



## **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, the 23<sup>rd</sup> June 2025**

**Number: 43**

**Application Number: 126/2022/1 ISB**

**Andreas Thomas Kuemmert**

**v.**

**Avukat tal-Istat u Kummissarju tal-Pulizija**

1. This is a judgment addressing the preliminary plea of nullity of the appeal filed by applicant on the 10<sup>th</sup> July 2024 from a judgment delivered by the First Hall Civil Court in its Constitutional Jurisdiction on the 12<sup>th</sup> June 2024, wherein the First Court rejected applicant's application and found that there was no violation of applicant's fundamental human rights as protected by article 5 and articles 6(3) of the Convention.

2. From the records of the case it transpires that:

2.1 Applicant was arraigned before the Court of Magistrates in relation to a number of traffic violations. When the relative charge sheets were issued, applicant could not be notified and as a result, regulation 8 of Subsidiary Legislation 9.22, was applied.

2.2 Applicant instituted constitutional proceedings on the 2<sup>nd</sup> March 2022 alleging a violation of his fundamental human rights as protected by Article 5 and Article 6(3) of the European Convention. He argued that the notification procedure contemplated in Regulation 8(1)(b) of Subsidiary Legislation 9.22, is not in line with the provisions of article 6(3) of the European Convention and that the warrant of arrest issued in his regard violates Article 5(1) of the said Convention.

2.3 The First Hall Civil Court in its Constitutional Jurisdiction delivered judgment on the 12<sup>th</sup> June 2024, and upheld the pleas raised by Respondents and dismissed applicant's requests in their entirety. The First Court, whilst basing itself on the particular facts pertaining to this case, found that the proceedings were fair. Applicant was duly assisted by a lawyer of his choosing and was granted adequate time to prepare his defence. Nothing was decided summarily and in fact the Court of Magistrates granted

applicant's request for an adjournment. The proceedings were also held in the English language following a request to this effect by applicant. The Court of Magistrates also stayed proceedings as soon as applicant informed the Court of his intention to institute constitutional proceedings.

2.4 The Court in its considerations also observed that the warrant of arrest against applicant was issued to ensure his presence during the Court sitting, which was scheduled for the next day and after having considered all the relative facts, ascertained that the said arrest was justified in terms of Article 5(1)(a) of the Convention.

2.5 By means of an application dated 10<sup>th</sup> July 2024, applicant lodged an appeal requesting the revocation of the judgment of the First Court dated 12<sup>th</sup> June 2024 in its entirety and that he be granted all the remedies requested and that compensation be made to the applicant.

2.6 In their reply dated 25<sup>th</sup> July 2024 to the appeal application filed by applicant, the State Advocate and the Commissioner of Police invoked the nullity of the appeal on the ground that said appeal was filed after the lapse of the twenty-day (20) time period imposed by Subsidiary Legislation 12.09.

2.7 The Court took cognisance of the records of the appeal and heard the oral submissions made by the parties during the sitting of the 28<sup>th</sup> April 2025.

2.8 This judgment relates solely to the plea regarding the validity or otherwise of the appeal application lodged by appellant.

**Considerations of the Court on the Preliminary Plea regarding the nullity of the appeal:**

3. In their reply to the appeal respondents invoked the nullity of the appeal, since the said appeal, filed on the 10<sup>th</sup> July 2024 was filed *fuori termine*. Respondents further contended that the procedure regulating appeals stipulates that appeals from judgments delivered by the First Hall Civil Court in its Constitutional Jurisdiction are to be filed within twenty (20) days as per regulation 4(2) of Subsidiary Legislation 12.09.

4. Upon examination of the records of the case, it transpires that the First Hall Civil Court in its Constitutional Jurisdiction, delivered its judgment on the 12<sup>th</sup> June 2024. Appellant then filed the appeal application on the 10<sup>th</sup> July 2024. The applicable procedural rules, relative to the nature of these proceedings, as correctly pointed out by respondents are enshrined in Subsidiary Legislation 12.09, particularly Rule 4(2), which provides that:

***(2)The application of appeal shall be made within twenty days from the date of the decision appealed from, and the respondent may file a written reply within eight working days from the date of service***

5. The Court concurs with Respondents; appellant had until the 2<sup>nd</sup> July 2024 to file his appeal, and thus, the appeal was indeed filed *fuori termine*. The Court observes that appellant, in effect, filed his appeal eight (8) days after the lapse of the timeframe envisaged in Rule 4(2) of Subsidiary Legislation 12.09. On this subject matter, the Court has on multiple occasions affirmed that:

***“... it-terminu għal preżentata tar-rikors tal-appell huwa wieħed legali u għalhekk ta’ ordni pubbliku. B’hekk m’huwiex possibbli li dan ir-rikors jiġi sannat, u l-preżentata fuori termine tiegħu tagħmlu null għall-finijiet u l-effetti kollha tal-Liġi. (Vide L-Avukat Cedric Mifsud noe vs Awtorita tat-Transport f’ Malta Rik.Nru.:19/2019/1 deciz mill-Qorti Kostituzzjonali nhar is-26 ta’ Jannar 2022)”<sup>1</sup>***

6. The Court took note of applicant’s oral submissions, however, it reiterates that irrespective of any plausible justification, jurisprudence on the matter has always been consistent: the legal time frames prescribed by law for the filing of judicial acts are of public order and cannot be overlooked, not even with the consent of the parties. Adherence to said time-limits ensure the proper administration of justice and compliance with the principle of legal certainty and those concerned must expect

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<sup>1</sup> Translation of citation: “The timeframe for the lodging of an appeal is a legal timeframe and therefore of public order. Thus, it is not possible for this application to be salvaged, and its tardy filing renders said appeal null and void at law.”

these rules to be applied. It is therefore incumbent on the interested parties to be diligent in the defence of their interests.<sup>2</sup> In fact, our Courts have always stated that the non-observance of the legal time frames may also be invoked by the Courts *ex-officio*.

7. Therefore, the preliminary plea filed by Respondents invoking the nullity of the appeal filed by Appellant is to be upheld.

***Decide:***

For these reasons the Court declares appellant's appeal to have been filed *fuori termine*, and consequently declares said appeal to be null and void. The Court shall therefore abstain from taking further cognisance of said appeal.

All judicial costs are at the charge of the appellant.

Mark Chetcuti  
Chief Justice

Giannino Caruana Demajo  
Judge

Anthony Ellul  
Judge

Deputy Registrar  
SS

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<sup>2</sup> Vide **Muscat vs Malta** (App. No. 2419/10), **Nakoc vs The former Yugoslav Republic of Macedonia** decided on the 24<sup>th</sup> October 2002 and **Teuschler vs Germany** decided on the 4<sup>th</sup> October 2001 by the European Court of Human Rights.