



IN THE CRIMINAL COURT

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

Bill of Indictment number: 11/2023

The Republic of Malta

Vs

Amo Frank Kwaku

Today, 27th of February 2025

The Court,

Having seen the bill of indictment number **47/2023** brought against **AMO FRANK KWAKU**, twenty-six (26) years old, born on the 15th January 1996 in Ghana, currently residing in Corradino Correctional Facility, and holder of Italian Residence Permit number **AX2606296.**, wherein the Attorney General in the bill of indictment premised:

---

**FIRST COUNT: *Wilful Homicide of Isaac Kwabena Kyere***

---

THE FACTS

During the night between the tenth (10) and the eleventh (11) June of the year two thousand and twenty-one (2021) the accused **Amo Frank Kwaku**, with the intent to kill or put the life of *Isaac Kwabena Kyere* in manifest jeopardy, caused the death of such other person being *Isaac Kwabena Kyere*, in Ġerreġja Street, Marsa, Malta and/or these Islands.

That evening both the accused **Amo Frank Kwaku** and the victim *Isaac Kwabena Kyere* were visiting a friend's house wherein both the accused **Amo Frank Kwaku** and the victim *Isaac Kwabena Kyere* started to argue with each other. At one point the accused **Amo Frank Kwaku** left the premises and eventually the victim *Isaac Kwabena Kyere* left the premises also. It so happened that as the victim *Isaac Kwabena Kyere* arrived near the pedestrian bridge, near Ġerreġja Street in Marsa he encountered once again the accused **Amo Frank Kwaku**. The accused **Amo Frank Kwaku**, with the intent to kill a person (*Isaac Kwabena Kyere*) using a knife he had on his person, then stabbed the victim *Isaac Kwabena Kyere* no less than eighteen times. Four of these wounds proved fatal. In addition, the victim *Isaac Kwabena Kyere* also sustained defensive wounds during the stabbing he received from the accused **Amo Frank Kwaku**.

#### THE CONSEQUENCES

Therefore, by committing the above-mentioned acts maliciously, and with criminal intent, the accused **Amo Frank Kwaku** rendered himself guilty of wilful homicide, namely that during the night between the tenth (10) and eleventh (11) June of the year two thousand and twenty-one (2021), in the area of Ġerreġja Street, Marsa, Malta and/or these Islands, maliciously, with intent to kill a person (*Isaac Kwabena Kyere*) or to put the life of that person in manifest jeopardy, caused the death of the victim *Isaac Kwabena Kyere*.

#### THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, and facts which have already been mentioned above in this Count of this bill of indictment, accuses the aforementioned **Amo Frank Kwaku**, as guilty of wilful homicide, namely that during the night between the tenth (10) and the

eleventh (11) of June of the year two thousand and twenty-one (2021), in Ġerreġja Street, Marsa, Malta and/or these Islands, maliciously, with intent to kill *Isaac Kwabena Kyere* or to put his life in manifest jeopardy, caused the death, of the same *Isaac Kwabena Kyere*.

#### THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Amo Frank Kwaku** is, according to the law, **sentenced to imprisonment for life** in accordance with the content of articles 9, 17, 23, 23B, 31, 211(1), 211(2), 532A and 533 of Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

- 1 **SECOND COUNT:** *Arrested, detained or confined Isaac Kwabena Kyere against his will, during which arrest, detainment or confinement Isaac Kwabena Kyere was subjected to any bodily harm*
- 

#### THE FACTS

Whereas, as explained in the first Count of this Bill of Indictment, it transpires that in order to carry out the wilful homicide of *Isaac Kwabena Kyere*, during the night between the tenth (10) and the eleventh (11) June of the year two thousand and twenty-one (2021), in Ġerreġja Street, Marsa, Malta and/or these Islands, the accused **Amo Frank Kwaku**, detained, arrested or confined the victim *Isaac Kwabena Kyere* during which arrest, detention or confinement, the same accused **Amo Frank Kwaku** subjected his victim to bodily harm when he stabbed his victim eighteen (18) times, which stab wounds led his death.

#### THE CONSEQUENCES

Therefore, by committing the above-mentioned acts with criminal intent, the accused **Amo Frank Kwaku** rendered himself guilty of having, during the night between the tenth (10) and eleventh (11) June of the year two thousand and twenty-one (2021), in Ġerreġja Street, Marsa, Malta and/or these Islands at the time of the commission of a crime against the person of *Isaac Kwabena Kyere*, the accused **Amo Frank Kwaku**, detained, arrested or confined the victim *Isaac Kwabena Kyere*, subjecting him to bodily harm with the use of arms proper.

#### THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, and facts which have already been mentioned above in this Count of this bill of indictment, accuses the aforementioned **Amo Frank Kwaku**, as guilty of having, during the night between the tenth (10) and the eleventh (11) of June of the year two thousand and twenty-one (2021), in Ġerreġja Street, Marsa, Malta, detained, arrested or confined the victim *Isaac Kwabena Kyere*, subjecting him to bodily harm.

#### THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Amo Frank Kwaku** is, according to the law, **sentenced to a term of imprisonment not exceeding six years** in accordance with the content of Articles 17, 23, 23B, 31, 86, 87(1)(c), 532A and 533 of Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

2 **THIRD COUNT:** *Carried outside any premises or appurtenance thereof, a knife or cutting or pointed instrument of any description without a licence or permit from the Commissioner of Police.*

---

THE FACTS

Whereas as explained in the first Count of this Bill of Indictment, on the same date, place, time and circumstances, it transpires from the evidence that in order to carry out the crime of wilful homicide, of *Isaac Kwabena Kyere*, during the night between the tenth (10) and the eleventh (11) June of the year two thousand and twenty-one (2021), in Ġerreġja Street, Marsa, Malta and/or these Islands the accused **Amo Frank Kwaku**, carried outside any premises or appurtenance thereof, a knife or cutting or pointed instrument of any description without a license or permit from the Commissioner of Police, which instrument was used to carry out the wilful homicide of *Isaac Kwabena Kyere*.

THE CONSEQUENCES

Therefore, by committing the above-mentioned acts with criminal intent, the accused **Amo Frank Kwaku** rendered himself guilty of having, during the night between the tenth (10) and eleventh (11) June of the year two thousand and twenty-one (2021) in Ġerreġja Street, Marsa, Malta and/or these Islands carried outside any premises or appurtenance thereof, a knife or cutting or pointed instrument of any description without a license or permit from the Commissioner of Police.

THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, and facts which have already been mentioned above in this Count of this Bill of Indictment, accuses the aforementioned **Amo Frank Kwaku**, as guilty of having, during the night between the tenth (10) and the eleventh (11) of June

of the year two thousand and twenty-one (2021), in Ġerreġja Street, Marsa, Malta and/or these Islands at the time of committing the crime of wilful homicide against the person of *Isaac Kwabena Kyere*, carried outside any premises or appurtenance thereof, a knife or cutting or pointed instrument of any description without a license or permit from the Commissioner of Police.

#### THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Amo Frank Kwaku** is, according to the law, **sentenced to a fine (*multa*) of €116.47** in accordance with the content of articles 6, 51 of Chapter 480 of the Laws of Malta, and Articles 17, 23, 23B, 31, 532A, 533 of Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

#### **3 FOURTH COUNT: *Having at the time of committing a crime against the person had on his person any arms proper***

---

#### THE FACTS

Whereas it is abundantly clear from the evidence and circumstances available that in order to carry out the wilful homicide of *Isaac Kwabena Kyere*, during the night between the tenth (10) and the eleventh (11) June of the year two thousand and twenty-one (2021), in Ġerreġja Street, Marsa, Malta and/or these Islands, the accused **Amo Frank Kwaku**, at the time of committing a crime against the person (wilful homicide of *Isaac Kwabena Kyere*) of the victim *Isaac Kwabena Kyere* had on his person any arms proper, being a knife, which knife was in fact used to carry out the wilful homicide of *Isaac Kwabena Kyere*.

## THE CONSEQUENCES

Therefore, with his own actions, by committing the above-mentioned acts with criminal intent, the accused **Amo Frank Kwaku** rendered himself guilty of having, during the night between the tenth (10) and eleventh (11) June of the year two thousand and twenty-one (2021) in Ġerreġja Street, Marsa, Malta and/or these Islands, at the time of committing a crime against the person of *Isaac Kwabena Kyere* had on his person any arms proper.

## THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, and facts which have already been mentioned above in this Count of this bill of indictment, accuses the aforementioned **Amo Frank Kwaku**, as guilty of having, during the night between the tenth (10) and the eleventh (11) of June of the year two thousand and twenty-one (2021), in Ġerreġja Street, Marsa, Malta and/or in these Islands, at the time of committing a crime against the person of *Isaac Kwabena Kyere* had on his person any arms proper.

## THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Amo Frank Kwaku** is, according to the law, **sentenced to a term of imprisonment of not more than four years** in accordance with the content of article 55(a) of Chapter 480 of the Laws of Malta and Articles 17, 23, 23B, 31, 532A, 533 of Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

**4 FIFTH COUNT: *disobeyed the lawful orders of any person entrusted with a public service, that is orders given by Police Officers***

---

THE FACTS

Whereas, it further results from the circumstances, facts and evidence of this case as explained in this Count of this Bill of Indictment, that during the night of the tenth (10) and eleventh (11) June of the year two thousand and twenty-one (2021), in Ġerreġja Street, Marsa, Malta and/or these Islands, the accused **Amo Frank Kwaku** following the wilful homicide of *Isaac Kwabena Kyere* disobeyed the lawful orders of any person entrusted with a public service, that is orders given by Police Officers when he fled to avoid arrest. The accused **Amo Frank Kwaku** led the Police Officers on a chase after he refused to surrender and attempted to evade capture when Police Officers closed in on him.

THE CONSEQUENCES

Therefore, with his own actions, by committing the above-mentioned acts with criminal intent, the accused **Amo Frank Kwaku** rendered himself guilty of having, during the night between the tenth (10) and eleventh (11) June of the year two thousand and twenty-one (2021) in Ġerreġja Street, Marsa, Malta and/or these Islands, disobeyed the lawful orders of any person entrusted with a public service, that is orders given by Police Officers.

THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, and facts which have already been mentioned above in this Count of this bill of indictment, accuses the aforementioned **Amo Frank Kwaku**, as guilty of having, during the night between the tenth (10) and the eleventh (11) of June



of the year two thousand and twenty-one (2021), in Ġerreġja Street, Marsa, Malta and/or these Islands, disobeyed the lawful orders of any person entrusted with a public service, that is orders given by Police Officers.

#### THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Amo Frank Kwaku** is, according to the law, **sentenced to detention for a period not exceeding 2 months** in accordance with the content of Articles 17, 23, 23B, 31, 338(ee), 532A, 533 of Chapter 9 of the Laws of Malta or for any other sentence according to law that can be given to the aforementioned accused.

#### **5 SIXTH COUNT: *wilfully disturbed the public good order or the public peace***

---

#### THE FACTS

Whereas, it further results from the circumstances, facts and evidence of this case that, during the night between the tenth (10) and eleventh (11) June of the year two thousand and twenty-one (2021), it transpired that the accused **Amo Frank Kwaku** in carrying out the crime of the wilful homicide of *Isaac Kwabena Kyere*, also wilfully disturbed the public good order or the public peace by creating a commotion in a public place during which the accused **Amo Frank Kwaku** mercilessly stabbed the victim *Isaac Kwabena Kyere* eighteen times, which stabbing led to the death of the victim *Isaac Kwabena Kyere*.

## THE CONSEQUENCES

Therefore, with his own actions, the accused **Amo Frank Kwaku** rendered himself guilty of having, during the night between the tenth (10) and eleventh (11) June of the year two thousand and twenty-one (2021) in the in Ġerreġja Street, Marsa, Malta and/or these Islands mentioned in this Count of this bill of indictment, wilfully disturbed the public good order or the public peace.

## THE ACCUSATION

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe and facts which have already been mentioned above in this Count of this bill of indictment, accuses the aforementioned **Amo Frank Kwaku**, as guilty of having, during the night between the tenth (10) and the eleventh (11) of June of the year two thousand and twenty-one (2021), in Ġerreġja Street, Marsa, Malta and/or these Islands wilfully disturbed the public good order or the public peace.

## THE PUNISHMENT REQUESTED

The Attorney General as a consequence of the above, demands that the accused be proceeded against according to law, and that the aforementioned **Amo Frank Kwaku** is, according to the law, **sentenced to detention for a period not exceeding two months** in accordance with the Articles 17, 23, 23B, 31, 338(dd), 532A, 533 of Chapter 9 of the Laws of Malta or for any other sentence according to law that can be given to the aforementioned accused.

Having seen the note filed by the accused in the acts of these proceedings on the 23rd March 2023 wherein he humbly requested the court to quash the statement of the accused and all reference made to them since these were not taken in a regular manner since these statements lacked the effective right of a lawyer before and during the said

statements which breached the accused's rights as protected by article 6 of the European Convention of Human Rights and article 39 of the Constitution of Malta.

Having seen what the defence uttered in the sitting of the 16th January particularly that he was remitting himself to the written note of pleas and had nothing further to state in addition.

Having heard the Attorney General make his submissions during the same sitting of the 16th of January 2025.

### **Considers,**

The accused is stating that his statement was taken by the police not in a regular manner and thus, should be quashed and consequently considered to be inadmissible evidence and thus not shown to the jurors once the jury is appointed for hearing.

The court took note of the evidence given by **Insepector Kurt Zahra**. On the 20th of September 2021<sup>1</sup> he explained how he was informed by then Superintendent Keith Arnaud that the accused was arrested in connection to a stabbing. That he had been escorted to Hamrun Police station to be medically examined by Dr Mario Scerri to see if he had any injuries. Subsequently he was interrogated by him. He said that he was cautioned and taken on site to walk them through what had happened. This was also filmed by PC 437 through his bodycam where the accused appears indicating the places he makes reference to in his deposition. He also signed a declaration that he was forfeiting his right to legal assistance. This is marked as Dok KZ2. On this declaration besides the signature of the accused there is also his signature that of Inspector Wayne Camilleri and Inspector Stacey Sammut. He said that prior to releasing the second statement he had spoken to the legal aid lawyer whilst in the lock up.

---

<sup>1</sup> Fol. 170 of the acts of the proceedings before the first court

On the 5th of September 2023<sup>2</sup> the witness testified again and confirmed once again that the accused released two statements which are found on two different CD's. He explained that the accused was arrested between the 10th and 11th June 2021 and Superintendent Keith Arnaud gave him a caution though after he was once again cautioned by him prior to the investigation, prior to the interrogation he further states that the accused further signed a declaration where he refused initially the assistance of a lawyer prior to his questioning and he signed a copy of his refusal. This was done before the first interrogation. Prior to the first statement taken on CD there is also the caution that was given to the accused. On tape the accused also stated that he understands the English language as well. Even though the accused refused legal assistance he was informed that he was given a legal aid lawyer when he was at the GHQ lock up. During the second interrogation he himself gave him the caution once again and once again the accused declared that he understood the English language. He also confirmed this through the friends of the accused who told him that they communicate between them in the English language. The accused also confirmed in court when charged that he understood the English language<sup>3</sup>. He confirmed that when the accused released his first statement also present in the room where Inspector Wayne Camilleri and Inspector Stacey whose surname he could not recall. During the second interrogation with him there was PC1455. He explains that the accused refused the service of an interpreter during the interrogation because he stated that he understood the English language. He confirms that during the night between one statement and another the accused spoke with a legal aid lawyer in the depot and on tape the accused confirms this too. He never showed him that he had changed his mind and that later on he wanted to be assisted by a lawyer. This never happened. What happened is that during that night there was a legal aid lawyer who went to the depot to speak to his clients and as he was there he asked the police sergeant if there was anyone else who wanted to speak to him and the accused said that he wanted to talk to him. This is what was reported to him by the sergeant.

---

<sup>2</sup> Fol. 95 pf the proceedings

<sup>3</sup> Sitting of 12<sup>th</sup> June 2021.

**Inspector Wayne Camilleri** gave evidence on the 23rd June 2021<sup>4</sup> where he stated that he had been informed from the GHQ control room that there was a stabbing in the vicinities of Triq il-Gewrrejja, Marsa' next to the Pedestrian Bridge. He went on to the place indicated to him and found the victim an African national lying on the floor but was still alive then with several stab wounds on his chest losing a lot of blood. He then informed Inspector Keith Zahra and Supt. Keith Arnau from the homicide squad about this report. He confirms that the accused was first interrogated by himself, Inspector Kurt Zahra and Inspector Stacey Sammut on the 11th of June 2021. He exhibited the interrogation that took place via video conferencing which is being marked as Dok WC2. He states that the accused was given all his rights as well as his right to full disclosure. He chose not to speak to a lawyer and not to have a lawyer present during this interrogation he confirms that the accused stated that he understood the English language very well and did not want an interpreter.

He then testified again upon a request by the defence on the 5th of September 2023<sup>5</sup>. He confirmed once again that he was present during the first interrogation which took place on the 11th of June, 2021. There was also present Inspector Kurt Zahra and Inspector Stacey Sammut. He confirmed that at the beginning of the statement they asked the accused if he understood the English language and whether he wanted an interpreter but the accused stated that he understood English and did not want the assistance of a translator. The accused never told them that he did not know how to read English. He confirmed that they asked the accused if he wanted a translator both before the interrogation started and even during the taking of the statement. He signed a declaration of refusal before he released his first statement on the 11th of June, 2021 not before the second one as he had spoken to a legal aid lawyer during the night. He confirms that he was not present during the second statement. Although he was not present for the taking of the second statement he still saw it and confirms that the accused did not want a lawyer present for the taking of the statement. He confirms that the accused spoke with a lawyer when the custody officer of the lock up said that

---

<sup>4</sup> Fol. 45 of the acts of the proceedings before the first court

<sup>5</sup> Fol. 105 of the proceedings in appeal stage

there was a legal aid lawyer asking if anyone wanted to speak with him. He did not ask for a lawyer when they gave him this right in fact he repeated that the accused had refused such legal assistance when asked.

The court took note of the note verbal dated 13th of August 2021 where it ordered that a transcript be made of the contents of Dok WC2 which is the CD containing the interrogation of the accused and the court nominated Dr Christopher Chircop for this purpose and on the 20th of September 2021<sup>6</sup> substituted Dr Chircop with Dr Luana Cuschieri and ordered her to make a transcript of the second interrogation marked as Dok KZ3<sup>7</sup> too.

On the 16th of December 2021 Dr Luana Cuschieri gave evidence and exhibited the transcripts of the two interrogations of the accused. The transcript of the first interrogation is marked as Dok LC1 whereas the transcripts of the second interrogation is marked as Dok LC2. On this occasion the witness returned both CDs to the court.

From an examination of Dok LC 1 the following results upon interrogation.

*“ Inspeotr Kurt Zahra.. Ok So I’m going to cal lyou Amo. Amo is it ..eh Amo. Ee you have the right not to answer to any wuestions . Whatever yu will say can be used both in favour or against ..or agaisnt you. E Whatever you will say its being recorded both cisually , there’s the camera up there .*

*Kwako Amo Frank. Yes*

*“ Inspeotr Kurt Zahra. ..and and...with the audio. Here are the microphones, whatever you say, it’s being , its being recorded. First of*

---

<sup>6</sup> Fol. 161 of the proceedings before the first court

<sup>7</sup> Fol 189 of the proceedings before the first court

*all I want to start before starting to discuss and talk and ask you some questions like we did, emm emm when we asked you to sign the papers. First of all do you confirm that we asked you for the right whether you want to speak to a lawyer at this stge or want a lawyer present? Do you confirm that?*

***Kwako Amo Frank.*** *Yes*

***Inspecotr Kurt Zahra*** *And do you confirm that you signed these parpers waiving your right to a lawyer?*

***Kwako Amo Frank.*** *Yes*

***Inspecotr Kurt Zahra.*** *Yes?*

***Kwako Amo Frank.*** *Yes of course*

***Inspecotr Kurt Zahra.*** *Yes okay. Did you understand your right..when you were arrested do you know why the polcie arrested you>*

***Kwako Amo Frank.*** *Yeah I can say I founght with someone*

***Inspecotr Kurt Zahra.*** *Yes, exactly*

***Kwako Amo Frank.*** *And then the person die*

***Inspecotr Kurt Zahra*** *And they gave you your rights? They gave you everything your rights and they cautioned you accordingly.*

***Kwako Amo Frank.*** *Of course*

***Inspecotr Kurt Zahra.*** *Okay*

.....

**Inspecotr Kurt Zahra.** *What about the langauge? Do you understand the English langauge?*

**Kwako Amo Frank.** *Yes English and Italian*

**Inspecotr Kurt Zahra** *English or Italian?*

**Kwako Amo Frank.** *Yes*

**Inspecotr Kurt Zahra** *So ,but at the moment if we carry out this itnerrogation in the English langauge is that okay? Would you understand and would you be able to answer back in English?*

**Kwako Amo Frank.** *Yes Yes*

**Inspecotr Kurt Zahra** *Okay*

**Kwako Amo Frank.** *Butnot too much*

**Inspecotr Kurt Zahra** *Not too much. Okay but if at any stage you feel difficulty in understanding what we are asking you or any difficulty in answering back.*

**Kwako Amo Frank.** *Okay*

**Inspecotr Kurt Zahra** *Because of the language*

**Kwako Amo Frank.** *Yes*

**Inspecotr Kurt Zahra** *Just inform us accordingly*



*Kwako Amo Frank yeah*

*Inspecotr Kurt Zahra Okay*

It is evident therefore, that the accused was given his right to legal assistance, was asked if he understood the English language and therefore if he wanted an interpreter and knew that all that he would say would be recorded.

In the second interrogation marked as Dok LC2<sup>8</sup> the following was said:-

*" ....*

*Inspecotr Kurt Zahra Okay and em, nesides this is continutation of yesterdays em itnerrogation. Yesterday initially you signed the declration stating that emyou didnt want to consult tith a lawyer for the interrogation but subsequently afterwards em you ve confirmed even the declaration even here that you signed this declaration waiving your right to a lawyer bit sibsequently em you soke to a lawyer*

*Kwako Amo Frank yes*

*Inspecotr Kurt Zahra Am I right you spoke to a lawyer? He came to speak to you at the lock up?*

*Kwako Amo Frank yes*

*Inspecotr Kurt Zahra right*

*Kwako Amo Frank yes*

---

<sup>8</sup> Fol 294 of the acts of the proceedings held before the first court vol II.

*Inspecotr Kurt Zahra . Yes okay perfect Em Im going to give you the caution again and then Im going to start with the questioning. Em I am not going to ask you alot of things. Its not going to take long but I have to do it. Em you have the right not to say anything, whatever **you** will say can be used bothin favour and against you in a court of law. Okay so you were saying yesterday you have consulted to a lawyer.*

*Kwako Amo Frank yes*

*Inspecotr Kurt Zahra. Okay first of all we re speaking in the English langague. Yesterday you confirmed that even you understand the English langagueem the reson why I am doing this questioning now is to infor you that you wil be arrainged and charged in court today okay the 12th June 2021.*

*Kwako Amo Frank yes*

Thus, from the above it transpires that even before the second interrogation was done the accused was given his rights that he could remain silent and whatever he said could be used in favour or agianst him in a court of law and this notwithstanding this, he decided to answer the questions put forward to him. He also declared that he understood the English language.

#### **Considered further:**

By virtue of Directive 2013/48/EU of the European Parliament and of the Council of the 22<sup>nd</sup> October, 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, there was a substantial change in what the right of access for a lawyer in criminal proceedings includes. Article 3 of the Directive provides:

***'The right of access to a lawyer in criminal proceedings***

*1. Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.*

*2. Suspects or accused persons shall have access to a lawyer without undue delay. In any event, suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest:*

*(a) before they are questioned by the police or by another law enforcement or judicial authority;*

*(b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 3;*

*(c) without undue delay after deprivation of liberty;*

*(d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.*

*3. The right of access to a lawyer shall entail the following:*

*(a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;*

*(b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. Such participation shall be in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure in accordance with the law of the Member State concerned;*

*(c) Member States shall ensure that suspects or accused persons shall have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:*

*(i) identity parades;*

*(ii) confrontations;*

*(iii) reconstructions of the scene of a crime.*

*4. Member States shall endeavour to make general information available to facilitate the obtaining of a lawyer by suspects or accused persons. Notwithstanding provisions of national law concerning the mandatory presence of a lawyer, Member States shall make the necessary arrangements to ensure that suspects or accused persons who are deprived of liberty are in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with Article 9.*

*5. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of point (c) of paragraph 2 where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.*

*6. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:*

*(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;*

*(b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.'*

At present, sub-articles (1) and (2) of Article 355AUA of the Criminal Code as amended by means of Act LI of 2016 provide the following:

*'(1) The suspect or the accused person shall have the right of access to a lawyer in such time and in such a manner so as to allow him to exercise his rights of defence practically and effectively.*

*(2) The suspect or the accused person shall have access to a lawyer without undue delay. In any event, the suspect or the accused person shall have access to a lawyer from whichever of the following points in time is the earliest:*

*(a) before they are questioned by the Executive Police or by another law enforcement or judicial authority in respect of the commission of a criminal offence;*

*(b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with sub-article(8)(e);*

*(c) without undue delay after deprivation of liberty;*

*(d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.*

Furthermore, Article 355AUA(8) of the Criminal Code reads as follows:

***The right of access to a lawyer shall entail the following:***

*(a) the suspect or the accused person, if he has elected to exercise his right to legal assistance, and his lawyer, shall be informed of the alleged offence about which the suspect or the accused person is to be questioned. Such information shall be provided to the suspect or the accused person prior to the commencement of questioning, which time shall not be less than one hour before questioning starts;*

*(b) the suspect or the accused person shall have the right to meet in private and communicate with the lawyer representing him, including prior to questioning by the police or by another law enforcement or judicial authority;*

***(c) the suspect or the accused person shall have the right for his lawyer to be present and participate effectively when***

*questioned. Such participation may be regulated in accordance with procedures which the Minister responsible for Justice may by regulations establish, provided that such procedures shall not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using where possible in the opinion of the interviewer audiovisual means in terms of paragraph*

*(d): Provided that the right of the lawyer to participate effectively shall not be interpreted as including a right of the lawyer to hinder the questioning or to suggest replies or other reactions to the questioning and any questions or other remarks by the lawyer shall, except in exceptional circumstances, be made after the Executive Police or other investigating or judicial authority shall have declared that it has no further questions; (d) questioning, all answers given thereto and all the proceedings related to the questioning of the suspect or accused person, shall where possible in the opinion of the interviewer be recorded by audio-visual means and in such case a copy of the recording shall be handed over to the suspect or the accused person following the conclusion of the questioning. Any such recording shall be admissible in evidence, unless the suspect or the accused person alleges and proves that the recording is not the original recording and that it has been tampered with. No transcription need be made of the recording when used in proceedings before any court of justice of criminal jurisdiction, nor need the suspect or the accused person sign any written statement made following the conclusion of the questioning once all the questions and answers, if any, are recorded on audiovisual means;*

*(e) the suspect or the accused person shall have the right for his lawyer to attend the following investigative or evidence-gathering acts if the*

*suspect or accused person is required or permitted to attend the act concerned:*

*(i) identity parades;*

*(ii) confrontations;*

*(iii) reconstructions of the scene of an offence*

**The accused was given all the rights in force at the time when the statement was taken. Even though the accused had the right to consult his lawyer prior to the interrogation, the accused did not have the right for a lawyer to be present during his interrogation. Furthermore, the released statement was not in violation of the law that was in force at the time.**

It is not within this Court's remit to consider whether the right to a fair hearing has been infringed. This Court must only decide whether the accused's statement should continue to form part of the criminal proceedings during the trial. The accused did not bring forward any allegations with regards to his vulnerability or the way the interrogation took place, or any other allegations as stated in the case of **Beuze v. Belgium**<sup>9</sup>.

This court is of the opinion that both statements released by the accused to the police should be considered as admissible evidence as they were taken after the accused was given all his legal rights. Thus, the plea of the defence is being rejected and the court is ordering the continuation of the case.

**Dr Consuelo Scerri Herrera**  
**Hon. Madame Justice**

**Maria Grech**  
**Deputy Registrar**

---

<sup>9</sup> Decided by the Grand Chamber of the ECtHR on the 9 th November, 2018 (App no: 71409/10).