Court of Criminal Appeal

Onor. Imħallef Consuelo Scerri Herrera, LL.D., Ph.D.

Appeal Number: 8/2024

The Republic of Malta

vs

Ayub Ali Khan Mohammed

Today, 17th June, 2025

The Court,

Having seen the charges brought against the appealed, **Ayub Ali Khan Mohammed** holder of Maltese Identity Card number **0212634A** is being charged with having:

a. Converting or transferring property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity.

b. concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership pf property, knowing or suspecting that such property was derived directly or indirectly from criminal activity or from an act of participation in criminal activity, c. acquiring, possessing or using property

knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity:

d. retaining without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

e. attempting any of the matters or activities defined in the above foregoing subparagraph (1), (ii), and (tv) within the meaning of article 41 of the Criminal Code,

f. Acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing subparagraphs (1), (u), (ui), (iv) and (v);

And also in the same date, time, place and circumstances, in Malta knowingly received or purchased and property which was stolen, misapplied or obtained by means of any offence, whether committed in Malta or abroad, or knowingly took part, in any manner whatsoever, in the sale or disposal of the same.

Having seen the judgment of The Court of Magistrates (Malta) as Court of Criminal Judicature of the 15th December,2023, after having seen articles 17, 18, 310(1)(b) and 334(c) of the Criminal Code, Chapter 9 of the Laws of Malta and articles 2(1) and 3(2A)(a)(i) of The Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, found the appellant guilty of all charges proferred against him and condemned him to eighteen (18) months imprisonment, however, by application of article 28A of the Criminal Code, Chapter 9 of the Laws of Malta, ordered that such sentence does not take effect unless, during a period of three (3) years, the appellant commits another offence punishable with imprisonment.

Moreover, the Court of First Instance, upon application of article 3(5) of the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, and in view of the fact

that it was not possible to identify and forfeit the proceeds of the crime or to order the forfeiture of such property the value of which corresponds to the value of those proceeds, condemned the appellant to a fine (multa) of two thousand four hundred Euro (€2,400) equivalent to the amount of proceeds of the offence which fine shall be recoverable as a civil debt and for such purpose the judgment shall constitute an executive title for all intents and purposes of the Code of Organisation and Civil Procedure.

Moreover, upon application of article 3(7) of the Prevention of Money Laundering Act, Chapter 373 Laws of Malta, which refers also to article 22(3A)(b)(d) (7) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, the Court of First Instance ordered the forfeiture in favour of the Government of all moneys or other movable property, and of the entire immovable property of the appellant even if such immovable property has since passed into the hands of third parties, and even if the said monies, movable property or immovable property are situated in any place outside Malta.

To this end and for the purposes of article 23D of the Criminal Code, Chapter 9 of the Laws of Malta, the Court of First Instance ordered the Director of the Asset Recovery Bureau to conduct the necessary enquiries to ascertain any assets pertaining to the appellant and thus liable to forfeiture in favour of Government.

Moreover, in terms of Article 533 of the Criminal Code, Chapter 9 of the Laws of Malta, the Court of First Instance ordered the appellant to pay to the Registrar of Court the sum of five hundred and forty Euro (€540) representing one third (1/3) of the sum paid in connection with the employment of Keith Cutajar as court expert in these proceedings, within six (6) months.

Moreover, in terms of terms of article 15A of the Criminal Code, Chapter 9 of the Laws of Malta, the Court of First Instance also condemned the appellant to pay Attilia

Attard the sum of two thousand four hundred Euro (€2,400) within sis (6) months, by way of restitution of the proceeds knowingly obtained unlawfully to her detriment.

Having seen the application of Ayub Ali Khan Mohammed where they are asking that this Honourable Court **reforms** the judgment proffered against the accused in these proceedings by:

- Revoke and oveturn the said appealed judgment in so far as the appellant was found guilty of all charges proferred against him and instead declare him not guilty of said charges and proceed to acquit him

- Alternatively proceed, in light of grievance 'B', on the basis of article 46(3) of the Constitution of Malta as well as on the basis of article 4(3) of Chapter 319 of the Laws of Malta, refer the constitutional matter expounded therein to the First Hall of the Civil Court in its Constitutional Jurisdiction so that the said Court may decide whether the imposition of the punitive measure set-out in article 3(7) of Chapter 373 of the Laws of Malta, which renders applicable mutatis mutandis article 22(3A)(b)(d) (7) of the Dangerous Drugs Ordinance, which measure has as its effect the blanket forfeiture in favour of the Government of Malta of all assets (whether in Malta or overseas), has violated appellant's right to property as safeguarded by Article 1 to Protocol 1 of the European Convention on Human Rights and Article 37 of the Constitution of Malta and if in the affirmative, to accord all necessary effective remedies to remedy such violation and:

- Subsequently, in furtherance of grievance 'B' and request number (ii), proceed to cancel, revoke and annul or alterntively proceed to proportionately attenuate the applicable punitive measure set-out in article 3(7) of Chapter 373 of the Laws of Malta whereby the Court of First Instance ordered the forfeiture in favour of the Government of all moneys or other movable property, and of the entire immovable property of the appellant

even if such immovable property has since passed into the hands of third parties, and even if the said monies, movable property or immovable property are situated in any place outside Malta.

- In light of the said grievance 'B', proceed to reform the punishment inflicted on the appellant by substituting it with a less onerous and more equitable and proportionate punisment.

REASONS FOR AND GROUNDS FOR APPEAL

A. Knowledge or suspicion of the underlying predicate offence leading to Money Laundering

On a prelimninary note, the Prevention of Money Laundering Act, Chap. 373 of the Laws of Malta, which since its promulgation in 1994 has undergone several amendments, some of which being quite substantial, is a special law which ought to be applied very cautiously. The Court of Criminal Appeal, in the judgment by the names: **'Ir-Repubblika ta' Malta v. John Vella'**, decided on November 29th, 1999, and therefore at a time when this piece of legislation was less draconian in nature, had remarked as follows "*Din bi ligi straordinarja li tintruduci kanietti radikali fis-sistema baghna a li tirrekjedi applikazzjoni blukbar skrupiu a attenzjom biex ma tigix reza fi strument Pingatinga aktar ruminisconti tazmingut tal-Inkavyoni minn dawk tal-era moderna tad-drittijiet tal-bniedem.*" Since this pronouncement, Chapter 373 was revisited and rendered even more draconian.

In the case at hand, it is undisputed that the appellant received a sum of money onginating from an underlying criminal activity into his bank account. Neither is it disputed that such sum of money derived directly from a bank account pertaining to the sole victim of the fraudulent racket concerned. Yet, the appellant in these proceedings, both at pre-trial stage as well as in his testimony before the Court of First Instance provided a plausible, consistent account of what went on which account was

at no point contradicted by conflicting versions of events and/or other pieces of evidence.

The appellant's line of defence was crystal clear since the inception of the case, that is his acts (being the receipt, withdrawal, and onward transmission of the proceeds) were not coupled with the necessary criminal intent simply because the appellant never had knowledge or otherwise suspected of the intricate scam that led to criminal proceeds being transferred into his Revolut account. In any case, contrary evidence, direct or circumstantial, hinting towards such knowledge or suspicion on the illegal provenance of the funds deposited into his Revolut account, was never produced by the Prosecution. Nor can such knowledge or suspicion be reasonably inferred from objective, factual circumstances emanating from the acts of proceedings.

While a conviction for the crime of money laundering does not necessitate a judicial finding of guilt in respect of the underlying predicate offence and the Prosecution is only expected to prove a mere suspicion on the part of the accused regarding the source of the proceeds, such element of suspicion ought to be proved by the Prosecution beyond a reasonable doubt. **One must therefore be careful not to confuse the suspicion that the accused might have had with the level of proof required to prove such suspicion.**

In other words, the nature and degree of lesser knowledge, The mere suspicion, does not in anyway absolve the Prosecuton from its legal doty of proving beyond a reasonable doubt such element of suspicion as a formal element of the crime of money laundering.

Citing from the Court of Appeal in England in the case **Regina r Hilda Gondwe Da Silra**, the Court of Criminal Appeal in the judgement delivered on the 19th November 2015 in the names: **The Police v. Vladimir Omar Fernandez Delgado'**, the element of 'suspicion' was afforded the following meaning in the context of money laundering

> "The word suspect means that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice."

With respect, the Court of First Instance seemed to have gone at great lengths to save the Prosecution's case in its clear attempt to pinpoint factors which hypothetically go to demonstrate that the appellant, at the very least, suspected that the funds credited into his Revolut account, were proceeds of criminal activity. But such pinpointing is nothing but an exercise of identifiying possibilities and in no way covers up for the Prosecution's blatant failure of proving beyond a reasonable doubt that appellant actually acred under the knowledge or, at least, the suspicion that the money credited to his Revolut account originated from criminal activity

In spite of the Prosecution failing to furnish evidence, direct or circumstantial, hinting towards the required formal element of the crime of money laundering, the appellant nonetheless provided a detailed, plausible account as to how he himself was literally misled by a friend he trusted into receiving fraudulently obtained funds into his Revolut account.

The appellant invariably explained, both in his police statement at pre-trial stage as well as before the Court of First Instance during his testimony, that he only accepted to receive funds (which was not in an exorbitant amount) into his Revolut account as a gesture of goodwill for the benefit of his then Nigerian flat-mate, Godwin, with whom he had been sharing a rented apartment in Msida, who had asked him for his Revolut account number in order for his sister, who lived in Canada, would be able to send him money.

The appellant moreover continued to explain that his flat-mate Godwin had told him that his own Nigerian ATM card was expired and that he would not be able to use it to withdraw the funds from his own bank account. Godwin had also told him that he had no money to pay the rent and to buy food and he had asked either to borrow some

money from him or to receive the money sent by his sister into his Revolut account, withdraw it and pass it onto him.

All the appellant did was simply agree to this latter option as he had no money to lend to Godwin. Godwin had also told him that his father was rich however they had fought over the phone in his presence several months before and he refused to continue to help Godwin out financially.

The Prosecution did obsolutely nothing to shed doubt as to the truthfulness of such account given by the appellant. Yet, respectfully, the Court of First Instance seemed to have unfortunately endeavoured into a fishing expedition to identify what the Prosecution itself failed to identify and ultimately, prove.

For instance, the Court of First Instance remarked, in page 20 of the appealed judgment, that the appellant accepted to receive funds into his Revolut account on instructions of a third party who was unknown to him. This is simply not true at all since it clearly emerges that such instructions were given to him by his flat-mate Godwin a person he then considered to be friend. On other occasions, the Court of First Instance evidently attributed negative connotations and implications to actions the appellant undertook, which actions were simply not indicative of criminal behaviour. At page 20 of the appealed judgment, for instance, the Court of First Instance flagged the fact that the appellant proceeded to withdraw from an ATM machine most of the money he had received on Revolut that same day. With all due respect, what is so alarming and suspicious with such an act when it clearly emerged that the appellant had agreed with Godwin that upon receipt of the funds, i.e. the amount of €2,430, he would withdraw them and pass them on to him?

At page 21 of the appealed judgment, the Court of First Instance also seemed to negatively flag the fact that the amount of circa €140 was left in his Revolut account and does not appear to have been withdrawn and transmitted to Godwin. When confronted with this fact, the appellant unhesitantly explained that this balance was

not withdrawn since it represented repayment of money he had lent his flat-mate Godwin. The Court of First Instance dubs such explanation as implausible, yet the appellant genuinely fails to understand what is so implausible and improbable with such explanation!

In this context, the appellant reiterates that although in theory, suspicion may be less difficult to prove than knowledge, in order to prove suspicion as one of the elements of the crime of money laundering, the Prosecution needs to prove beyond reasonable doubt that the accused must has thought that there is a possibility, "which is more than fanciful, that the relevant fact exists. A vague feeling of unease does not suffice."

In the absence of admissible contradictory pieces of evidence which militate against the appellant's account, the Prosecution simply fell short of proving beyond a reasonable doubt the formal element required for the crime of money laundering to subsist and for this reason, the applicant could have never reasonably been found guilty of the charges proferred against him.

B. Excessivley disproportionate measures, legal arbitrariness & lack of judicial discretion

This grievance is being brought forward with prejudice to the grievance 'A'.

Appellant is well aware that as stated by the Court of Criminal Appeal (Superior Jurisdiction) in its judgment delivered on the 4th of December 2003 in the names: **'Ir-Repubblika ta' Malta v. Serag F. H. Ben Abid '**, our Courts have constantly and consistently embraced the view that an appeal from the punishment meted out in a judgment delivered by the Court of Magistrates as a Court of Criminal Judicature following an admission of the charges by the accused is deemed to be particularly odious whenever the said punishment falls within the parameters of the law.

This grievance in fact, apart from touching on aspects related to the proportionality of the punishment inflicted, is primarily aimed at raising a point of constitutional significance. This grievance centres, primarily, on the fact that article 3(7) of Chapter 373 of the Laws of Malta, which renders applicable mutatis mutandis article 22(3A)(b)(d) (7) of the Dangerous Drugs Ordinance, creates **a blanket pre-set excessive punitive punishment** which in the particular cirumstances of this case is not merely beyond disproportionate but is also one which allows no room for judicial discretion. Appellant is here referring to the consequential punitive measure to conviction that **forces** the deciding Court to forfeit in favour of the Government of Malta **all** assets (whether in Malta or overseas) pertaining to the convict, comprising therefore all moneys, movable and immovable property pertaining to him/her.

One ought to firstly keep in mind that it was the Court of First Instance itself which deemed it fit to impose a fine equivalent of the amount of the proceeds of the offence, i.e. €2,400.

This is therefore not a case where the quantum of criminal proceeds is unclear or otherwise unidentifiable. In fact, since the inception of this case, it was made clear by the Prosecution that the unlawful financial gain made, at least from the appellant's end, amounts to the sum of €2,400,

Yet, the Court of First Instance unfortunately had no other option at law but to order the blanket forfeiture **of literally all assets pertaining to the appellant** a measure which is undeniably manifestly exorbitant and disproportionate, to say the least.

How can one reasonably contend that it is proportionate to literally confiscate **all** of one's assets when the Prosecution itself has tied the amount of criminal proceeds to €2,400?

Indeed, such **pre-set, blanket forfeiture**, is a measure established by the law which fails to take into account the gravity of the infringement and other mitigating or

aggravating factors which are typically weighed in by a Judge or Magistrate in arriving at a just and proportionate punishment.

Certainly, such a measure is draconian. In fact, amendments intended to rectify and address the current local legal regime on freezing and forfeiture of assets seem to thankfully be in the pipeline. Specifically, such proposed amendments shall be aimed at **limiting and restricting** the freezing and eventual confiscation of assets only to the alleged amount of criminal proceeds as identified and quantified by the Prosecution. Such amendments have been long awaited and, one would hope, once introduced, shall serve the purpose of achieving the much-desired sense of proportionality.

It is the firm belief of the appellant that as it currently stands, the current 'unrectified' legislative position flagrantly violates one's right to property in that the fixed, pre-set punitive measure (which is consequential to conviction) established by the law is manifestly arbitrary, excessive, and disproportionate. Not only is such punitive measure too onerous and exorbitant **but the law as it stands also fails to grant discretion to the court in meting out a just and proportionate punishment**, in the sense that the sentencing court is not merely bound to impose such draconian measure, but it also cannot vary or modify it any way.

In support of the above, the Constitional Court judgment in the names '**Il-Pulizija v. Ahmed Alhadi Khalleefah Suwah**', decided on the 23 of November 2020 by the Constitutional Court, the following was held:

> "35 F'dan il-każ, skont ir-Regolamenti dwar il-Kontroll ta' Flus qabel ma gew imhasara bl-Avviz Legali 285 tal 2020, m'hemins mezz kif Limputat jikkontests konfiska ta iktar minn €10,000 11-ligi ma kinies tikkontempla ghat cirkostanza fon il-provenienza tal Ous tkun legittima u mhux bräultat ta' si reat. **Kulhadd tpoġġa l-istess keffa, irrispettivament jekk il provenjenza tal-Ous kinits minn attivita Jegali jew illegali. Meta tigi ghall-**

konfiska, il-Qorti tal- Magistrati (Malta) bhala Qorti ta Gudikatura Kriminali ma ketthiex diskrezzioni. Is-sejbien ta hija minhabba li l-akkutat ma jkuns ghamel ist dikjarazzjoni permezz tal-formola li hemm iskeda, twassal sabiex il-Qori jkollha tordna konfiska tal-flus in excess ta €19,000, Dan irrispettivament mic-cirkostanzi partikolari tal-każ

Dan m'għandus ikun u jwassal biex ma jkunx hemm il-bilanc (proportionality) li jrdu l-Artikolu 1 tal-Ewwel Protokollu l-Artikolu 37 talKostituzzjoni. Proportionality li kif rajna re Regolamenti tal-Unjoni Ewropea numru 1889/2005 u 2018/1672 stess jeżigu [emphasis of the appellant].

Similarly, in the judgment delivered by the First Hall of the Civil Court (Constitutional Jurisdiction) in the names **Jason James Agius v. Avukat Generali** decided on the 23rd of January 2022, the Cour held as follows:

"Illi din il-Qorti tqis **ukoll illi n-nuqqas ta' diskrezzjoni da parti tal-Qorti Kriminali fil-każijiet in kontestazzjoni li tevalwa hi ghandhiex jew le tordna l-konfiska tas-somma** in eccess flimkien mal- imposizzjoni tal-multa ta' 25% fuq l-ammont maqbud in eċċess (oltre l-ewwel ghaxart elef li fuqha gia esprimiet ruhha din il-Qorti aktar il' fuq), u dan wara li tkun hi li semghet il-fatti u l-provi fl-atti, wkoll jikkonsisti fi ksur tad-drittijiet fondamentali tar rikorrent ai termini tal-artikolu 37 tal-Kostituzzjoni ta' Malta u l-Ewwel Artikolu tal-Ewwel Protokoll tal- Konvenzjoni. Din il-Qorti tqis li almenu, sabiex il- principju tal-striking a fair balance' u cioe tal- proporzjonalita' jkun qed jigi rispettat, ghandu jinghata 1-poter lill-istess Qorti kompetenti li tisma' l-kaz kriminali li hi stess tapplika 1-principju ta' proporzjonalita skont il-każ pendenti quddiemha. Il-fatt li fil-liġi

> lanqas režisti l-possibilita' li l-Qorti tqis il propozjonalita' tal-konfiska u l-piena (almenu ghal dik li hija konfiska) fil-każ partikolari certament jilledi d. drittijiet tar-rikorrent kif isostni ai termini tat-tieni talba tieghu u ghalhekk din il-Qorti ser tghaddi sabiex tilqa' 1- istess fid-dawl ta' dawn l-osservazzjonijet."

Indeed, while the State has a right to enforce laws as it deems necessary to control the use of property acquired through illicit activity, it is to be reminded that in accordance with the jurisprudence of the European Court of Human Rights (hereinafter: ECtHR), as shall be amply cited below, such exercise must be carried out in a manner that respects the principle of proportionality

The principle of proportionality has been developed by the ECtHR as a measure to limit the margin of appreciation afforded to the contracting States of the ECHR. Thus, an interference with property...must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The ECtHR has explained that: the concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, including, therefore, the second sentence, which is to be read in the light of the general principle enunciated in the first sentence'. In particular, 'there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures depriving a person of his of ber possessions

The European Court of Human Rights (ECtHR) in the judgment by the names of '**Sadocha v. Ukraine**", delivered on the 11th of July 2019, held as follows:

> "31. The Court reiterates that in order to be proportionate, **the interference should correspond to the severity of the infringement**, and the sanction to the gravity of the offence it is designed to punish - in the instant case, failure to comply with

the declaration requirement (see Gyrlyan, § 28, and Gabrić, § 29, both cited above).

32. It is true that the amount confiscated was substantial for the respondent. However, there is no evidence that the respondent might have caused any serious damage to the State: he had not avoided customs duties or any other levies or caused any other pecuniary damage to the State.... Thus, the Court finds that the confiscation measure was not intended as pecuniary compensation for damage - as the State had not suffered any loss as a result of the respondent's failure to declare the money - but was deterrent and punitive in its purpose.

In these circumstances, the confiscation of the entire undeclared amount of the money, in the Court's view, imposed an excessive burden on the respondent and was disproportionate to the offence committed (see Gabrić, § 39, and Ismayilov, § 38, both cited above, and Tanasov v. Romania [Committee), no. 65910/09, 5 28, 31 October 2017).

37. There has therefore been a violation of Article 1 of Protocol No. 1." [emphasis added by respondent]

Similar assertions were submitted by the ECtHR in the judgment **Ismayilov v. Russia**, decided on the 6th of April 2009:

34. The Court will next assess whether there was a reasonable relationship of proportionality between the means employed by the authorities to secure the general interest of the community and the protection of the respondent's right to the peaceful

> enjoyment of his possessions or, in other words, whether an individual and excessive burden was or was not imposed on the respondent.
>
> …
>
> 38. The Court considers that, in order to be considered proportionate, the interference should correspond to the gravity of the infringement, namely the failure to comply with the declaration requirement, rather than to the gravity of any presumed infringement which had not however been actually established, such as an offence of money laundering or tax evasion. The amount confiscated was undoubtedly substantial for the respondent, for it represented the entirety of the proceeds from the sale of his late mother's home in Baku. On the other hand, the harm that the respondent might have caused to the authorities was minor: he had not avoided customs duties or any other levies or caused any other pecuniary damage to the State. Had the amount gone undetected, the Russian authorities would have only been deprived of the information that the money had entered Russia. Thus, the confiscation measure was not intended as pecuniary compensation for damage as the State had not suffered any loss as a result of the respondent's failure to declare the money - but was deterrent and punitive in its purpose."

The current legislative framework on confiscation of assets simply allows no leeway to the presiding member of the judiciary in meting out a punishment or punitive measure that is fitting and proportionate when taking into account the gravity of the crime being imputed to the person who stands charged. This is being said since upon the finding of guilt, the Court has its hands tied as to what consequential punitive

measure to impose on the convict without being afforded the judicial discretion to attenuate or otherwise said measure.

While it is true that the appellant, post conviction, has a civil remedy available to him to retrieve back forfeited assets which were legitimately acquired by him, such judicial avenue does not in anyway serve to attenuate the gravity of the disproportionate punitive meausure imposed in the criminal proceedings. Why should one have to endure the burden of forking out additional fees **(ironically when all of one's assets are supposedly forfeited)** to lodge civil proceedings simply to request back what is legitimately yours! Such procedure is simply illogical and, if anything, contributes to further injustice.

With respect to the fact that the law as it stands affords no discretion to the sentencing court with regards to the punitive measure that is to be meted out in the eventuality of a conviction, the appellant makes reference to the judgment **'Gyrlyan v. Russia"** decided on the 9th of January 2019, wherein the ECtHR contended as follows:

> " 31. Moreover, contrary to the Government's claim that the court had opted for the most lenient penalty, **Article 16.4 does not appear to leave the sentencing court any discretion in the matter by imposing a choice between a fine equivalent to at least the undeclared amount or confiscation of the undeclared cash. In either case, it was the entire undeclared amount that was forfeited to the State. In the Court's view, such a rigid system is incapable of ensuring the requisite fair balance between the requirements of the general interest and the protection of an individual's right to property** (see Grifhorst, cited above, § 103 in fine, and also Vasilevski v. the former Republic of Macedonia, no. 22653/08, § 57, 28 April 2016, and Andonoski v. the former Yugoslav Republic of Macedonia, no. 16225/08, § 38, 17 September 2015, in which the domestic

> legislation prevented the courts from considering the relationship between the respondent's conduct and the offence).
>
> The confiscation measure imposed an individual and excessive burden disproportionate on the respondent and was to the offence committed (see Ismayilov, § 38, and Boljević, § 45, both cited above; and Tanasov v. Romania, no. 65910/09, § 28, 31 October 2017).

In light of the above-cited jurisprudence, it is amply clear, in the appellant's humble view, that the blanket, arbitrary imposition of the punitive measure set-out in article 3(7), which renders applicable mutatis mutandis article 22(3A) (b) (d) (7) of the Dangerous Drugs Ordinance, which ordered the forfeiture in favour of the Government of Malta of **all** assets (whether in Malta or overseas) pertaining to the appellant is arbitrary, disproportionate, excessive and has effectively violated appellant's right to property as safeguarded by Article 1 to Protocol 1 of the European Convention on Human Rights and Article 37 of the Constitution of Malta.

Having seen the reply of the Attorney General filed in the registry of this Honourable Court on the 10th of March, 2025;

Having seen the note of submission presented by the appellant during the sitting of the 20th of March 2025 where the appellant withdrew his request for a constitutional reference request in light of the applicability of Act VI of 2024.

Having heard the parties declare on the 20th of March, 2025 that they are not going to make any further submissions.

Having seen all the acts of the proceedings and the updated conviction sheet of the accused.

Considers,

The first grievance brought forward by the appellant concerns the knowledge or suspicion held by the accused regarding the underlying predicate offence, which led to the offence of money laundering. The accused insists that his actions were not accompanied by the necessary criminal intent, i.e., *mens rea*. He asserts that he neither had knowledge of nor suspected the scam that resulted in criminal proceeds being transferred into his Revolut account. The Attorney General, on the other hand, emphasised that, following the 2007 amendments to Chapter 373 of the Laws of Malta—introduced by Act XXXI of 2007—the prosecution need only prove that the accused had a suspicion of the illicit origin of the funds.

At this point, this Court thinks it is opportune to emphasize that this is an appellate Court tasked with the revision of the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature. This Court does not change the findings of fact, legal conclusions and the decisions made by the Court of Magistrates when it appears to it that the Court of Magistrates was legally and reasonably correct. As held in the judgment delivered by this Court, differently presided, in the case of **Il-Pulizija vs. Julian Genovese**[1] :

> *"hu principju ormaj stabilit fil-gurisprudenza ta 'din il-Qorti (kemm fil-kaz ta 'appelli minn sentenzi tal-Qorti tal-Magistrati kif ukoll filkaz ta 'appelli minn verdetti w sentenzi tal-Qorti Kriminali) li din il-Qorti* ***ma tiddisturbax l-apprezzament dwar il-provi maghmul mill-Ewwel Qorti jekk tasal ghall-konkluzzjoni li dik il-Qorti setghet ragonevolment u legalment tasal ghall-konkluzzjoni li waslet ghaliha.*** *Fi kliem iehor, din il-Qorti ma tirrimpjazzax id-diskrezzjoni fl-apprezzament tal-provi ezercitata mill-Ewwel Qorti,* ***izda taghmel apprezzament approfondit tal-istess biex tara jekk dik l-Ewwel Qorti kienetx ragjonevoli fil-konkluzzjoni***

[1] Decided by the Court of Criminal Appeal on the 31st July, 2008.

> ***taghha.*** *Jekk izda din il-Qorti tasal ghall-konkluzzjoni li l-Ewwel Qorti fuq il-provi li kellha quddiemha, ma setghetx ragjonevolment tasal ghall-konkluzzjoni li waslet ghaliha, allura din tkun raguni valida, jekk mhux addirittura mpellenti, sabiex din il-Qorti tiddisturba dik id-diskrezzjoni w konkluzzjoni* (ara f'dan is-sens "inter alia" l-Appell Kriminali : "**Il-Pulizija vs. Raymond Psaila et.**[2]" [12.5.94]; "**Ir-Repubblika ta' Malta vs. George Azzopardi**[3]" [14.2.1989]; "**Il-Pulizija vs. Carmel sive Chalmer Pace**[4]" [31.5.1991]; "**Il-Pulizija vs. Anthony Zammit**[5]" [31.5.1991] u ohrajn.)

In this regard, this Court refers to what was stated by **Lord Chief Justice Widgery** in the case of **R. v. Cooper** (in connection with section 2 (1) (a) of the English Criminal Appeal Act, 1968):

> *"assuming that there was no specific error in the conduct of the trial, an appeal court will be very reluctant to interfere with the jury's verdict (in this case with the conclusions of the learned Magistrate) , because the jury will have had the advantage of seeing and hearing the witnesses, whereas the appeal court normally determines the appeal on the basis of papers alone . However, should the overall feel of the case – including the apparent weakness of the prosecution evidence as revealed from the transcript of the proceedings – leave the court with a lurking doubt as to whether an injustice may have been done, then, very exceptionally, a conviction will be quashed."*[6]

[2] Decided by the Court of Criminal Appeal on the 12th May, 1994.
[3] Decided by the Court of Criminal Appeal on the 14th February,1989.
[4] Decided by the Court of Criminal Appeal on the 31st May, 1991.
[5] Decided by the Court of Criminal Appeal on the 31st May, 1991.
[6] See also BLACKSTONE'S CRIMINAL PRACTICE (1991), p. 1392.

In **Ir-Republika ta' Malta vs. Ivan Gatt**,[7] it was held that where an appeal was based on the evaluation of the evidence the exercise to be carried out by this Court was to examine thoroughly the evidence and see if there are contradictory versions tendered by witnesses. If it results to the Court that there were contradictory versions – as in most cases, there would be – this Court has to assess whether any one of these versions could be freely and objectively believed without going against the principle that any doubt should always go in accused 's favour. If the said version could have been believed by the Court of First Instance, the duty of this Court was to respect that discretion and that evaluation of the evidence even if in the evaluation conducted by this Court, this same Court came to a conclusion different from the one reached by the jury. This assessment made by the Court of First Instance will not be disturbed and replaced by the assessment of this Court unless it was evident that the Court of First Instance would have made a manifestly wrong assessment and evaluation of the evidence and consequently that they could not have reasonably and legally have reached that conclusion.[8]

Two very important articles of Maltese Law of Evidence are articles 637 and 638 of the Criminal Code. According to article 637 of the Criminal Code:

> *637. Any objection from any of the causes referred to in articles 630, 633 and 636, shall affect only the credibility of the witness, as to which the decision shall lie in the discretion of those who have to judge of the facts, regard being had to the demeanour, conduct, and character of the witness, to the probability, consistency, and other features of his statement, to the corroboration which may be forthcoming from other testimony, and to all the circumstances of the case:*

[7] Delivered by the Court of Criminal Appeal on the 1st. December, 1994.
[8] See **Ir-Republika ta' Malta vs. Mustafa Ali Larbed** decided by the Court of Criminal Appeal on the 5th July, 2002.

> *Provided that particular care must be taken to ensure that evidence relating to the sexual history and conduct of the victim shall not be permitted unless it is relevant and necessary.*

Furthermore, article 638 of the Criminal Code states that:

> *(1) In general, care must be taken to produce the fullest and most satisfactory proof available, and not to omit the production of any important witness.*
>
> *(2) Nevertheless, in all cases, the testimony of one witness if believed by those who have to judge of the fact shall be sufficient to constitute proof thereof, in as full and ample a manner as if the fact had been proved by two or more witnesses.*

Judgments such as **Il-Pulizija vs Joseph Bonavia**[9] and **Il-Pulizija vs Antoine Cutajar**[10] have confirmed the abovementioned principles. Moreover, as it was held in Il-**Pulizija vs Joseph Thorne**:[11]

> *'mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghall-liberazzjoni tal-persuna akkuzata. Imma l- Qorti, f' kaz ta' konflitt fil-provi, trid tevalwa l-provi skond il-kriterji enuncjati fl-artikolu 637 tal-Kodici Kriminali w tasal ghall-konkluzzjoni dwar lil min trid temmen u f'hix ser temmnu jew ma temmnux'.*

This jurisprudence shows also that the main challenge faced by Courts of Criminal Jurisdiction is the discovery of the truth, historical truth, behind every *notitia criminis*. Courts of Criminal Jurisdiction are legally bound to decide cases based on direct and indirect evidence brought before them. But evidence and testimony produced in

[9] Decided by the Court of Criminal Appeal on the 6th November, 2002.
[10] Decided by the Court of Criminal Appeal on the 16th March 2001.
[11] Decided by the Court of Criminal Appeal on the 9th July 2003.

criminal trials do not necessarily lead the Court to the discovery of the historical truth. A witness may be truthful in his assertions as much as he may be deceitful. Unlike a mortal witness, circumstantial evidence cannot lie. But if this evidence is not univocal, it may easily deceive a Court of Criminal Jurisdiction thus leading it to wrong conclusions. A Court of Criminal Jurisdiction can only convict an accused if it is sure[12] that the accused committed the facts constituting the criminal offence with which he stands charged, and this on the basis that the Prosecution would have proven their case on a level of sufficiency of evidence of proof beyond a reasonable doubt. Courts of Criminal Jurisdiction need only to be sure of an accused's guilty; they do not need to be absolutely sure of his guilt. But if a Court of Criminal Jurisdiction is sure of an accused's guilt, then it is obliged to convict and mete out punishment in terms of Law.

In view of the above and the appellant's first grievance, this Court will go on to evaluate the most salient and relevant testimonies heard and to the documents exhibited before the First Court.

Inspector Sarah Kathleen Zerafa[13] testified before the Court of Magistrates on the 28th April, 2021 where she stated that Ms Attilia Attard had lodged a report at the Paola police station on the 28th March, 2019. Ms Attard had stated that she had received a friend request on Facebook from a certain Victor Scarlett. This person told her that he was a U.S. army soldier stationed in Syria. Mr Scarlett told Ms Attard to send emails to his Commander so that he would be able to visit her in Malta. Ms Attard sent these emails and was requested by the Commander to send money so that Mr Scarlett would be released from Syria. On the 14th January, 2019, Ms Attard sent the amount of $2,850 from her BOV Bank account to a Revolut account number in the name of Ayub Ali Khan, followed by other transactions to other accounts. She clarified that Ms Attard reported she was transferring money into these accounts so that Mr Scarlett would be able to come to Malta. The details were delivered to Ms Attard via email from the alleged Commander. On the 17th April, 2021 Mr Ayub Khan was arrested

[12] **R v Majid**, 2009, EWCA Crim 2563, CA at 2.
[13] Fol. 38 et seq of the proceedings.

from his place of work and a search was carried out in the apartment where he was residing at the time. He consulted with his lawyer Dr Roberto Montalto and during the interrogation he decided not to reply to any of the questions.

When crossed examined by the appellant's lawyer, she confirmed that the only connection between Ms Attard and the appellant was this one transaction which took place in 2019. She also clarified that Ms Attard did not know the appellant and there was no link between the appellant and the other co-accused. The appellant also provided the police with the passwords as requested.

Attilia Attard[14] testified before the first Court on the 3rd May, 2021 where she explained that this story started on the 16th December, 2018 when she received a friend request on Facebook from a guy with the name of Victor Scarlett. They started chatting on Facebook and then on Whatsapp. Mr Scarlett started to tell her about his life and that he was a soldier in Syria. He told her that he was fed up with the war. In the beginning she was sceptic but then she fell for it. Mr Scarlett had asked her to help him get away from Syria and asked her to speak to his Commander for *emergency leave*. She explained how she used to speak to him for hours. They started talking in December 2018 up till 2020. Ms Attard stated that she kept talking because she thought that one day he will give her the money back. She communicated with the Commander who informed her that she had to pay for Scarlett's logistics and other things. The first payment she made was of $2,850 to Marvis Yeke, whom the Commander told her was a United Nations representative. She deposited this money into his account via HSBC Bank. Subsequently, she was asked to go and collect the money back from HSBC Bank. Commander Wilson gave her the appellant's details and she deposited the money in the latter's account via BOV Bank. Following this, the Commander told her that they were 'fixing things' to send Scarlett home. One fine day, the Commander got back to her asking her for more money to clear Scarlett's taxes. Ms Attard then made other payments to other accounts. She said that they kept asking her for money, but she was already in debt for the money she had sent them

[14] Fol. 210 et seq of the acts of the proceedings.

and did not have anymore to give. She explained once again that she had sent the money to get Mr Scarlett out of Syria. The latter continued calling her and later even changed his email and whatsapp number.

Silvio Chetcuti[15] testified on the 3rd May, 2021 as the deputy MLRO of Bank of Valletta plc. and brought forward information regarding Ms Attila Attard and her brother Mark Anthony Gerada's bank accounts together with a copy of their ID cards.

Inspector Claire Borg[16] testified on the 3rd of May 2021 and explained that an investigation was initiated following a report that was filed in 2019 by Ms Attilia Attard at the Paola police station. Ms Attard explained to them that approximately €31,000 were transferred to three (3) different beneficiary owners, with the first payment being deposited on the 1st of January 2019 to the Revolut account of Mr Ayub Ali Khan. The appellant was arrested on the 17th of April from his workplace and was assisted via telephone by his lawyer. Mr Ayub Khan remained silent and told them that he will explain everything in Court. She recognised the appellant before the Court of Magistrates.

The appellant **Ayub Ali Khan Mohammed**[17] testified on the 4th May 2021, where he stated that he did not know the co-accused, Eguavoen Collins, Oliver Chamberline Chibuike nor the victim Attilia Attard. He confirmed that he received the sum of $2,830 in his Revolut account because his flatmate Godwin who was Nigerian, used his account and, told him that his sister was the one who was going to send him the money. He explained that when he came to Malta, he did not afford to rent a whole apartment, so he rented a room in an apartment where Godwin and two other flatmates were residing. The other two flatmates were Romanian who used to work with Betfair. These two guys had nothing to do with the transaction. He lived in this apartment from 2018 till 2019. Godwin had told him that he did not have any money

[15] Fol. 423 et seq of the acts of the proceedings.
[16] Fol. 451 et seq of the acts of the proceedings.
[17] Fol. 472 et seq of the acts of the proceedings.

to pay rent and asked whether he can borrow some money or else provide him with an account number where his sister from Canada can send him some money. Subsequently, all he had to do was withdraw the money and give it to him. He did not have any money to lend him, so he provided Godwin with his account details. Prior to that, he had spoken once to Godwin's sister on the phone. He was cooking in the kitchen and Godwin was on a video-call with her and he said hello. He did not know her name and she looked Nigerian. Godwin had told him that his Nigerian card had expired, and he could not withdraw any money. Before him, Godwin had asked two friends, but they did not help him. One of these individuals stated that he did not have a Revolut account and that he had problems with his bank account. After leaving the apartment in 2019, he met Godwin only once by chance and the latter told him that he's working in Birkirkara and living with his Maltese girlfriend in Marsascala. They also exchanged mobile numbers. Prior to that, for the first two months after leaving the flat he was renting with Godwin, he helped the latter by giving him money as he didn't have any. It was Covid time, and he helped a lot of people who were not working since he was still working. He presented Godwin's Facebook ID to the Court. He confirmed that when he met Godwin in Birkirkara his girlfriend was with him. He also acquired Gowdin's mobile number from a friend. He states that he knows nothing about the fraud that was taking place. He explained that when he received the money, he converted them on his Revolut account from dollars to Euros. The amount he received amounted to a total of €2,430. He stated that Godwin accompanied him three times to the ATM in Msida where he withdrew the money himself. He continued by stating that the last two times he thinks Godwin went to withdraw the remaining balance alone with his card. Later he was asked by the Court whether Godwin was with him every time and he replied that he was with him and he even went to buy with his card some food from the Convenience shop. He trusted Godwin with his card because he did not have much cash anyway. He says that this case impacted his life in a bad way as he has problems at work and a family depending on him in India.

When asked by the Court, he confirmed that on the 16th of January,2019 he received the money and on the same day he went with Godwin to the HSBC University

Campus and withdrew €960. On the same day there was two other withdrawals of €500 and €330. Asked about his incoming transaction of €144 on the 17th of January, 2019, he explained that it could be from his boss as when at times he worked extra, he used to send him money via Revolut. He further explained that at times his friends also lent him money via Revolut and then he would pay them back.

Crossed examined by the prosecution about the €150 balance that remained in his account he stated that Godwin also bought some groceries using his card. Following that, he also stated that at times Godwin borrowed money from him. He was not paid by Godwin for making use of his account and the balance could reflect money paid back by Godwin for the money the latter had previously borrowed. He explained that he had said 'hello' to Godwin's sister via a video-call about a month or a month and a half prior to him receiving the money on his Revolut account. Back then he knew her name, but he did not know whether she was married. Asked about Ms Attilia's Maltese surname, the appellant explained that at the time he was not yet aware of Maltese surnames. He confirmed that the video-call had nothing to do with the transfer. Godwin's sister was a student studying in Canada and he was told that their father was rich in Nigeria. But since Godwin fought with his father, he could only get money from his sister who was getting the money from her father. He said that the two other Romanians who used to reside with them in their Imsida apartment were called Dani and Holia, but he was no longer in touch with them. He stated that he asked nothing in return for his favours towards Godwin. He continued to state that Godwin was inconsistent with his employment and used to stop as soon as he gets money and dwell about starting a business. He used to lend him money in small amounts like €10, €20 and €50. Asked about his rent, he stated that that his was €350 but he did not know about Godwin's rent. Asked whether Godwin used to pay him back he said that sometimes he paid and at other times he did not pay.

Joseph Saliba[18] in representation of Jobsplus testified on the 16th of June, 2021 and presented an employment history of the appellant.

[18] Fol. 586 et seq of the acts of the proceedings.

Mark Anthony Gerada[19] testified on the 16th of June 2021 where he stated that he knew Attilia Attard for thirty-five (35) years. He explained how Ms Attard gave him €5,300 in cash and he did a money transfer on her behalf to Collins Eguavoen.

PS 67 Gary Saliba[20] testified on the 16th of June 2021 where he stated that on the 17th April he was instructed to go to the appellant's place of work and arrest him. He said that he was accompanied by PC 945, and they presented both the search warrant and the arrest warrant to the appellant. They searched his residence in Mosta and confiscated two (2) mobile phones, a passport and a micro-sim. He also stated that he gave him his rights and recognised him before the Court of Magistrates.

PC 945 Roberto Cilia[21] testified on the 16th of June 2021 where he stated the same facts as his colleague PS 67 Gary Saliba.

Ishmael Buttigieg[22] testified on the 23rd of September 2021 on behalf of the Asset Recovery Bureau and presented the inventory of assets of the appellant to the Court of Magistrates.

Keith Cutajar[23] testified on the 30th of November 2021 where he stated that he was appointed by the Court to analyse the mobiles and sim that were seized from the appellant. He presented his report to the Court. All the relevant data was exhibited to the Court by means of a digital copy. During another sitting,[24] he testified that for one of the mobiles to be unlocked it had to be sent to Germany.

Marlon Bugeja[25] testified on the 30th of November 2021 where he stated that he helped his friend Attilia Attard by transferring the sum of €5000 via HSBC Bank to a third

[19] Fol. 593 et seq of the acts of the proceedings.
[20] Fol. 614 et seq of the acts of the proceedings.
[21] Fol. 621 et seq of the acts of the proceedings.
[22] Fol. 795 et seq of the acts of the proceedings.
[23] Fol. 924 et seq of the acts of the proceedings.
[24] Fol. 1010 et seq of the acts of the proceedings.
[25] Fol. 963 et seq of the acts of the proceedings.

party. He did not ask any questions at the time and Ms Attard gave him the same amount in cash.

Chris Attard[26] testified on the 8th of March 2022 where he was referred to expert Keith Cutajar's report and he testified about the repairs that were carried out on one of the phones. He also exhibited his report explaining all the work that was carried out.

Dr Martha Travers Tauss[27] testified on the 31st of May 2022 and presented the transcript of the appellant's statement.

The appellant exercised his right to silence mostly throughout the whole interrogation. However, he gave the Inspectors the password to his Revolut account. Asked about an iPhone, he stated that it belongs to a friend, he did not use it and that he had to give it to a phone repairer. He stated that the mobile that worked had an Indian sim card. Asked whether he knew Attilia Attard he replied that he did not know her. Shown some pictures of individuals, he states that he does not know them. He also stated that Gowdin was Nigerian, and they lived together and two (2) Romanians in a rented apartment in Imsida between 2018 and 2019. He stated that Godwin used to go to university for classes and then stayed at home. He does not know what he worked. In 2019, Godwin did not have a girlfriend and when they changed flats, he had nothing to do with him. He said that he met Godwin last a year before.

Considers further,

This case involves a classic instance of romance fraud. The victim, Ms. Attilia Attard received a friend request on Facebook from an individual identifying himself as Victor Scarlett, who claimed to be an American soldier stationed in Syria. They began corresponding, during which Scarlett expressed a desire to travel to Malta to meet her.

[26] Fol. 1024 et seq of the acts of the proceedings.
[27] Fol. 1035 et seq of the acts of the proceedings.

He informed Ms. Attard that, to do so, she would need to communicate with his superior, Commander Jack Wilson.

Commander Wilson claimed that Scarlett needed to apply for emergency leave and that, before this could be granted, outstanding taxes had to be settled. He provided instructions for the required payments, including one for the sum of $2,850, which Ms. Attard was instructed to transfer to the Revolut account of the appellant.

It is not contested by the defence that Attilia Attard was instructed to make a payment to the accused's Revolut account and that the appellant did, in fact, receive the sum of USD 2,830 from her. The Prosecution contends that the appellant knowingly or suspecting that the funds were proceeds of criminal activity, accepted the same into his Revolut account. Furthermore, it is alleged that he was promised a portion of these funds as compensation for his assistance.

Article 2(2a) of Chapter 373 of the Laws of Malta stipulates the following:

> *"A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity and without it being necessary to establish precisely which underlying activity."*

This Court refers to the case in the names **The Police vs Anya Uchena**[28] which in turn referred to the judgment in the names **Il-Pulizija (Insp Angelo Gafa') vs Carlos Frias Mateo**[29] in this regard and explained Article 2(2)(a) of Chapter 373 of the Laws of Malta:

[28] Decided by this Court as presided on the 5th September, 2024
[29] Decided by the Court of Magistrates on the 5th August, 2011. This Case was also appealed and decided on the 19th January, 2012.

'Dana ifisser illi ghalkemm l-attivita kriminali sottostanti ma tigix ippruvata, madanakollu jekk il-prosekuzzjoni jirnexxielha tipprova illi s-sors tal-flus gej minn dik l-attivita kriminali allura ir-reat ikun gie ippruvat, u ma ikunx hemm il-htiega ta' prova rigward xi sentenza ta' kundanna in konnessjoni mar-reat sottostanti.'

The Prosecution is assisted, to a certain extent, in demonstrating the necessary criminal origin of the questioned laundered proceeds through direct evidence when available, or through circumstantial or other types of evidence. The Prosecution is not required to obtain an actual conviction for the underlying offence. The Law does not mandate that they precisely prove the specific nature of the crime involved.

Moreover, the accused does not need to be aware of the exact nature of the crime from which the proceeds are derived. It is sufficient that he knows or suspects that these proceeds may have an illicit origin.

In applying this to the current case, it means that the Prosecution does not need to prove the appellant's guilt specifically, but rather the nature of his operations, or that something appeared suspicious to him at a certain point in time. The Prosecution needs to prove beyond reasonable doubt that the property constitutes the proceeds of criminal activity and that the appellant engaged in conduct prohibited under Article 3 of Chapter 373 of the Laws of Malta. The Prosecution also needs to prove that when the appellant committed the prohibited act or acts, he acted with the required *mens rea* that is, he had the knowledge, or at least the suspicion, that the property originated either directly or indirectly, from criminal conduct.

The appellant contends that he neither knew nor suspected that the funds transferred to his Revolut account were the proceeds of fraud perpetrated against Attilia Attard. It is accepted that the appellant received the funds, withdrew them, and subsequently

passed them on to an individual named Godwin. However, the appellant maintains that he did not possess the requisite *mens rea* to render his conduct criminal. Accordingly, the issue for determination is whether the prosecution has established, beyond reasonable doubt, that the appellant knew or at least suspected that the funds in question derived from criminal activity, specifically the proceeds of a romance fraud scheme.

The appellant denies having known or even suspected the fraudulent scheme in which his flatmate, Godwin, was involving him. Our law does not define the term *suspicion*, and the First Court referred to various texts and jurisprudence to interpret the term. The Court of Magistrates concluded that the appellant must have considered there to be a real possibility that the relevant fact existed. Furthermore, the Court of Magistrates identified three principal elements that, in its view, led to the appellant's conviction: (1) the appellant withdrew all the funds on the same day they were deposited; (2) he left €140 in his account, which remained unexplained; and (3) he made no enquiries as to the identity of the sender of funds, Attilia Attard.

Primarily, this Court observes that while the appellant, being of Indian origin, may have encountered some difficulty fully articulating himself in English, both due to language barriers and potential challenges with pronunciation, the substance of his statements was understood from the acts of the proceedings. It is recommended that in such circumstances an interpreter should be appointed to assist the potential suspect of a crime.

The appellant explains that the decision to withdraw all the funds in a single day was driven by the persistent demands of his flatmate, Godwin, who required urgent access to money that his sister in Canada was expected to send. According to the appellant, Godwin was not on speaking terms with their father, which is why the sister—a student who had nonetheless received the funds from their father—was acting as the intermediary.

It is also relevant to note that, as the appellant testified, these events occurred during the COVID-19 pandemic. Although affected by the circumstances, the appellant remained employed and was not available daily to manage or respond to his flatmate's needs. Acting in good faith, he believed it was reasonable to withdraw the funds and hand them over to Godwin. Therefore, this action alone does not constitute suspicion of wrongdoing.

The second element relied upon by the First Court in finding the appellant guilty was the fact that approximately €150 remained in his Revolut account following three transactions that withdrew the transferred funds. The appellant explained that this sum was intended to repay credit previously extended to his flatmate. He stated that this was not the first time he had lent money to Godwin, who at times reimbursed him back and on other times no. During his testimony, the appellant described how he had assisted several individuals during the COVID-19 pandemic, particularly those who were unemployed, as he himself remained in employment. It is therefore plausible that he did not insist on repayment in earlier instances due to the dire circumstances. However, when Godwin later received a sum of money from his sister, the appellant accepted repayment at that time.

Furthermore, the appellant stated that he was introduced to Godwin's sister via a video call, during which he exchanged a simple greeting as Godwin introduced him as his friend from India. Although he was told her name during the call, he could not recall it when he testified before the First Court. In his 2021 statement, the appellant confirmed that he had been residing in Malta for six years. However, during his testimony, he clarified that he first arrived in Malta in 2017, subsequently moved to Poland for a year, and returned in May 2018. Given that the Revolut transaction in question occurred in January 2019, he would have spent only several months, not years, in Malta at that time. Thus, it is plausible that he was unfamiliar with Maltese names and surnames, particularly as "*Attilia*" is not a typical Maltese name.

This Court is of the view that, when all the evidence is considered—including the possibility that the appellant may have difficulty articulating himself clearly in English—**this case appears to be one of good faith gone wrong**[30]. The circumstances surrounding the case must be assessed in the context of the COVID-19 pandemic, the appellant's status as a third-country national residing in Malta, his cohabitation with Godwin, and the fact that Godwin's explanation seemed reasonable to someone who was inclined to assist those affected by unemployment during the pandemic.

While the appellant exercised his right to remain silent during much of his interrogation, he also provided some detailed information and provided access to his phone and devices. He trusted his flatmate and sought to help him, never suspecting that he was involved in any criminal activity. The appellant substantiated his testimony by providing the Facebook user ID of his flatmate and the latter's Maltese partner, as well as a mobile number through which Godwin could be contacted. Accordingly, while the prosecution raised a reasonable suspicion regarding the appellant's involvement, **the appellant provided a plausible rebuttal supported by adequate evidence.** [31]

Having weighed all the facts, the Court considered whether the prosecution's suspicion meets the standard of proof required to uphold the judgment of the First Court. However, this Court does not believe that the appellant acted with the requisite *mens rea* and therefore lacked both knowledge and/or suspicion that the funds originated from criminal activity.

[30] [30] Emphasis of this court
[31] Emphasis of this court

Consequently, this Court is upholding the first grievance, marked with the letter 'A' brought forward by the appellant. Accordingly, this Court hereby revokes and overturns the judgment of the First Court and acquits the appellant Ayub Ali Khan Mohammed from all charges proffered against him and declares him not guilty.

Dr Consuelo Scerri Herrera
Judge

Maria Grech
Deputy Registrar