



CONSTITUTIONAL COURT

JUDGES

**THE HON. CHIEF JUSTICE MARK CHETCUTI
THE HON. MR JUSTICE GIANNINO CARUANA DEMAJO
THE HON. MR JUSTICE ANTHONY ELLUL**

Sitting of Monday, 28th April, 2025.

Number: 1

Application number:424/23/1 ISB

Dr Paul Scarrow

v.

Avukat Ġenerali u Kummissarju tal-Pulizija

1. By application filed on the 31st January 2025, plaintiff requested this court to make a preliminary reference to the European Court of Justice concerning Directive 2016/679/EU on the protection of natural persons with regard to the processing of personal data and on free movement of such data, and Directives 2012/13/EU on the right to information in criminal proceedings 2016/680 on the protection of natural persons with regard to processing of personal data by competent authorities for the purposes of the prevention, detection or prosecution of

criminal offences or the execution of criminal penalties, and on the free movement of such data.

2. In their reply the defendants objected to the request.

3. Criminal proceedings are pending against the plaintiff. On the 28 August 2023, the plaintiff filed a constitutional case, claiming that he was being denied a fair hearing and the right to an effective remedy, because:

i. His request to withdraw his consent for the criminal case to be decided by the Court of Magistrates (Malta) as a Court of Criminal Judicature, was refused;

ii. The Magistrate who is presiding the court is not in a position to review the conclusions reached by another Magistrate during the inquiry stage;

iii. The medical experts appointed by the inquiring Magistrate were not impartial;

iv. The presiding Magistrate refused plaintiff's request for a reference to the Civil Court, First Hall in terms of art. 46(3) of the Constitution and art. 4(3) of the European Convention Act (Chapter 319).

4. By a judgment delivered on the 10th July 2024 the Civil Court, First Hall decided:

i. With regards to the first three complaints, the Court declined to decide on the merits, as they had been declared frivolous and vexatious by a decree delivered on the 20th June 2023 by the Court of Magistrates (Malta) as a Court of Criminal Judicature;

ii. Regarding the fourth complaint, the first court decided that the defendants were not the proper parties to the suit;

5. According to art. 267 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union has jurisdiction to give preliminary rulings on the interpretation of EU law. The case filed by plaintiff concerns the alleged breach of fundamental rights protected by the Constitution and the Convention. The merits of the case deal with the interpretation of the Constitution and the Convention, and whether the fundamental rights invoked by the plaintiff have been breached. This has nothing to do with the interpretation of EU law.

6. Furthermore, it is also clear that the Civil Court, First Hall has not decided on the merits of the case. At this stage the case certainly does

not involve a question of EU law that is essential to resolving the dispute. This court, as a court of appeal, must review and render a decision on the judgment delivered by the first court.

7. Therefore, the questions raised by the plaintiff to be referred to the CJEU certainly do not need a decision to enable this court to give judgment on the matter before it.

8. Under the circumstances, the request for a preliminary reference to the European Court of Justice is not warranted.

9. For this reason the court rejects plaintiff's request made by application filed on the 31st January, 2025 which the court considers as vexatious. The judicial costs related to this decree shall be borne by the plaintiff.

Mark Chetcuti
Chief Justice

Giannino Caruana Demajo
Judge

Anthony Ellul
Judge

Deputy Registrar
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