat tiġi misjuba hatja fil-proċeduri għal dak ir-reat hlief wara ordni ta' qorti superjuri mogħti matul il-kors ta' appell jew proċeduri ta' revizjoni dwar id-dikjarazzjoni ta' htija jew liberazzjoni; u ebda persuna ma għandha tghaddi proċeduri għal reat kriminali jekk turi li tkun hadet il-mahfra għal dak ir-reat:

20. Jirrizulta illi l-baži tal-argument kollu tagħhom huwa li, permezz tas-sentenza mogħtija fil-konfront tagħhom mill-Qorti tal-Appell Kriminali fis-6 ta' Jannar 2023, huma nstabu hatja ta' akkuži illi kienu ġia nstabu hatja tagħhom preċedement permezz ta' proċeduri distinti minn dawk deċiżi mill-Qorti tal-Appell Kriminali, u li kienu ġew deċiżi kontra tagħhom mill-Qorti tal-Maġistrati (Malta) fid-19 ta' Novembru 2014.

21. Jirrizulta, għalhekk, illi r-rikorrenti ikkontendew illi, fil-konfront tagħhom, kellu japplika l-prinċipju ta' *nebis in idem*, u għalhekk id-deċiżjoni mogħtija mill-Qorti tal-Appell Kriminali tas-6 ta' Jannar 2023 li biha huma ġew ikkundannati sitt snin priġunerija, li huma preżentement qed jiskontaw, kellha tiġi mħassra u kanċellata, u għalhekk kellhom jiġu skarċerati minnufih.

Proċeduri Ġudizzjarji

22. Jirrizulta illi, ladarba l-qofol tat-talba tar-rikorrenti hija l-fatt li nstabu hatja darbtejn ta' l-istess akkuži, il-Qorti jidhirlha opportun illi jiġu riprodotti kemm l-akkuži illi tagħhom instabu hatja fid-19 ta' Novembru 2014, u dawk illi nstabu hatja tagħhom fis-6 ta' Jannar 2023.

23. Jirrizulta illi, fis-7 ta' **Ottubru 2015**, quddiem il-Qorti tal-Maġistrati (Malta) inkarigata tisma' kawżi rappurtati mid-*'Department of Industrial and Employment Relations'*, magħrufa bħala DIER sitting, ir-rikorrenti Bin Han kif ukoll Jia Liu kienu akkużati fil-proċeduri tas-segwent:

According to Articles 5, 43(8), 45, 46 and 47 (2) of Chapter 452 of the Laws of Malta ;

According to the Regulations: 9(3) and 10 of the Legal Notice 431 of 2002, as amended by the Legal Notice 427 of 2007 ;

Billi int akkużat talli:

In your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership 'LEISURE CLOTHING LIMITED (C 8265), having its registered address at B31, Industrial Estate, Bulebel, Zejtun, Malta and/or being the persons responsible and appointed by the said commercial partnership, on the 3rd of November, 2014, you have

failed to answer or answered falsely or caused any other person not to answer or to answer falsely to any question which an inspector is authorized to ask under Chapter 452 of the Laws of Malta; or you have failed to produce any books, registers or other documents that, according to this Act, you were required by an inspector to produce.

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, and Regulation 10 of the Legal Notice 431 of 2002, as amended by the Legal Notice 427 of 2007, to order the accused to pay the penalties established by law, for the reasons specified above, and also order the accused, in accordance with Article 43(8) of Chapter 452 of the Laws of Malta, and or Regulation 9(3) of the Legal Notice 431 of 2002 as amended by the Legal Notice 427 of 2007, not to obstruct in any manner an inspector in the performance of his duties, to allow, directly or indirectly, any employee to appear before or to be questioned by an inspector, as well as produce and make available any information requested by the Director of the Department of Employment and Industrial Relations

24. Jirrizulta illi fid-**29 ta' Settembru 2016**, ir-rikorrenti ammettew għal tali akkużi u ġew immultati mitejn u hamsin Euro (€250) kull wieħed.
25. Jirrizulta illi, nelfrattemp, qabel tali deċiżjoni, ossija fid-**19 ta' Novembru 2014**, l-istess rikorrenti Bin Han kif ukoll Jia Liu kienu tressqu bl-arrest quddiem il-Qorti tal-Maġistrati (Malta) Bħala Qorti Istrutturja, akkużati bis-segwenti:

*Having seen that the accused **Bin Han** holder of identity card number: 524413L and 20799A and holder of Chinese passport number G49624122, in his own name and in the name and as a representative of **Leisure Clothing Limited**, bearing registration number C8265 and address "B31", Industrial Estate, Bulebel, Zejtun and **Jia Liu** holder of Maltese identity card bearing number 64215A, in his own name and in the name and as a representative of **Leisure Clothing Limited**, bearing registration number C8265 and address "B31", Industrial Estate, Bulebel, Zejtun, have been charged with having on the 29th October 2014 and in the preceding years, on the Maltese Islands, by several acts committed by them, even if at different times, which constitute violations of the same provision of the law, committed in pursuance of the same design:*

- 1) *By means of violence or threats, including abduction, deceit or fraud, misuse of authority, influence or pressure or by giving or receiving payments or benefits to achieve the consent of persons having control over, trafficked persons of age namely Van Ngu Tran: Vietnamese I.D number B8289450P; Thi Thu Tran: Vietnamese I.D number B8249346P; Thi Cam Van Hoang: B8247413P; Nguyen Van Giang: Vietnamese I.D number B8244745; Phuong Thi Vuong: Vietnamese I.D number B8305220; Thi Hoa Vu Vietnamese I.D number B85336280; Lien Thi Duong: B4768442; Hien Thi Nguyen Vietnamese I.D number B507646P, Thi Kim Loan Nguyen: Vietnamese I.D number B825902P and Liao Pingshan; Chinese Passport G48164137 and any other persons for the purpose of exploiting those persons in the production of goods or*

provision of services or any other unlawful activities not specifically provided for elsewhere inder this sub-title.

- 2) *And in the same circumstances misappropriated, by converting to their own benefit or to the benefit of any other person, the sum of more than €5000 which has been entrusted or delivered to them under a title which implies an obligation to return such thing or to make use thereof for a specific purpose and this to the detriment of Van Ngu Tran: Vietnamese I.D number B8289450P; Thi Thu Tran: Vietnamese I.D number B8249346P; Thi Cam Van Hoang: B8247413P; Nguyen Van Giang: Vietnamese I.D number B8244745; Phuong Thi Vuong: Vietnamese I.D number B8305220; Thi Hoa Vu Vietnamese I.D number B85336280; Lien Thi Duong: B4768442; Hien Thi Nguyen Vietnamese I.D number B507646P, Thi Kim Loan Nguyen: Vietnamese I.D number B825902P and Liao Pingshan; Chinese Passport G48164137 and/or any other persons;*
- 3) *And in the same circumstances under the title of directors, managers, secretaries or other principal officers of a body corporate or being persons having the power of representation of a body or having an authority to take decisions on behalf of such body or having authority to exercise control within that body, which committed for the benefit, in part or in whole, of that body corporate, these persons shall under this title be deemed to be vested with the legal representation of the same body corporate;*
- 4) *And in the same circumstances as employers contravened or failed to comply with any recognised conditions of employment prescribed by a national standard order or by a sectoral regulation order or collective agreement, or with any provisions of this Act 452 or any regulations made thereunder.*
- 5) *And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership ‘**LEISURE CLOTHING LIMITED**’ (C 8265), having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 21st November, 2013 and ending on the 25th of July, 2014, amounting to €5,973.33, you have failed to pay the **Weekly Allowance** due for the period commencing on the 21st November, 2013 and ending on the 25th July, 2014, amounting to €164.97, you have failed to pay the **Statutory Bonus** due for the period commencing on the 21st November, 2013 and ending on the 25th July, 2014, amounting to €183.94, you have failed to pay the **Overtime on Public Holidays** due for the period commencing on the 13th December 2013, and ending on the 25th July, 2014, amounting to €667.10, you have failed to pay the **Overtime** due for the period commencing on the 21st November, 2013 and ending on the 25th July, 2014, amounting to €4465.32, you have failed to pay the **Vacation Leave** due for the period commencing on the 1st January, 2014, and ending on the 25th of July,*

2014, amounting to **€452.46**, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 21st November, 2013 and ending on the 25th July, 2014, amounting to €2,582.25, globally amounting to €14489.37 from which a payment of €600 was made leaving a remaining due balance of thirteen thousand eight hundred eighty-nine EUROS and thirty-seven cents (**€13,889.37**), inclusive of national insurance and tax, owed to **Van Ngu Tran (Vietnamese ID Number B828945OP)**, employee of the above-cited commercial partnership.

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Van Ngu Tran (Vietnamese ID Number B828945OP)** the amount of fifteen thousand five hundred and fifty-four Euros and seventy-six (**€15,554.76**) for the reasons specified above.

- 6) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership '**LEISURE CLOTHING LIMITED**' (C 8265), having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 22nd November, 2013 and ending on the 25th of July, 2014, amounting to €5,841.36, you have failed to pay the **Weekly Allowance** due for the period commencing on the 22nd November, 2013 and ending on the 31st March, 2014, amounting to €83.88, you have failed to pay the **Statutory Bonus** due for the period commencing on the 22nd November, 2013 and ending on the 30th June, 2014, amounting to €164.70, you have failed to pay the **Overtime on Saturdays** due for the period commencing on the 23rd November, 2013 and ending on the 25th July, 2014, amounting to €804.70, you have failed to pay the **Overtime on Public Holidays** due for the 13th December 2013, 25th December 2013, and the period commencing on the 1st January, 2014 and ending on the 25th July, 2014, amounting to €967.79, you have failed to pay the **Overtime** due for the period commencing on the 22nd November, 2013 and ending on the 25th July, 2014, amounting to €5500.41, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 22nd November, 2013 and ending on the 25th July, 2014, amounting to €2791.92, globally amounting to €16154.76 from which a payment of €600 was made leaving a remaining due balance of fifteen thousand five hundred and fifty-four Euros and seventy-six (**€15,554.76**), inclusive of national insurance and tax, owed to **Thi Thu Tran (Vietnamese ID Number B8249346P)**, employee of the above-cited commercial partnership.

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta to order the accused to pay **Thi Thu**

Tran (Vietnamese ID Number B8249346P) the amount of fifteen thousand five hundred and fifty-four Euros and seventy-six (**€15,554.76**) for the reasons specified above.

- 7) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership '**LEISURE CLOTHING LIMITED**' (C 8265), having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 22nd November, 2013 and ending on the 25th of July, 2014, amounting to €5,841.36, you have failed to pay the **Weekly Allowance** due for the period commencing on the 22nd November, 2013 and ending on the 31st March, 2014, amounting to €83.88, you have failed to pay the **Statutory Bonus** due for the period commencing on the 22nd November, 2013 and ending on the 30th June, 2014, amounting to €164.70, you have failed to pay the **Overtime on Saturdays** due for the period commencing on the 23rd November, 2013 and ending on the 25th July, 2014, amounting to €804.70, you have failed to pay the **Overtime on Public Holidays** due for the 13th December 2013, 25th December 2013, and the period commencing on the 1st January, 2014 and ending on the 25th July, 2014, amounting to €967.79, you have failed to pay the **Overtime** due for the period commencing on the 22nd November, 2013 and ending on the 25th July, 2014, amounting to €5500.41, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 22nd November, 2013 and ending on the 25th July, 2014, amounting to €2791.92, globally amounting to €16154.76 from which a payment of €600 was made leaving a remaining due balance of fifteen thousand five hundred and fifty-four Euros and seventy-six (**€15,554.76**), inclusive of national insurance and tax, owed to **Thi Cam Van Hoang (Vietnamese ID Number B8247413P)**, employee of the above-cited commercial partnership.

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta to order the accused to pay **Thi Cam Van Hoang (Vietnamese ID Number B8247413P)** the amount of fifteen thousand five hundred and fifty-four Euros and seventy-six (**€15,554.76**) for the reasons specified above.

- 8) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership '**LEISURE CLOTHING LIMITED**' (C 8265), having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 22nd November, 2013 and ending on the 11th of August, 2014, amounting to €5,477.76, you have failed to pay the **Weekly Allowance** due for the period commencing on the 22nd November, 2013 and ending on the 11th August, 2014,

*amounting to €154.71, you have failed to pay the **Statutory Bonus** due for the period commencing on the 22nd November, 2013 and ending on the 11th August, 2014, amounting to €195.78, you have failed to pay the **Overtime on Sundays** due for the period commencing on the 24th November, 2013 and ending on the 29th December 2013, amounting to €578.99, you have failed to pay the **Overtime on Public Holidays** due for the 13th December 2013, 25th December 2013, and the period commencing on the 10th February, 2014 and ending on the 7th June, 2014, amounting to €670.95, you have failed to pay the **Overtime** due for the period commencing on the 22nd November, 2013 and ending on the 11th August, 2014, amounting to €4346.56, and you have failed to pay the **Vacation Leave** due for the period commencing on the 1st January, 2014 and ending on the 11th August, 2014, amounting to €421.87, globally amounting to €11,846.62 from which a payment of €2,810 was made leaving a remaining due balance of nine thousand and thirty-six Euros and sixty-two cents (**€9036.62**), inclusive of national insurance and tax, owed to **Nguyen Van Giang (Passport No B8244745)**, employee of the above-cited commercial partnership.*

*The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Nguyen Van Giang (Passport No B8244745)** the amount of nine thousand and thirty-six Euros and sixty-two cents (**€9036.62**) for the reasons specified above.*

- 9) *And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership '**LEISURE CLOTHING LIMITED**' (C 8265), having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 24th March, 2014 and ending on the 27th of October, 2014, amounting to **€5166.72**, you have failed to pay the **Weekly Allowance** due for the period commencing on the 23rd March, 2014 and ending on the 30th of September, 2014, amounting to **€126.75**, you have failed to pay the **Statutory Bonus** due for the period commencing on the 23rd March, 2014 and ending on the 27th of October, 2014, amounting to **€162.06**, you have failed to pay the **Vacation Leave** due for the period commencing on the 23rd March, 2014, and ending on the 27th of October, 2014, amounting to **€476.93**, you have failed to pay the **Overtime on Public Holidays** due for the period commencing on the 31st March, 2014 and ending on the 8th of September, 2014, amounting to **€541.51**, you have failed to pay the **Overtime** due for the period commencing on the 24th March, 2014 and ending on the 27th of October, 2014, amounting to **€4,736.68**, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 23rd March, 2014 and ending on the 26th of October, 2014, amounting to **€2,484.17**, globally amounting to **€13694.80** from which a payment of **€450** was made leaving a remaining due balance of thirteen thousand two hundred*

and forty-four Euros and eighty cents (**€13244.80**), inclusive of national insurance and tax, owed to **Phuong Thi Vuong (B8305220)**, ex-employee of the above-cited commercial partnership on the 27th of October, 2014

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Phuong Thi Vuong (B8305220)** the amount of thirteen thousand two hundred and forty-four Euros and eighty cents (**€13244.80**) for the reasons specified above.

- 10) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership '**LEISURE CLOTHING LIMITED**' (C 8265), having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 23rd March, 2014 and ending on the 27th of October, 2014, amounting to **€5232.73**, you have failed to pay the **Weekly Allowance** due for the period commencing on the 23rd March, 2014 and ending on the 30th of September, 2014, amounting to **€145.39**, you have failed to pay the **Statutory Bonus** due for the period commencing on the 23rd March, 2014 and ending on the 27th of October, 2014, amounting to **€162.06**, you have failed to pay the **Vacation Leave** due for the period commencing on the 23rd March, 2014, and ending on the 27th of October, 2014, amounting to **€479.99**, you have failed to pay the **Overtime on Public Holidays** due for the period commencing on the 31st March, 2014 and ending on the 8th of September, 2014, amounting to **€541.51**, you have failed to pay the **Overtime** due for the period commencing on the 24th March, 2014 and ending on the 27th of October, 2014, amounting to **€4,289.93**, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 23rd March, 2014 and ending on the 26th of October, 2014, amounting to **€2,482.10**, globally amounting to **€13333.71** from which a payment of **€450** was made leaving a remaining due balance of twelve thousand eight hundred and eighty-three Euros and seventy-one cents (**€12883.71**), inclusive of national insurance and tax, owed to **Thi Hoa Vu (B85336280)**, ex-employee of the above-cited commercial partnership on the 27th of October, 2014

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Thi Hoa Vu (B85336280)** the amount of twelve thousand eight hundred and eighty-three Euros and seventy-one cents (**€12883.71**) for the reasons specified above.

11) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership '**LEISURE CLOTHING LIMITED**' (C 8265), having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to **€6,325.92**, you have failed to pay the **Weekly Allowance** due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to **€178.62**, you have failed to pay the **Statutory Bonus** due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to **€198.32**, you have failed to pay the **Vacation Leave** due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to **€585.92**, you have failed to pay the **Overtime on Public Holidays** due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to **€824.27**, you have failed to pay the **Overtime** due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to **€5464.18**, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to **€2,962.58**, globally amounting to **€16,539.81** from which a payment of **€550** was made leaving a remaining due balance of fifteen thousand nine hundred and eighty-nine Euros and eighty-one cents (**€15,989.81**), inclusive of national insurance and tax, owed to **Lien Thi Duong (B4768442)**, ex-employee of the above-cited commercial partnership on the 27th of October, 2014

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Lien Thi Duong (B4768442)** the amount of fifteen thousand nine hundred and eighty-nine Euros and eighty-one cents (**€15,989.81**) for the reasons specified above.

12) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership '**LEISURE CLOTHING LIMITED**' (C 8265), having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 31st March, 2013 and ending on the 27th of October, 2014, amounting to **€13,536.00**, you have failed to pay the **Weekly Allowance** due for the period commencing on the 31st March, 2013 and ending on the 27th of October, 2014, amounting to **€379.46**, you have failed to pay the **Statutory Bonus** due for the period commencing on the 31st March, 2013 and ending on the 27th of October, 2014, amounting to **€426.24**, you have failed to pay the **Vacation Leave**

due for the period commencing on the 1st January, 2014 and ending on the 27th of October, 2014, amounting to **€644.00**, you have failed to pay the **Overtime on Public Holidays** due for the period commencing on the 31st March, 2013 and ending on the 27th of October, 2014, amounting to **€1,565.81**, you have failed to pay the **Overtime** due for the period commencing on the 31st March, 2013 and ending on the 27th of October, 2014, amounting to **€13,068.05**, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 31st March, 2013 and ending on the 27th of October, 2014, amounting to **€6337.52**, globally amounting to €35,957.08 from which payments of a total of €5651 were made leaving a remaining due balance of thirty thousand three hundred and six Euros and eight cents (**€30,306.08**), inclusive of national insurance and tax, owed to **Hien Thi Nguyen (B507646P)**, ex-employee of the above-cited commercial partnership on the 27th of October, 2014. The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Hien Thi Nguyen (B507646P)** the amount of thirty thousand three hundred and six Euros and eight cents (**€30,306.08**) for the reasons specified above.

- 13) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership '**LEISURE CLOTHING LIMITED**' (C 8265), having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 30th January, 2014 and ending on the 27th of October, 2014, amounting to **€6,466.72**, you have failed to pay the **Weekly Allowance** due for the period commencing on the 30th January, 2014 and ending on the 27th of October, 2014, amounting to **€180.39**, you have failed to pay the **Statutory Bonus** due for the period commencing on the 30th January, 2014 and ending on the 27th of October, 2014, amounting to **€200.54**, you have failed to pay the **Vacation Leave** due for the period commencing on the 30th January, 2014 and ending on the 27th of October, 2014, amounting to **€591.73**, you have failed to pay the **Overtime on Public Holidays** due for the period commencing on the 10th February, 2014 and ending on the 27th of October, 2014, amounting to **€709.68**, you have failed to pay the **Overtime** due for the period commencing on the 3rd February, 2014 and ending on the 27th of October, 2014, amounting to **€2,853.56**, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to **€2,954.22**, globally amounting to **€13,956.84** from which a payment of €550 was made leaving a remaining due balance of thirteen thousand four hundred and six Euros and eighty-four cents (**€13,406.84**), inclusive of national insurance and tax, owed to **Thi Kim Loan Nguyen (B825902P)**, ex-employee of the above-cited commercial partnership on the 27th of October, 2014.

*The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Thi Kim Loan Nguyen (B825902P)** the amount of thirteen thousand four hundred and six Euros and eighty-four cents (**€13,406.84**) for the reasons specified above.*

- 14) *And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership '**LEISURE CLOTHING LIMITED (C 8265)**', having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the persons responsible and appointed by the said commercial partnership on the 3rd of November, 2014, you have failed to answer or answered falsely or caused any other person not to answer or to answer falsely to any question which an inspector is authorized to ask under Chapter 452 of the Laws of Malta; or you have failed to produce any books, registers or other documents that, according to this Act, you were required by an inspector to produce.*

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, and Regulation 10 of the Legal Notice 431 of 2002, as amended by the Legal Notice 427 of 2007, to order the accused to pay the penalties established by law, for the reasons specified above, and also order the accused, in accordance with Article 43(8) of Chapter 452 of the Laws of Malta, and or Regulation 9(3) of the Legal Notice 431 of 2002, as amended by the Legal Notice 427 of 2007, not to obstruct in any manner an inspector in the performance of his duties, to allow, directly or indirectly, any employee to appear before or to be questioned by an inspector, as well as produce and make available any information requested by the Director of the Department of Employment and Industrial Relations.

The Court is being humbly requested, on reasonable grounds, to provide for the safety of any vulnerable witnesses including Van Ngu Tran: Vietnamese I.D number B8289450P; Thi Thu Tran: Vietnamese I.D number B8249346P; Thi Cam Van Hoang: B8247413P; Nguyen Van Giang: Vietnamese I.D number B8244745; Phuong Thi Vuong: Vietnamese I.D number B8305220; Thi Hoa Vu Vietnamese I.D number B85336280; Lien Thi Duong: B4768442; Hien Thi Nguyen Vietnamese I.D number B507646P, Thi Kim Loan Nguyen: Vietnamese I.D number B825902P and Liao Pingshan; Chinese Passport G48164137 and their families and other persons, and forthwith apply the provisions of Section 412C of Chapter 9 of the Laws of Malta and thus issue a protection order against the accused with all the necessary restrictions or prohibitions;

The Court is also being humbly requested to apply mutatis mutandis the provisions of Article 5 of Chapter 373 of the Money Laundering Act of the Laws of Malta, in accordance with Article 23A(2) of Chapter 9 of the Laws

of Malta, and on conviction apply the provisions of Article 23B of Chapter 9 of the Laws of Malta;

The Court is finally being humbly requested, in pronouncing judgment or in any subsequent order, sentence the person convicted to pay the costs incurred in connection with any experts or referee and this in accordance to Article 533 of Chapter 9 of the Laws of Malta.

26. Jirrizulta illi, permezz ta' sentenza mogħtija fil-**21 ta' Marzu 2022**, il-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali ddeċidiet il-każ fuq riprodott kif ġej:

A. JIA LIU not guilty of all charges proffered against him and is therefore being acquitted in terms of Law;

B. BIN HAN -

(i) not guilty of charge number (1) from which charge he is being acquitted; but

(ii) guilty of all the remaining charges (2 to 14) and condemns him to a term of imprisonment of two (2) years suspended for a term of four (4) years in terms of Article 28A of Chapter 9 of the Laws of Malta; the Court explained to the accused his responsibilities under Articles 28A and 28B of Chapter 9 of the Laws of Malta.

(iii) and condemns the body corporate LEISURE CLOTHING LIMITED (C8265) to the payment of a fine multa in the amount of two hundred thousand euros (€200,000).

(iv) And condemns accused Bin Han further to the payment of all the costs incurred in these proceedings, and this in terms of Article 533 of Chapter 9 of the Laws of Malta.

27. Jirrizulta illi kemm r-rikorrent Bin Han kif ukoll l-Avukat Ġenerali appellaw minn tali deċiżjoni, fejn il-Qorti tal-Appell Kriminali, filwaqt illi ċaħdet l-appell ta' Bin Han, laqgħet l-appell ta' l-Avukat Ġenerali u għalhekk varjat id-deċiżjoni billi, permezz ta' sentenza mogħtija fis-**6 ta' Jannar 2023**, ddeċidiet is-segwent:

Consequently, for the above-mentioned reasons, the Court is rejecting entirely the appeal brought forward by appellant Bin Han. However, it is upholding the appeal filed by the Attorney General, and thus reforms the appellate judgment in the following manner: –

1) Revokes it in that part of the judgment where accused Bin Han was acquitted from the first charge brought against him, and after having seen articles 248A(1)(2)(3), 248E(1)(3)(4A), 17(h) 18, and 121D of Chapter 9 of the Laws of Malta and article 13 of Chapter 249 of the Laws of Malta, finds him guilty of the said charge;

2) Consequently, revokes it in that part where it imposed upon Bin Han a term of imprisonment of two (2) years suspended for a term of four (4) years in terms of Article 28A of Chapter 9 of the Laws of Malta, and instead condemns him to a term of effective imprisonment of six (6) years;

3) Revokes that part of the judgment where it found Jia Liu not guilty of all charges brought against him, and after having seen articles 248A(1)(2)(3), 248E(1)(3)(4A), 293, 294, 310(1)(a), 310A, 18, 17(h) and 121D of Chapter 9 of the Laws of Malta, articles 45(1)(2), 47 and 48 of Chapter 452 of the Laws of Malta, regulations 22 of Subsidiary Legislation 452.87, and article 13 of Chapter 249 of the Laws of Malta, finds him guilty of all charges brought against him and condemns him to a term of imprisonment of six (6) years.

4) Confirms it in that part where it found Bin Han guilty of charges 2 to 14;

5) Confirms it in the part where it condemned the body corporate Leisure Clothing Limited to the payment of a fine (multa) in the amount of two hundred thousand euros (€200,000); and

6) Revokes it in that part where it condemned Bin Han to the payment of all the costs incurred in these proceedings, and instead orders that the payment of the said costs be apportioned equally between both accused Bin Han and Jia Liu, and this in terms of Article 533 of Chapter 9 of the Laws of Malta.

Finally, after having seen article 23B(1)(1A), 23(C)(2) of Chapter 9 of the Laws of Malta, article 3(5) of Chapter 373 of the Laws of Malta and article 22(3A)(d) of Chapter 101 of the Laws of Malta, orders the forfeiture of all the property appertaining to accused Bin Han, Jia Liu and Leisure Clothing Company Limited in favour of the Government of Malta.

Konsiderazzjonijiet ta' dina l-Qorti

28. Il-Qorti tibda billi tirrileva illi, fil-proċeduri odjerni, karatterizzati minn varji rikorsi ta' urġenza da' parte tar-rikorrenti, bħala provi, għajr għall-kopji elettronici tal-Proċeduri Nru 658/14 u l-Proċeduri Nru 1128/2014 deċiżi rispettivament fid-29 ta' Settembru 2016 u fis-6 ta' Jannar 2023, ma tressqu ebda provi oħra, salv l-allegazzjoni tal-atti tal-kawża 390/2023 AD ċeduti mir-rikorrenti fit-2 ta' April 2024.
29. Il-Qorti tirrileva wkoll illi, kemm il-konsulenti tar-rikorrenti kif ukoll l-Avukat tal-Istat, għalih u għall-Avukat Ġenerali, ippreżentaw sottomissjonijiet mirquma w dettaljati, fejn lkoll esponew ir-raġunamenti tagħhom bl-għajnuna ta' referenzi ta' ġurisprudenza, kemm nostrana kif ukoll estera.
30. Ikun għalhekk opportun illi, wara illi l-Qorti fliet fir-reqqa l-atti ppreżentati quddiemha u qrat b'interess is-sottomissjonijiet tal-partijiet, tgħaddi biex tagħmel l-osservazzjonijiet u konkluzjonijiet tagħha.
31. Dwar il-fatti tal-każ w l-ilment kif impostat mir-rikorrenti permezz tal-rikors promotur ippreżentat fid-19 ta' April 2024 kif ukoll id-difiżi ppreżentati, il-Qorti ġia rriproduċiethom kollha u għalhekk ma hemmx il-ħtieġa illi dawna jerggħu jiġu ripetuti għal fini ta' konsiderazzjoni.

Nuqqas ta' eżawriment tar-rimedji ordinarji

32. Fid-difiżi tagħhom, l-intimati qajjmu, bħala l-ewwel difiża ta' sustanza tagħhom, wara d-difiża ġenerika li kollox mitlub huwa infondat fil-fatt u fid-dritt, l-argument illi r-rikorrenti kienu naqsu milli jeżawrixxu r-rimedji ordinarji tagħhom, u dina kif tidher redatta fit-tieni eċċezzjoni tagħhom.
33. Jirrizulta illi l-intimati qed jikkontendu illi meta ir-rikorrenti, kemm fil-proċeduri quddiem il-Qorti tal-Maġistrati li ġew deċiżi fil-21 ta' Marzu 2022, kif ukoll fil-proċeduri quddiem il-Qorti tal-Appell Kriminali li ġew deċiżi fis-6 ta' Jannar 2023, naqsu milli jqajjmu, bħala difiża, il-fatt illi huma kienu ġia nstabu ħatja ta' l-istess akkużi fid-29 ta' Settembru 2016, huma naqsu milli jeżawrixxu r-rimedji ordinarji tagħhom.
34. Jirrizulta illi, għalhekk, l-intimati stiednu lil dina l-Qorti sabiex tiddeklina milli teżerċita l-ġurisdizzjoni konvenzjonali tagħha ai termini tal-proviso għall-Artikolu 4 (2) tal-Att dwar il-Konvenzjoni Ewropeja (Kap. 319 tal-Liġijiet ta' Malta) u tal-Artikolu 46 (2) tal-Kostituzzjoni ta' Malta.
35. Jirrizulta illi, da parte tagħhom, ir-rikorrenti fis-sottomissjonijiet ta' l-abbli difensuri tagħhom, laqgħu għal dak allegat billi saħqu illi kien obbligu tal-Pulizija u tal-Prosekuzzjoni li jassikuraw li ma sseħħ id-doppja inkriminazzjoni tar-rikorrenti.
36. Jirrizulta illi r-rikorrenti insistew illi r-regola tal-eżawriment ta' rimedji ordinarja kellha tiġi applikata b'mod flessibbli, kif issosti l-Qorti Ewropeja għad-Drittijiet tal-Bniedem, filwaqt illi saħqu illi jrid jintwera li r-rimedju illi seta' kellhom kien wieħed aċċessibbli, xieraq, effettiv u adegwat biex jindirizza l-ksur illi dwaru qed jillamentaw fil-proċeduri odjerni.
37. Jirrizulta, finalment, illi r-rikorrenti ikkontendew li ksur ta' dritt kostituzzjonali ma huwiex dritt illi jista' jiġi kkunsidrat minn Qorti ta' ġurisdizzjoni oriġinali u jispetta biss lill-Qrati b' kompetenza kostituzzjonali, bħalma hija dik odjerna, u għalhekk ir-rikorrenti kellhom kull dritt illi ma jfittxux ir-rimedju ordinarju quddiem il-Qrati li ma għandhomx ġurisdizzjoni jqisu ksur ta' natura kostituzzjonali.

Ikkunsidrat

38. Il-Qorti hawnhekk tibda billi tosserva illi fil-proċeduri 658/2014 deċiża mill-Qorti tal-Maġistrati fid-29 ta' Settembru 2016, fuq ammissjoni ta' l-istess rikorrenti, r-rikorrenti instabu ħatja tas-segwenti:

On the 3rd of November, 2014, you have failed to answer or answered falsely or caused any other person not to answer or to answer falsely to any question which an inspector is authorized to ask under Chapter 452 of the Laws of Malta; or you have failed to produce any books, registers or other documents that, according to this Act, you were required by an inspector to produce.

U din kif riprodotta f'aktar dettall fil-paragrafu 23 aktar 'il fuq.

39. Jirrizulta illi tali deċiżjoni ingħatat fuq ammissjoni tar-rikorrenti stess, u għalhekk ir-rikorrent kienu ben a korrent ta' dak illi kien ġie lilhom akkużat u dak illi huma

ammettew, għall liema ammissjoni huma wehlu multa ta' €250 kull wiehed, li thallset minnhom ftit xhur wara.

40. Il-Qorti tosserva, madanakollu, illi preċedement, ossija fid-19 ta' Novembru 2014, fil-proċeduri 1128/2014, l-istess rikorrenti kienu ġia tressqu taħt arrest u fil-konfront tagħhom u fil-konfront tagħhom inħargulhom erbatax-il akkuża, kif fuq riprodott fil-paragrafu 25, fosthom, l-aħhar akkuża, indikata bħala Numru 14,

And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership 'LEISURE CLOTHING LIMITED (C 8265), having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the persons responsible and appointed by the said commercial partnership on the 3rd of November, 2014, you have failed to answer or answered falsely or caused any other person not to answer or to answer falsely to any question which an inspector is authorized to ask under Chapter 452 of the Laws of Malta; or you have failed to produce any books, registers or other documents that, according to this Act, you were required by an inspector to produce.

41. Jirrizulta, għalhekk, illi fid-29 ta' Settembru 2016, meta r-rikorrenti ammettew, fil-proċeduri 658/2014, quddiem il-Qorti tal-Maġistrati illi kienet qed tisma' s-seduta tal-infrazzjonijiet mahruġa mid-Departiment of Industrial & Employment Relations, l-akkuża miġjuba kontra tagħhom, huma ċertament kellhom ikunu ben a konoxxenza tal-fatt illi tali akkuża kienet ukoll ġia inkluża fl-akkużi miġjuba kontra tagħhom fid-19 ta' Novembru 2014, bin-numru 1128/2014.
42. Jirrizulta, aktar minn hekk, illi fil-21 ta' Marzu 2022, meta l-Qorti tal-Maġistrati għaddiet biex tagħti d-deċiżjoni tagħha għall-akkużi illi kienu tressqu bl-arrest għalihom fid-19 ta' Novembru 2014 bin-numru 1128/2014, ir-rikorrenti kellhom ikunu ben konxji tal-akkuża minnhom ammissa sitt snin qabel – madanakollu għażlu illi ma jgħidu xejn.
43. Jirrizulta, finalment, illi anke meta ntavolaw l-appell tagħhom, ossija ta' Bin Han, quddiem il-Qorti tal-Appell, u dan fis-6 ta' April 2022, ir-rikorrenti kellhom ikunu ben konxji tad-deċiżjoni tad-29 ta' Settembru 2016 w tal-possibbiltà li jqajjmu difiża ta' *nebis in idem*, iżda ta' dan ma qajjmu xejn, kemm fl-appell, kif ukoll fis-sottomissjonijiet finali.
44. Jirrizulta, għalhekk, illi tul il-proċeduri kollha tal-kawża 1128/2014, illi eventwalment wasslet għal sentenza ta' sitt snin prigunerija għaž-żewġ rikorrenti odjerni, huwa qatt ma ġabu l-fatt tal-allegat *nebis in idem* għall-attenzjoni tal-Qrati, kemm ordinarja kif ukoll tal-Appell, u għalhekk għandu jiġi kkunsidrat jekk naqqasux milli jeżawrixxu r-rimedju ordinarju tagħhom li jgħibu tali fatt a konsiderazzjoni tal-Qorti qabel ma nġhatat is-sentenza finali.

Gurisprudenza

45. Il-Qorti, hawnhekk, jidrilha opportun illi tagħmel referenza għal deċiżjoni tal-Prim Awla (Sede Kostituzzjonali) mogħtija fit-28 ta' Ottubru 2022, u sussegwentement ikkonfermata mill-Qorti Kostituzzjonali fil-25 ta' Ottubru 2023, fl-ismijiet '**Ramon**

Fenech vs Avukat tal-Istat, fejn dwar l-applikazzjoni tal-Artikolu 46(2) tal-Kostituzzjoni u l-Artikolu 4 (2) tal-Kap 319, kellha dawn l-osservazzjonijiet x'tagħmel:

22. *Din id-difiża tal-Avukat tal-Istat hija mibnija fuq il-ħsieb li, qabel ma persuna tersaq quddiem din il-qorti biex tingħata rimedju għall-ksur ta' jedd fundamentali tagħha, hija trid tkun inqadiet l-ewwel bir-rimedji l-oħrajn li l-ligi tagħti lil dik il-persuna f'dik il-qagħda;*
23. *Insibu fil-provisos għall-artikolu 46(2) tal-Kostituzzjoni ta' Malta u għall-artikolu 4(2) tal-Kap 319 tal-Ligijiet ta' Malta, li l-leġislatur halla fl-għaqal tal-qorti mogħnija bis-setgħat kostituzzjonali, biex min-naħa l-waħda ma jithallewx isiru kawżi kostituzzjonali jew konvenzjonali bla bżonn, u biex min-naħa l-oħra jiġi żgurat li f'każijiet li jixirqu li jiġu eżaminati taħt il-lenti kostituzzjonali jew konvenzjonali, dawn jiġu hekk eżaminati fid-dawl tar-rimedju jew rimedji li huma, jew kienu disponibbli favur il-persuna li tkun qed tallega ksur tad-drittijiet fundamentali tagħha. Tassew il-provisos ta' dawn iż-żewġ artikoli mhumieks maħsuba biex il-qorti taħrab mir-responsabbiltà li tqis ilmenti ta' bixra kostituzzjonali, iżda fuq ix-xaqliba l-oħra wiehed irid iqis li jekk hemm jew kien hemm rimedji ordinarji xierqa u effettivi, il-qorti għandha l-għażla li tmil lejn iċ-ċaħda tal-eżerċizzju tas-setgħat tagħha taħt l-artikoli kostituzzjonali u konvenzjonali fuq imsemmija (ara **Elvia Scerri et v. Awtorità tad-Djar et** deċiża mill-Qort Kostituzzjonali fit-13 ta' April, 2018);*
24. *Id-diskrezzjoni dwar jekk qorti tagħzlix li twettaq is-setgħat kostituzzjonali tagħha jew le tista' titqajjem mill-istess qorti minn rajha, anke jekk ma jkunx hemm eċċezzjoni formali mill-partijiet (ara **Easygas Malta Ltd v. Ministru għar-Riżorsi u Affarijiet Rurali et** deċiża mill-Qorti Kostituzzjonali fit-30 ta' Novembru, 2012, **Olaf Cini v. Ir-Repubblika ta' Malta et** deċiża mill-Qorti Kostituzzjonali fil-25 ta' Ottubru, 2013, **Valletta Freight Services Limited v. Direttur Qrati Ċivili u Tribunali et** deċiża mill-Qorti Kostituzzjonali fit-3 ta' Novembru, 2015 u **Rosaria Borg Busuttil v. Onorevoli Prim Ministru et** deċiża mill-Qorti Kostituzzjonali fit-12 ta' Lulju, 2019);*
25. *Ingħad li persuna ma tistax tippretendi li tirċievi rimedju minn qorti mogħnija b'setgħat kostituzzjonali meta jirriżulta li hija stess tkun għażlet li ma tużax ir-rimedji ordinarji li kienet tagħtiha l-ligi ordinarja. Dan għaliex kif sew imtenni fis-sentenza, **Nardu Balzan Imqareb v. Registratur tal-Qrati tal-Ġustizzja** mogħtija mill-Prim Awla tal-Qorti Ċivili (sede kostituzzjonali) fit-18 ta' Mejju, 2006,*

«Rikorsi Kostituzzjonali huma, min-natura tagħhom, speċjali u straordinarji, u meta s-sistema ordinarja ta' ridress tipprovdi mod ta' soluzzjoni effettiva, dik is-sistema ordinarja trid tiġi użata u adottata qabel ma' l-Gvern, jew l-amministrazzjoni tagħha, jiġi akkużat bi ksur tad-drittijiet fundamentali tiegħu. Ma jistax jingħad li l-Gvern ikun kiser id-drittijiet fundamentali taċ-ċittadin, meta liċ-ċittadin ikunu pprovduti u hemm disponibbli għalih rimedji għal-lanjanzi tiegħu.»

26. Kif qalet tajjeb il-Qorti Kostituzzjonali fis-sentenza **John Sammut v. Awtorità tal-Ippjanar et** deciza fis-27 ta' Frar, 2003, il-fatt li ghemil jew nuqqas partikolari jkun jikser dritt fundamentali ma jfissirx tabilfors li l-uniku rimedju effettiv huwa dak kostituzzjonali jew konvenzjonali. Kieku kien hekk, il-provisos tal-artikolu 46(2) tal-Kostituzzjoni u tal-artikolu 4(2) tal-Kap 319 tal-Ligijiet ta' Malta kienu jkun superfluwi jew sahanistra bla sens (ara f'dan is-sens is-sentenzi tal-Qorti Kostituzzjonali tas-7 ta' April, 2000 fl-ismijiet **Adel Mokhtar Al Sakalli v. Onor. Prim Ministru et** u tal-31 ta' Mejju, 2000 fl-ismijiet **Teddy Rapa v. Chairman tal-Awtorità tal-Ippjanar et**);

27. Dejjem fuq din l-istess linja ta' hsieb, gie miżmum ukoll fis-sentenza, **Tat-Taljan Company Limited v. L-Awtorità tal-Ippjanar** deciza mill-Qorti Kostituzzjonali fit-2 ta' Novembru, 2001 li,

«sakemm tibqa' il-possibilità li leżjoni ta' xi dritt fundamentali seta' kien, jew għad jista' jiġi, rettifikat bil-proċeduri w mezzi ordinarji provduti mil-liġi, ikun generalment il-każ li din il-Qorti tiddeklina milli teżercita s-setgħat kostituzzjonali tagħha. Fejn għad hemm disponibbli mezzi ordinarji, dawn għandhom jiġu adoperati, u r-rikors għall-organi ġudizzjarji ta' natura kostituzzjonali għandu jsir wara li r-rimedji ordinarji jiġu eżawriti definittivament jew meta ma jkunux disponibbli.»

28. Anke f'sentenzi aktar riċenti l-qradi kostituzzjonali qagħdu lura milli jieħdu għarfien ta' ilmenti kostituzzjonali meta ntebħu li r-rikorrenti kienu naqsu kompletament milli jinqdew bir-rimedji li kienet tagħtihom il-liġi (ara **Horace sive Grezzju Cassar v. L-Avukat Ġenerali et** deciza mill-Qorti Kostituzzjonali fl-10 ta' Jannar, 2005, **John Mary Chircop v. Kummissarju tal-Pulizija et** deciza mill-Qorti Kostituzzjonali fis-7 ta' Lulju, 2007, **Olaf Cini v. Ir-Repubblika ta' Malta et** deciza mill-Qorti Kostituzzjonali fil-25 ta' Ottubru, 2013, **Gafà Saveways Limited v. Avukat Ġenerali et** deciza mill-Qorti Kostituzzjonali fit-30 ta' Ottubru, 2015 u **JA&M Developments Limited v. L-Avukat Ġenerali et et** deciza mill-Qorti Kostituzzjonali fit-23 ta' Novembru, 2020) jew meta r-rikorrent jagħmel użu hażin mill-jedd mogħti lil bil-liġi ordinarja (ara b'eżempju **A & J Hili ta' Miema Ltd. vs. Kummissarju tat-Taxxa fuq il-Valur Miżjud**, Qorti Kostituzzjonali tas-7 ta' Frar, 2005);

29. Naturalment meta jingħad li jkun hemm rimedju iehor xieraq, dejjem ikun qiegħed jifisser li tali rimedju jrid jitqies fid-dawl tal-ksur tal-jedd fundamentali li jkun qed jiġi allegat li nkiser jew li jkun mhedded li sejjer jinkiser. Fuq kollox, dan ir-rimedju jrid jkun wieħed aċċessibbli, xieraq, effettiv u adegwat biex jindirizza l-ksur jew theddid ta' ksur lamentat (ara **Tonio Vella v. Kummissarju tal-Pulizija et** deciza mill-Qorti Kostituzzjonali fil-5 ta' April, 1991 u **Louise Xerri et v. Kummissarju tal-Artijiet** deciza mill-Qorti Kostituzzjonali fis-27 ta' Mejju, 2016). M'hemmx għalfejn li, biex jitqies bħala effettiv, ir-rimedju jintwera bħala wieħed li ser jagħti lir-rikorrent suċċess garantit, biżżejjed iżda li jintwera li jkun wieħed li jista' jiġi użat b'mod Prattiku, effettiv u effikaċi

(ara **Rea Ceramics Limited v. Kunsill Malti Għall-Isport et** deċiża mill-Qorti Kostituzzjonali fit-18 ta' Lulju, 2014);

30. Tassew ir-regola li trid, li min idur għar-rimedju straordinarju għandu qabel ifittex ir-rimedji ordinarji kollha, ma hix xi regola teknika ta' applikazzjoni awtomatika. Il-qorti għandha diskrezzjoni biex tara jekk, fiċ-ċirkostanzi, ir-rimedju ordinarju kienx ikun biżżejjed għall-harsien tad-drittijiet fundamentali; halli b'hekk ma jsirx rikors għar-rimedji straordinarji, meta daww ordinarji kienu jkun biżżejjed. Ma hemm ebda hteġa, iżda, illi r-rikorrent ikun hela hin u spejjeż fi proċeduri li x'aktarx ma jagħtuhx rimedju tajjeb (ara **Evelyn Montebello et v. L-Avukat Ġenerali et** deċiża mill-Qorti Kostituzzjonali fit-13 ta' Lulju, 2018 u **Louis Apap Bologna v. Avukat Ġenerali et** deċiża mill-Qorti Kostituzzjonali fid-29 ta' Marzu, 2019); jew meta l-possibbiltà li jingħata rimedju taħt il-ligi ordinarja tkun waħda remota (ara **Joseph Bartolo v. Onorevoli Prim Ministru** deċiża mill-Qorti Kostituzzjonali fit-2 ta' Diċembru, 2002, **John Mattei et v. L-Awtorità tad-Djar et** deċiża mill-Qorti Kostituzzjonali fil-5 ta' Ottubru, 2018 u **Glen James Scott v. L-Onorevoli Prim Ministru et** deċiża mill-Qorti Kostituzzjonali fis-26 ta' Jannar, 2022);
46. Referenza għandha ssir ukoll għal każ **John Grech et vs Onor. Prim Ministru et** deċiża fid-29 t'April 2013 u kkonfermata mill-Qorti Kostituzzjonali fil-31 ta' Jannar 2014 fejn dwar tali poter mogħti lill-Qorti, meta għandha ġurisdizzjoni ta' natura Kostituzzjonali, kellha dan xi tgħid:-

*“Illi din il-kwistjoni giet dibattuta diversi drabi fil-Qrati tagħna. Il-Qorti Kostituzzjonali dahlet fil-fond tagħha fis-sentenza tagħha fil-kawża fl-ismijiet “**Dr Mario Vella vs Joseph Bannister nomine**” (deċiża fis-7 ta' Marzu 1994) fejn, wara li elenkat numru ta' sentenzi preċedenti, qalet fost affarijiet oħra illi:*

“Minn din ir-rassenja kemm tal-Prim' Awla u kemm ta' din il-Qorti jistgħu jitnisslu dawn il-linji ġurisprudenzjali:

- a. *Meta hu ċar li hemm mezzi ordinarji disponibbli għar-rikorrenti biex ikollu rimedju għad-danni li qed jilmenta, bħala prinċipju ġenerali dawn għandhom jiġu adoperati u r-rikors għall-organi ġudizzjarji ta' natura Kostituzzjonali għandu jsir wara li l-ordinarji jiġu eżawriti jew meta mhumex disponibbli;*
- b. *Din il-Qorti Kostituzzjonali sakemm ma jirriżultawliex raġunijiet serji gravi ta' illegalità jew ta' ġustizzja jew żball manifest ma tiddisturbax l-eżerċizzju ta' diskrezzjonalità tal-ewwel Qorti kkonferita mill-artikolu 46 (2) tal-Kostituzzjoni;*
- c. *Kull każ għandu l-fattispeċje partikolari tiegħu;*
- d. *Meta r-rikorrenti ma jkunx għamel użu minn rimedju li seta' kellu dan ma jfissirx li l-Qorti għandha tikkonsidra li ma għandhiex*

teżerċita l-gurisdizzjoni tagħha jekk dak il-possibbli rimedju ma kienx pero' jirrimedja hlief in parti l-lanjanzi tar-rikorrenti;

- e. *Meta r-rikorrenti ma jkunx eżawrixxa r-rimedju ordinarji, jekk pero' dan in-nuqqas ikun ikkontribwixxa għalih l-operat ta' haddiehor allura ma jkunx desiderabbli illi l-Qorti tieqaf u ma tipproċedix bit-trattazzjoni tal-każ;*
- f. *Meta l-ewwel Qorti teżerċita d-diskrezzjoni tagħha u tieqaf mit-trattazzjoni mingħajr ma teżamina l-materja neċessarja li fuqha dik id-diskrezzjoni għandha tiġi eżerċitata, il-Qorti tat-tieni grad għandha twarrab dik id-diskrezzjoni.*

*Illi l-istess Qorti fil-kawża fl-ismijiet “**Philip Spiteri vs Sammy Meilaq**” (deċiża fit- 8 ta' Marzu 1995) qalet ukoll li:*

“Meta l-oġġett tal-kawża jkun ta' natura komplessa – u jkollu kwistjonijiet li għandhom rimedju f' xi ligi oħra, u oħrajn li ma għandhomx, rimedju hlief Kostituzzjonali – allura għandha tipprevali din l-aħħar azzjoni”. F'din is-sentenza l-Qorti osservat li jkun sewwa li mal-kelma 'komplessa' jiżdied il-kliem 'jew inkella mħallta'.

*Fil-kawża fl-ismijiet “**Maria sive Marthese Attard et vs Policy Manager tal-Malta Shipyards et**” (deċiża mill-Prim' Awla, Sede Kostituzzjonali, fit-30 ta' Settembru 2010) gie dikjarat illi:*

“L-eżistenza ta' rimedju ieħor trid titqies fil-kuntest tal-allegat ksur tad-dritt fundamentali. Għandu jkun rimedju aċċessibbli, xieraq, effettiv u adegwat biex jindirizza dan il-ksur. Fl-istess waqt ma hemmx għalfejn li biex jitqies effettiv ikun jirriżulta li r-rimedju sejjer jagħti lir-rikorrenti suċċess garanti. Huwa biżżejjed li jintwera li jkun wieħed li jista' jiġi segwit b'mod prattiku, effettiv u effikaċi.

Meta jidher li jeżistu mezzi ordinarji disponibbli biex jikseb rimedju għall-ilment tiegħu r-rikorrent għandu jirrikorri għal dawk il-mezzi, qabel ma jirrikorri għar-rimedju Kostituzzjonali u huwa biss wara li jkun fittex dawk il-mezzi jew wara li jidher li dawk il-mezzi ma jkunux effettivament disponibbli li għandu jintuża r-rimedju Kostituzzjonali.”

*Illi f'dan is-sens wieħed jista' jsib ukoll l-insenjament fir-rigward fis-sentenza tal-Qorti tal-Appell fl-ismijiet “**Joseph Fenech vs Awtorita' tal-Ippjanar et**” deċiża fid-9 ta' Novembru 2012.*

Illi wieħed għandu jqis li kemm l-artikolu invokat mill-intimati u kemm il-Kostituzzjoni ta' Malta ssemmi mezzi li 'kienu disponibbli' u allura anke jekk kien hemm mezzi li 'kienu' disponibbli għar-rikorrent iżda li minhabba t-trapass taż-żmien ma jkunux għadhom (disponibbli), il-Qorti tista' jekk hekk jidhrilha tiddeklina li teżerċita l-gurisdizzjoni tagħha.

Konsiderazzjonijiet finali

47. Ikkunsidrat dak kollu hawn fuq espost, kemm bhala fatti tal-każ, kif ukoll bhala ġurisprudenza tal-Qrati nostrani tagħna, il-Qorti tgħaddi biex tagħmel l-osservazzjonijiet finali tagħha.
48. Jidher ċar, l-ewwel u qabel kollox, illi fid-29 ta' Settembru 2016, ir-rikorrenti, wara li tressqu quddiem il-Qorti tal-Maġistrati mill-Pulizija Eżekuttiva (658/2014), ammettew illi, fit-3 ta' Novembru 2014, kienu naqsu milli jressqu dokumentazzjoni kif ukoll risposti lill-Awtoritajiet illi kienu talbuhom tali informazzjoni.
49. Jidher ċar ukoll illi, meta tressqu fid-19 ta' Novembru 2014 b'varji akkużi gravi inkluż ta' traffikar ta' persuni, misappropriazzjoni u nuqqas ta' hlas ta' pagi lill-ġhaxar persuni differenti ta' nazzjonalita' Vietnamiżi u Ċiniżi, huma ġew akkużati wkoll illi naqsu milli jressqu dokumentazzjoni mitluba lilhom, u dana fit-3 ta' Novembru 2014.
50. Jirrizulta illi, permezz tal-proċeduri odjerni, ir-rikorrenti qed jittentaw iħassru d-deċiżjoni finali, meħuda kontra tagħhom fis-6 ta' Jannar 2023, fejn ġew ikkundannati sitt snin ħabs, taħt il-pretest illi huma ġew akkużati darbtejn fuq l-akkuża illi ġgħib id-data tat-3 ta' Novembru 2014.
51. Jirrizulta, madanakollu, illi, għalkemm konxji ta' tali fatt sa mid-29 ta' Settembru 2016, l-ewwel darba illi r-rikorrenti hassew li kellhom jqajjmu tali ilment kif fit 19 ta' april 2024, meta huma intavolaw il-proċeduri odjerni, wara illi kienu intbghatu għal sitt snin il-ħabs.
52. Jirrizulta ċar illi, **fl-ebda stadju tal-proċeduri** bin-numru 1128/2014 li wasslet għad-deċiżjoni finali ta' sitt snin priġunerija fis-6 ta' Jannar 2023, huma ma qajjmu ilment dwar tali fatt, kemm lill-Qorti tal-Maġistrati kif ukoll lill-Qorti tal-Appell Kriminali.
53. Jirrizulta ċar, għalhekk, illi r-rikorrenti xjentement għażlu illi ma jqajjmu tali ilment fi stadju illi fih kienu qed jiġu ġgħudikati, meta kellhom kull dritt illi jagħmlu dan, w qajjmuha biss issa, wara illi s-sentenza finali kontra tagħhom ingħatat u qed jiskontaw piena ta' sitt snin ħabs.
54. Din il-Qorti tosserva wkoll illi, meta wiehəd iqis in-natura tal-akkuża illi dwarha huma qed jilmentaw illi ġew ġudikati darbtejn, ossija talli naqsu milli jgħaddu dokumentazzjoni jew jirrispondu għal domandi li sarulhom fit-3 ta' Novembru 2014, dawnha huma akkużi ċertament *de minis* meta mqabbla mal-gravita' tal-akkużi l-oħra illi għalihom huma nstabu lkoll hatja.
55. Għalhekk, tenut kont tal-fatt illi r-rikorrenti kienu ben a korrent ta' dak illi kienu nstabu hatja fid-29 ta' Settembru 2016, kif ukoll għan-natura *de minis* tal-akkuża illi dwarha huma qed jilmentaw, il-Qorti ma għandha ebda diffikulta tikkonkludi illi kien nuqqas esklussiv tar-rikorrenti illi huma ma qajjmu l-ilment tagħhom quddiem il-Qrati illi kienu qed jiġgħudikawhom, w tqis illi t-tentattiv illi qed isir issa huwa illi jagħmel użu minn tali nuqqas amministrattiv sabiex jaharbu minn deċiżjoni illi giet mogħtija fil-konfront tagħhom.
56. Għaldaqstant, il-Qorti tqis illi ladarba r-rikorrenti naqsu milli jużaw ir-rimedju ordinarji mogħti lilhom waqt il-proċeduri quddiem il-Qorti tal-Maġistrati u/jew il-Qorti tal-Appell Kriminali, huma ma jistgħux issa jinqdew b'din il-kawża kostituzzjonali sabiex

jippruvaw jirrimedjaw għall-iżball tagħhom. Ċertament, kieku din il-Qorti tippermetti dan li jsir, hija tkun qiegħda tippermetti li l-istitut tal-kawżi kostituzzjonali jibqa' jiġi abbużat filwaqt illi l-proċeduri ordinarji jiġu mnaqqa fl-iskop u fil-valur tagħhom.

57. Għalhekk, din il-Qorti tħoss illi huwa xieraq u ġust illi, f'dan il-każ, tilqa' t-tieni eċċezzjoni ta' l-intimati u tagħzel li ma tinqediex bis-setgħat lilhom mogħtija taħt il-Kostituzzjoni ta' Malta u l-Kap 319, la darba r-rikorrenti ma ħadux ħsieb illi jinqdew, kif imiss, mir-rimedji mogħtija lilhom fil-Liġi.

Konkluzjoni

Il-Qorti,

Wara illi rat l-atti proċesswali kollha ppreżentati quddiemha;

Wara illi rat is-sottomissjonijiet ta' l-abbli difensuri tal-partijiet;

Tgħaddi biex taqta' u tiddeċiedi l-vertenza billi:

Tilqa' t-tieni eċċezzjoni ta' l-intimati u għalhekk:

Tiddikjara illi r-rikorrenti Bin Han u Jia Liu naqsu milli jeżawrixxu r-rimedji ordinarji tagħhom u għaldaqstant, a tenur tal-Artikolu 46(2) tal-Kostituzzjoni ta' Malta u l-Artikolu 4(2) tal-Kap 319 tal-Liġijiet ta' Malta, tagħzel li tiddeklina milli teżerċita' l-funzjoni kostituzzjonali tagħha fil-każ odjern; u għalhekk

Tiċċad it-talbiet kollha attriċi.

L-ispejjeż kollha a kariku tar-rikorrenti in solidum bejniethom.

Francesco Depasquale LL.D. LL.M. (IMLI)

Imħallef

Rita Sciberras

Deputat Registratur