



QORTI TAL-APPELL KRIMINALI

Onor. Imhalledf Consuelo Scerri Herrera, LL.D., Ph.d.

Appell Nru: 374/2025

Il-Pulizja

Vs

Ali Ahmad

Illum, 11 ta' Lulju 2025

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellanti, **AHMAD ALI** ta' 43 sena, ta' nazzjonalita' Sirjana, imwieled s-Sirja nhar l-1 ta' Jannar 1982, detentur tal-karta tal-identita' Maltija bin-numru 0413714L tressaq taht arrest peress li mfittex mill-awtoritajiet kompetenti ġudizzjarji fil-Grecja pajjiz skedat ai fini tal-Artikolu 5 tal-Ligi Sussidjarja 276.05, u dan sabiex iservi sentenza ta' prigunerija.

Rat l-Allert taht is-Sistema ta' Informazzjoni ta' Schengen għall-finijiet ta' Estradizzjoni datat 3 ta' April 2025, kif ukoll il-Mandat ta' Arrest Ewropew mahrug minn *Public Prosecutors Office at the Court of Appeal of Kalamata*, gewwa l-Grecja datat il-31 ta' Marzu 2025;

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) Bhala Qorti Istruttorju (fl-Att dwar l-Estradizzjoni msejha l-Qorti Rimandanti) ta' nhar is-26 ta' Mejju 2025, fejn il-Qorti għal

dawk ir-ragunijiet, ai termini tal-Ordni dwar Pajjizi Barranin Appuntati dwar l-Estradizzjoni (L.S. 276.05), ddecidiet li t-treggih lura ta' **Ali Ahmad** lejn il-Grecja **m'huwiex impedut** u ghalhekk, ai termini tar-Regolament 24 tal-Ordni msemmija:

1. Ordnat li **Ali Ahmad** ghandu jinzamm taht kustodja fi stennija ghat-treggih lura lejn il-Grecja, bhala pajjiz skedat minn fejn inhareg il-Mandat t'Arrest Ewropew odjern;

Skont ir-Regolament 25 tal-Ordni msemmija, moqri flimkien mal-Artikolu 16 tal-Att Dwar l-Estradizzjoni (Kap. 276 tal-Ligijiet ta' Malta), il-Qorti informat lill-estradi li:

2. M'huwiex se jigi mregga lura lejn il-Grecja qabel ma jghaddu sebat' ijiem mid-data ta' din l-Ordni ta' Kustodja;
3. Huwa ghandu dritt li jinterponi appell minn din id-Decizjoni quddiem il-Qorti tal-Appell Krimnali; u
4. Jekk jidhirlu li xi wiehed mid-dispozizzjonijiet tal-Artikolu 10(1) u (2) tal-Att dwar l-Estradizzjoni, (Kap. 276 tal-Ligijiet ta' Malta), gie miksuri jew li xi dispozizzjoni tal-Kostituzzjoni ta' Malta jew tal-Att dwar il-Konvenzjoni Ewropea (Kap. 319 tal-Ligijiet ta' Malta) hija, tkun giet jew x'aktar tkun sejra tigi miksura dwar il-persuna tieghu hekk li tkun gustifikata r-revoka, l-annullament jew il-modifika tal-ordni tal-kustodja tal-Qorti, huwa ghandu jedd jitlob rimedju skont id-dispozizzjonijiet tal-Artikolu 45 tal-istess Kostituzzjoni jew tal-Att dwar il-Konvenzjoni Ewropea skont il-kaz u dan id-dritt qiegħed minn issa jigi rizervat a favur tal-persuna rikjedenti anke abbażi ta' dak espost f'din id-decizjoni.

B'dan illi, wara li l-Qorti tat id-decizjoni tagħha dwar il-persuna rikjesta għandha tigi ritornata lejn il-pajjiz rikjedenti, u wara li rat ir-regolament 28A(2)(a) tal-Ordni, tal-Ordni, il-Qorti qegħda tipposponi l-konsenja ta' Ali Ahmad sakemm tigi xi haġa minn dawn li gejjin:

- (i) Isir mill-akkuzat;
- (ii) L-akkuza tiġi rtirata’
- (iii) Il-procedimenti dwar l-akkuza ma jtkomplewx
- (iv) Il-procedimenti jiġu differit *sine die*;

u fir-rigward tal-kawza fl-ismijiet **‘Ir-Repubblika ta’ Malta vs Ali Ahmad u Dejan Mrvos’** li qed tinstema minn din il-Qorti diversament ippresjeduta b’dan illi meta tiġri xi wahda mill-grajjiet imsemmija fis-subparagrafi (i) sa (iv) hawn fuq, il-Qorti ordnat minnufih l-arrest mill-gdid u l-konsenja ta’ Ali Ahmad.

Finalment, il-Qorti rrakkomandat lill-awtoritajiet Griegi sabiex jaghtu dik l-attenzjoni medika kollha u mehtiega lil Ali Ahmad sabiex il-kondizzjoni medika tiegħu tibqa’ stabbli u kkontrollata.

Rat ir-rikors tal-appell tal-appellanti **Ali Ahmad** għat-treggih lura ta’ Ali Ahmad preżentat fir-registru ta’ din il-Qorti nhar it-30 ta’ Mejju 2025, fejn talab lil din l-Onorabbli Qorti sabiex:

- i. titlob l-Istat Grieg fit-termini tal-artikolu 13A jindika preċiżament liema paragrafu f’ taqsima (d) qiegħed jirreferi; u
- ii. tilqa’ l-aggravji u tirrevoka l-ordni ta’ estradizzjoni lejn il-Grecja.

Illi l-esponent hassu manifestament aggravat mill-imsemmija decizjoni u għalhekk jipprezenta dan l-appell.

AGGRAVJI

L-ewwel aggravju

Illi l-ewwel aggravju huwa in kwantu l-estradizzjoni tal-esponent ser twassal għall-trattament inuman u degredanti. L-esponent huwa marid bil-kundizzjoni *chronic*

Hepatits B u l-garanziji moghtija mill-awtoritajiet Griegi m'humieix konformai mal-garanziji rikjesti mill-Qorti tal-Magistrati, u ma jissodisfawx il-garanziji mehtiega mill-Qorti Ewropea f'Dorobantu (C-128/18) u Aranyosi and Căldăraru (C-404/15 u C-659/15 PPU).

Illi minn kif xehed it-tabib specialist Dr. Aaron Schmebri (Med Reg. 4001), l-esponent marid b'*chronic Hepatitis B*. Il-marda hija kronika kwindi ma titfejjaqx u tehtieg moniteragg konsistenti u speċjalizzat. Prezentament huwa jinghata dan it-trattament Malta fejn ilu jercevieh għall-ahhar snin. *Una volta* ma jinghatax dan it-trattament jew ma jinghatax trattament adegwat minn speċjalisti li jafu l-kaz tieghu, il-marda hija fatali. Illi għal din ir-raguni u għar-raguni li l-habsijiet gewwa l-Grecja huma notorji għall-*overcrowding* u kundizzjonijiet sotto-sanitarji, il-Qorti talbet garanzija fit-termini ta' Dorobantu (C-128/18).

Illi l-awtoritajiet Griegi bghatu tlett twegibiet fir-rigward, wahda datata 7.04.2025 (*sic!*), ohra 9.5.2025 u l-ahhar wahda fil-15.05.2025. L-ebda wahda ma hija konformi ma' dak mehtieg mill-Qorti Ewropea fir-rigward. F' Dorobantu (C-128/18) huwa stabbilit illi:

'75 In addition, it is apparent, in essence, from the case-law of the European Court of Human Rights that, in cases where a multi-occupancy prison cell – measuring in the range of 3 to 4 m² of personal space per inmate – is at issue, the space factor remains an important factor in the assessment of the adequacy of conditions of detention. In such instances it may be concluded that there is a violation of Article 3 of the ECHR if the space factor is coupled with other aspects of inappropriate physical conditions of detention, including lack of access to outdoor exercise, natural light or air, poor ventilation, inadequacy of room temperature, the impossibility of using the toilet in private, and non-compliance with basic sanitary and hygienic requirements (see, to that effect, ECtHR, 20 October 2016, Muršić v. Croatia, CE:ECHR:2016:1020JUD000733413, § 139).'

Illi fil-kaz odjern dan ma giex garantit u dan ghas-segwent i ragunijiet:

- i. Il-Habs ta' Patras huwa *overcrowded*. Filwaqt li ghandu 'projected capacity' ta' 446 prigioniera, attwalment jalloggja 527 prigionier, kwazi 20 fil-mija iktar mill-limitu.
- ii. Una volta huwa *overcrowded*, il-kmamar numerati 1-8 joffru massimu ta' 2.875 metru kwadru,¹ kmamar numerati 9-10 joffru spazju ta' 3.8 metru kwadru² filwaqt li celli joffru massimu ta' 2.9 metru kwadru.³ Ikoll taht il-limitu preskritt fuq.
- iii. Andreeva vs Grece (App. Nru. 36658/17) deciza 6/9/2018 u Gregoriou vs Greece (App. Nru. 57378/18) deciza 14/07/2023 il-Qorti Ewropea ghad-Drittijiet tal-Bniedem sabet li l-kundizzjonijiet tal-Habs ta' Patras jilledu l-artikolu 3 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem
- iv. Iz-zamma tal-esponent f'Patras lanqas huwa garantit izda soggett ghall-'*availability of the prison*' (ara komunikazzjoni 9.5.2025 parag. 4)
- v. Jista' ukoll jinzamm f'Drama, liema post **m'huwiex habs (prison) izda *migration detention centre*** (ritratti ta' Drama annessi bhala Dok C).⁴ Habs m'huwiex ekwivalenti ghall-*detention premises*, id-definizzjoni ta' moghtija ghall-'habs' mill-Unjoni Ewropea hija propju:

¹ kobar tac-cella ezkluz facilitajiet tal-banju 23 metru kwadru filwaqt li spazju massimu ta' 8 prigioniera.

² ibid

³ Kobar gie indikat fil-inkartament tal-korrispondenza tal-15 ta' Mejju, 2025, dokument mmarkat b'ref. no 7757, filwaqt li fl-ittra ref. no. 7567 hemm indikat li cella tesa massimu ta' 3 prigioniera.

⁴ Ritratti mehuda mill-Google Maps u minn fuq is-sit

<https://www.globaldetentionproject.org/countries/europe/greece/detention-centres/1621/drama-paranesti-preremoval-detention-centre> (accessat 28 ta' Mejju, 2025)

‘Prison means specialised premises where people are forcefully detained and deprived of their liberty, following a lawful criminal justice process. This is different from detention premises used for other purposes, for instance related to migration or military operations’ (Dok D).

Kwindi l-garanzija mibghuta fir-rigward ta’ Drama tfalli *ab initio*.

- vi. **Illi Drama mahuwiex attrezzat bil-assistenza medika necessarja u mehtiega sabiex jikkuraw il-bzonnijiet specifici medici li ghandu l-esponent (*chronic Hepatits B*). Minn paragrafu 3 tad-dokument li jiddeskrivi l-kundizzjonijiet f’Drama jirrizulta li ‘there is no permanent doctor in our facility ... ‘there are 4 doctors specialising in General Medicine’. Mix-xiehda tat-tabib specjalist Dr. Aaron Schmebri jirrizulta li l-esponent jehtieg kura medika **specjalizzata** u moniteragg **konsistenti**. Xehed ukoll illi attenzjoni ta’ *general practioner* m’hijiex sufficienti.**
- vii. Illi dan kollu huwa amplifikat bil-fatt illi l-esponent jbati minn *chronic Hepatitis B*. Illi l-awtoritajiet Griegi fil-kaz ta’ Kotsaftis v Greece (app. Nru. 39780/06) (Dok E) diga nstabu responsabbli talli naqsu minn jaghtu attenzjoni u kura necessarja lill-persuna mardia b’ Hepatits B. Fid-dawl ta’ dan l-esponent ma ghandux serhan il-mohh li l-kundizzjoni tieghu qieghda u sejra tittiehed bis-serjeta li haqqha.

Illi bir-rispett kollu dawn ic-cirkostanzi gew totalment sorvolati mill-Ewwel Qorti. Ghaldaqstant bir-rispett, anke dan l-aggravju jisthoqlu jigi akkolt.

It-tieni aggravju

Illi t-tieni aggravju huwa in kwantu l-mod ta' kif gie redatt l-MAE huwa irregolari u inezigwibbli.

Illi regolament 13(4) ta' L.S. 276.05 moqri ma' 23(1) u (3) jipprovvdut li una volta l-persuna rikjesta instabet hatja *in absentia*, l-Qorti 'ghanda' tiddeciedi jekk mill-Mandat jirrizulta wahda mill-kweziti (a) sa (d) tar-regolament 23(3).

Illi minn taqsima (d) tal-MAE ma huwiex car liema mill-kweziti gew indikati mill-Awtoritajiet Griegi. Il-*pro forma* tal-MAE pprovdut mill-Kummissjoni Ewropea tipprovvdut kaxxi hdejn kull kwezt f' taqsima (d) sabiex l-indikazzjoni tkun cara u preciza (*pro forma* annessa bhala Dok F). F'dan il-kaz l-Istat Grieg ghal xi raguni ma uwzax il-*pro forma* u ma ghamlu ebda indikazzjoni cara u univoka ta' liema paragrafu qed jigi invokat.

Illi bir-rispett kollu l-ghazla tal-Istat Grieg ma tistax tigi prezunta mill-enfasi (**bold**) o *meno* tat-tipa fil-MAE. L-indikazzjoni tal-kweziti ta' regolament 23(3) jehtieg jkun univoci u mhux jithalla f'idejn il-gudikant sabiex jiddesumi x'kellu f'mohhu l-Istat Grieg. Iktar u iktar meta mill-kontenut tal-MAE huwa evidenti illi t-tipa **bold** ma jidhirx li tintuza bhala mezz ta' indikazzjoni anzi t-tipa **bold** tintuza frekwentament u b'mod kazwali fil-MAE kollhu. Propju il-kweziti li ghandhom jigu indikati, bhal f'dan il-kaz il-kwezt illi l-esponent 'did not appear in person at trial that led to Court Order' (pagna 3) m'huwiex indikat b'tipa enfasizzata. Dan jekk xejn huwa indikattiv illi l-enfasi ma hijiex indikazzjoni ta' intenzjoni. Raguni ohra ghalfejn l-enfasi ma ghandiex titiehed bhala indikazzjoni ta intenzjoni hija illi l-paragrafi ohra ta' taqsima (d) huma mimlija b'informazzjoni *sui generis* tal-kaz u minkejja dan, m'humix enfasizzati b'tipa **bold**. Per eżempju paragrafu 3.3 hemm id-data specifika u preciza tat-13 ta' Jannar 2023 fejn allegatament 'the person concerned was explicitly informed of their right to another hearing or to an appeal'.

Illi huwa pacifiku illi ghajr għall-*presumptions of fact* u *presumptions of law*, f'process gudizzjarju kollox jehtieg jigi ppruvat b'mod univoku. Illi għalhekk bir-rispett kollu l-esponent ma jistax jifhem abbazi ta' xiex l-Ewwel Onorabbli Qorti wasslet għal 'fehma' illi 'l-paragrafi hekk mitluba b'tipa grassa huma daww il-paragrafi magħzula u indikati mill-Awtoritajiet tal-Grecja.'

Illi għaldaqstant jigi sottomess b'rispett illi s-sentenza m'hijiex safe and satisfactory u jitlob l-aggravju tiegħu jigi milqugh.

It-tielet aggravju

Illi t-tielet aggravju huwa in kwantu l-MAE ma jissodisfax il-kriterji tar-regolament 23(3) tal-Legislazzjoni Sussidjarja 276.05. Barra minn hekk il-Qorti tal-Magistrati għamlet apprezzament parzjali tal-fatti u applikazzjoni skorretta tal-Ligi għall-istess.

Illi kif ingħad fl-ewwel aggravju, huwa mehtieg *ex lege* illi l-MAE jissodisfa alemnu wiehed mill-kweziti li jipprovvdri r-regolament 23(3). F'dan ir-rigward, il-MAE jirriskontra numru ta' nuqqasijiet.

Illi jekk għal grazzja tal-argument wiehed **jassumi** illi ntgħazel paragrafu 3.1.b tal-MAE, il-paragrafu jirreferi għall-artikolu 4a(1)(a)(i)(ii) ta' 2002/584/JHA u huwa replikat f'regolament 23(3)(a)(i) u (ii) ta' L.S. 276.05. L-imsemmi regolament jehtieg illi l-Qorti għanda tkun sodisfatta Ili filwaqt li l-persuna ma gietx notifikata personalment:

- i. b'mezzi oħra fil-fatt irċeviet informazzjoni uffiċjali tad-data u l-post.
- ii. b'tali mod li għie stabbilit **inekwivokabbilment** li hija kienet konxja mill-proċedimenti skedati;

- iii. giet infurmata li tista' tingħata deċiżjoni jekkhija ma tidhirx għall-proċedimenti.

Illi l-ebda wahda minn dawn il-kweziti ma jinsabu sodisfatti. Il-kontenut tal-MAE ma jipprovdi l-ebda informazzjoni u lanqas il-provi prodotti mill-Pulizija ma juru li dawn il-kweziti gew sodisfatti. Adirittura meta l-Awtoritajiet Griegi intalbu jfornu din l-informazzjoni permezz ta' talba għall-informazzjoni supplimentari (artikolu 13A) l-informazzjoni baqat qatt ma wasslet. *Di piu*, l-esponent xehed u ikkonferma lli huwa qatt ma kien konnoxxenti bid-data jew smiegh tas-seduta/i gewwa l-Grecja li permezz tagħhom wehel gahxar snin habs.

Illi huwa principju ta' dritt Ewropew (**Colozza vs Italy**, app. Nru. 9024/80) illi qabel jghaddi għall-gudizzju *in absentia*, kull membru stat ghandu jagħmel dak kollu possibbli sabiex jezegwixxi notifika. Tant jipprovdi l-artikolu 8(4) tad- Direttiva (UE) 2016/343:

*'4. Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but it is not possible to comply with the conditions laid down in paragraph 2 of this Article because a suspect or accused person **cannot be located despite reasonable efforts having been made**, Member States may provide that a decision can nevertheless be taken and enforced. In that case, Member States shall ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they are also informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy, in accordance with Article 9.'* (enfasi u sottolinear mizjud)

F' **Colozza** gie ritenut:

'28 ... In addition, the attempts made to trace him were inadequate: they were confined to the flat where he had been sought in vain in 1972 (via Longanesi) and to the address shown in the Registrar-General's records (via Fonteiana), yet it was known that he was no longer living there (see paragraphs 10 and 12 above). The Court here attaches particular importance to the fact that certain services of the Rome public prosecutor's office and of the Rome police had succeeded, in the context of other criminal proceedings, in obtaining Mr. Colozza's new address (see paragraph 15 above); it was thus possible to locate him even though - as the Government mentioned by way of justification - no data-bank was available. It is difficult to reconcile the situation found by the Court with the diligence which the Contracting States must exercise in order to ensure that the rights guaranteed by Article 6 (art. 6) are enjoyed in an effective manner (see, mutatis mutandis, the Artico judgment of 13 May 1980, Series A no. 37, p. 18, para. 37). (sottolinear mizjud)

In conclusion, the material before the Court does not disclose that Mr. Colozza waived exercise of his right to appear and to defend himself or that he was seeking to evade justice. It is therefore not necessary to decide whether a person accused of a criminal offence who does actually abscond thereby forfeits the benefit of the rights in question.'

Illi huwa ghalhekk illi l-Qorti Ewropea f' **Paweł Dworzecki** (C-108/16 PPU) stabbiliet illi jehtieg jigi accertat illi notifika wasslet ghand il-persuna rikjesta u mhux sufficienti illi notifika thalliet ma' terz. Din tal-ahhar m'hijiex valida ghall-finijiet ta' ezekuzzjoni ta' MAE (iktar dwar l-imsemmija sentenza fit-tielet aggravju). Fil-kaz odjern l-Istat Grieg qabbad *ex officio* lil certu avukata Sofia Filareti Dimitrea sabiex tirraprezenta lill-esponent u nnotifika lilha bil-proceduri tieghu. Din qatt ma ikkomunikat mieghu. Sar jaf bl-ezistenza taghha biss wara l-proceduri odjerni. Bir-rispett li wiehed jqabbad avukat *ex officio* ghal finijiet ta' notifika ma tista' qatt tissodisfa l-vot rikjest mill-Ligi.

Illi barra minn hekk l-esponent jinsab perpless rigward il-konkluzjoni mill-huqa mill-Ewwel Onorabbli Qorti f'pagna 10 tas-sentenza appellata. F'pagna 10 il-Qorti tikkonkludi illi

'il-persuna rikjesta tirresjedi gewwa indirizz ghalkollox differenti gewwa l-Qawra'

tghid ukoll illi:

'jidher li l-istess persuna rikjesta ttentat taghmila ferm iktar diffici li tigi ntraccata mill-Awtoritajiet Griegi'.

Bl-ikbar rispett, dan huwa fattwalment zbaljat. Minn kif tikkonferma il-karta tal-identita tieghu (dok A), sal-2024 l-esponent kien registrat jghix fl-indirizz Binja FIERES Ent B, fl 7 Triq San Rernig Hal Kirkop. Illum jghixu fih il-familjari tal-esponent. Dan huwa l-istess indirizz illi ta lill-awtoritajiet Griegi. **Tul dan il-perjodu ta' iktar minn hames snin, huwa qatt ma ircieva ebda notifika jew komunikazzjoni mill-Grecja.** Dan minkejja illi skond il-MAE, fit-23 ta' Marzu, 2023, waqt li kien jghix fl-indirizz maghruf mal-awtoritajiet Griegi, l-avukata Sofia Filareti Dimitrea kienet notifikata bid-data tas-seduta. Ghaldaqstant l-anqas jista' jkigi invokat l-insenjament ta' Generalstaatsanwaltschaft (Case C-416/20 PPU) meta persuna intenzjonalment tipprova tevadi n-notifika. L-esponent ma kellu ebda hjiel dwar il-proceduri skedati l-Grecja, *sic et simpliciter*.

Illi barra minn hekk, lanqas ma' huwa plawzibbli jew possibbli illi wiehed **jassumi** illi ntghazel paragrafu 3.4 ta' taqsima (d) tal-MAE. Dan ghaliex f'paragrafu 3.3 ta taqsima (d) hemm miktub hekk:

'the order [sentenza tal-Qorti tal-Appell ta' Kalamatta] was served on 18 January 2023 and the person concerned was explicitly informed of

their right to another hearing or to an appeal, at which the person would be entitled to appear and that the substance of the case, including new evidence would be re-examined, with the new hearing potentially overturning the original order and that they expressly stated that they did not consent to the decision'

Illi sussegwentament fl-istess taqsima punt 4, hemm miktub: 'if you ticked box 3.1.b, 3.2 or 3.3 above please provide information on the way in which the relevant condition has been met'. Immedjatament wara din is-sentenza hemm apragrafu li jispjega li s-sentenza giet notifikata lill-istess avukata Dimitrea. Illi paragrafi 3.3 u 3.4 huma alternattivi u jeskludu l-xulxin ghalhekk ma jistax jigu ndikati kontestwalment.

Illi finalment jinghad illi almenu, incertezza b'saħħita bhal ma hi din kellha tigi verifikata permezz tal-procedura mfassla fl-artikolu artikolu 13A tal-L.S. 276. 05 u mhux tithalla biex tigi prezunta. Ghaldaqstant l-esponent minn issa jitlob illi din l-Onorabbli Qorti titlob l-Istat Grieg fit-termini tal-artikolu 13A jindika precizament liema paragrafu f' taqsima (d) qieghed jirreferi.

Ghaldaqstant bir-rispett, anke dan l-aggravju jisthoqlu jigi akkolt.

Ir-raba aggravju

Illi r-raba aggravju huwa in kwantu l-ezekuzzjoni tal Mandat ta' Arrest Ewropew se jwassal għall-lezzjoni tad-dritt fundamentali tal-esponent għall-smiegh xieraq in kwantu l-proceduri *in absentia* saru bi ksur tal-Ligi Ewropea u principji fundamentali ta' Gustizzja Naturali.

Illi wiehed jirrileva li li, skont il-ġurisprudenza stabbilita tal-Qorti tal-Ġustizzja Ewropea, l-ezekuzzjoni ta' MAE u l-Ligi li tirregolah għandhom jigu interpretati u applikati b'konformità mad-drittijiet fundamentali (ara, fost l-oħrajn, is-sentenza C. K. et al., C 578/16 PPU § 59), li parti integrali minnhom hija r-rispett għad-drittijiet tad-

difiża, li jirrizultaw mid-dritt għal proċess ġust, stabbilit fl-Artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem.

Illi kif inghad huwa kwezit mehtieg mill-artikolu 8(4) tad- Direttiva (UE) 2016/343 illi jintwera illi ‘reasonable efforts having been made’ sabiex issir in-notifika qabel wiehed jipprocedi għall-gudizzju *in absentia*. Meta l-awtoritajiet Greigi intalbu jfornu evidenza illi l-esponent kien ‘inekwivokabbilment’ konxu tal-proceduri skedati jew ‘reasonable efforts having been made’, l-Awtoritajiet baqaw inadempjenti. Minflok, baghatu komunikazzjoni datata 7 ta’ April 2025 (*sic!*) fejn pprovdew illi n-notifika saret lil certu avukata Sofia Filareti Dimitrea u li skond il-Ligi Griega din in-notifika hija bizzzejjed sabiex ‘the wanted person had been informed of the date of the trial and of the judgement issued’.

Illi hawn wiehed jirriskontra zewg ostakoli. L-ewwel, hija lli dan il-mezz ta’ notifika jikser il-Ligi Ewropea stabbilita f’ Paweł Dworzecki (C-108/16 PPU). Fl-imsemmija sentenza gie stabbilit illi:

‘Article 4a(1)(a)(i) of Council Framework Decision 2002/584/EC (...) must be interpreted as meaning that a summons, such as that at issue in the main proceedings, which was not served directly on the person concerned but was handed over, at the latter's address, to an adult belonging to that household who undertook to pass it on to him, when it cannot be ascertained from the European arrest warrant whether and, if so, when that adult actually passed that summons on to the person concerned, does not in itself satisfy the conditions set out in that provision.’ (enfasi u sottolinear mizjud)

Illi bir-rispett li wiehed jqabba avukat *ex officio* għal finijiet ta’ notifika ma tista’ qatt tissodisfa l-vot rikjest mill-Ligi. Alemnu għandu jirrizulta kif/jekk in-notifika wasslet

ghand l-esponent. Xi haga illi qatt ma sehhet. Fir-rigward kull sottomissjoni ohra tkun superfluwa.

Illi kif ukoll, mill-kontenut tas-sentenza moghtija mill-Qorti tal-Appell ta' Kalamatta (pagna 2) jirrizulta hekk:

'Therefore, given his failure to appear, he must be tried as if he were present, pursuant to Article 340(4) of the Code of Criminal procedure, as ratified by Law 4620/2019 and in force since July 2019.'
(sottolinear u enfasi mizjuda).

Illi l-esponent ikkometta l-allegat reat u **rritorna lura Malta f'Awwissu 2018**. Ghalhekk qatt ma seta' kien applikabbli ghalih il-qafas legali ta' gudizzju *in absentia*. Dan il-fatt gie totalment sorvolat mill-Ewwel Qorti. Gie sorvolat ukoll 1) il-fatt illi l-esponent qatt ma seta' kellu gharfien ta' dan il-process ghax fiz-zmien ma kienx jezisti, alemnu fil-forma li hu illum u 2) illi huwa principju ta' gustizzja naturali illi ligi procedurali lli timpatta dritt sostantiv jew li tippregudika lill-persuna ma ghandix applikazzjoni retrospettiva.

Ghaldaqstant bir-rispett, anke dan l-aggravju jisthoqlu jigi akkolt.

Semghet lill-partijiet jittrattaw l-aggravju novella maghmul ai fini tan-nota li giet prezentata mill-Avukat Generali nhar it-13 ta' Gunju 2025 fejn gharraf lil din l-Onroabbli Qorti li l-proceduri gewwa l-Grecja m'humiex res judicata u li hemm trial gdid skedat li jinstema nhar id-19 ta' Mejju 2026 gewwa l-Grecja.

Rat ukoll in-nota tal-Avukat Generali prezentata fl-atti nhar l-20 ta' Gunju 2025 li permezz tagħha ipprezenta xi dokumentazzjoni li huwa rcieva mill-Awtoritajiet Griegi;

Rat ir-risposta ta' Ali Ahmad għan-nota tal-Avukat Generali prezentata fir-registru ta' din il-Qorti nhar l-24 ta' Gunju 2025.

Ikkunsidrat;

Illi jirrizulta li l-appellant Ahmad Ali tressaq taht arrest fit-28 ta' April 2025 peress li huwa mfittex mill-awtoritajiet kompetenti ġudizzjarji fil-Grecja pajjiż skedat ai fini tal-Artikolu 5 tal-Ligi Sussidjarja 276.05, u dan sabiex iservi sentenza ta' priġunerija.

Illi jirrizulta min-Nota tal-Avukat Ġenerali tal-20 ta' Ġunju 2025 li l-Awtoritajiet Griegi kkonfermaw li l-appellant appella d-deċiżjoni mogħtija fil-konfront tiegħu u li l-appell tiegħu għandu jiġi deċiż fid-19 ta' Mejju 2026. Għalhekk hawn teżisti konferma li l-bażi li fuqha qegħda tintalab l-estradizzjoni hija inkorretta stante għalkemm qiegħed jintalab li din l-estradizzjoni qegħda tintalab sabiex l-appellant iservi sentenza ta' priġunerija meta effettivament dan ma huwiex il-każ.

Illi l-Framework Decision 2009/299 jistabbilixxi r-raġunijiet għar-rifjut tal-eżekuzzjoni ta' Mandat ta' Arrest Ewropew fejn il-persuna kkonċernata ma dehrinx personalment fil-proċess tagħha. Il-premessi 1, 2, 4, 6 sa 8, 14 u 15 jiddikjaraw:

'(1) The right of an accused person to appear in person at the trial is included in the right to a fair trial provided for in Article 6 of the [ECHR], as interpreted by the European Court of Human Rights. That Court has also declared that the right of the accused person to appear in person at the trial is not absolute and that under certain conditions the accused person may, of his or her own free will, expressly or tacitly but unequivocally, waive that right.

(2) *The various Framework Decisions implementing the principle of mutual recognition of final judicial decisions do not deal consistently with the issue of decisions rendered following a trial at which the person concerned did not appear in person. This diversity could complicate the work of the practitioner and hamper judicial cooperation.*

...

(4) *It is therefore necessary to provide clear and common grounds for non-recognition of decisions rendered following a trial at which the person concerned did not appear in person. This Framework Decision is aimed at refining the definition of such common grounds allowing the executing authority to execute the decision despite the absence of the person at the trial, while fully respecting the person's right of defence. This Framework Decision is not designed to regulate the forms and methods, including procedural requirements, that are used to achieve the results specified in this Framework Decision, which are a matter for the national laws of the Member States.*

...

(6) *The provisions of this Framework Decision amending other Framework Decisions set conditions under which the recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused. These are alternative conditions; when one of the conditions is satisfied, the issuing authority, by completing the corresponding section of the European arrest warrant or of the relevant certificate under the other Framework Decisions, gives the assurance that the requirements have been or will be met, which should be sufficient for the purpose of the execution of the decision on the basis of the principle of mutual recognition.*

(7) *The recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused if either he or she was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in*

the decision, or if he or she actually received, by other means, official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial. In this context, it is understood that the person should have received such information “in due time”, meaning sufficiently in time to allow him or her to participate in the trial and to effectively exercise his or her right of defence.

(8) The right to a fair trial of an accused person is guaranteed by the [ECHR], as interpreted by the European Court of Human Rights. This right includes the right of the person concerned to appear in person at the trial. In order to exercise this right, the person concerned needs to be aware of the scheduled trial. Under this Framework Decision, the person’s awareness of the trial should be ensured by each Member State in accordance with its national law, it being understood that this must comply with the requirements of that Convention. In accordance with the case-law of the European Court of Human Rights, when considering whether the way in which the information is provided is sufficient to ensure the person’s awareness of the trial, particular attention could, where appropriate, also be paid to the diligence exercised by the person concerned in order to receive information addressed to him or her.

...

(14) This Framework Decision is limited to refining the definition of grounds for non-recognition in instruments implementing the principle of mutual recognition. Therefore, provisions such as those relating to the right to a retrial have a scope which is limited to the definition of these grounds for non-recognition. They are not designed to harmonise national legislation. This Framework Decision is without prejudice to future instruments of the European Union designed to approximate the laws of the Member States in the field of criminal law.

(15) The grounds for non-recognition are optional. However, the discretion of Member States for transposing these grounds into national law is particularly governed by the right to a fair trial, while taking into

account the overall objective of this Framework Decision to enhance the procedural rights of persons and to facilitate judicial cooperation in criminal matters ...'

L-Artikolu 4a tal-Framework Decision 2002/584 ġie miżjud bl-Artikolu 2 tal- Framework Decision 2009/299 u huwa intitolat “Deċiżjonijiet mogħtija wara proċess li fih il-persuna ma dehrirx personalment”. L-Artikolu 4a(1) jishaq kif ġej:

(a) in due time:

(i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,

and

(ii) was informed that a decision may be handed down if he or she does not appear for the trial;

or

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(c) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

(i) expressly stated that he or she does not contest the decision;

or

- (ii) *did not request a retrial or appeal within the applicable time frame;*
- or*
- (d) *was not personally served with the decision but:*
 - (i) *will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;*
 - and*
 - (ii) *will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.'*

Il-każ **C-270/17 PPU – Tupikas**, deċiż mill-Qorti tal-Ġustizzja tal-Unjoni Ewropea fit-10 ta' Awwissu 2017, kien jikkonċerna l-eżekuzzjoni ta' Mandat ta' Arrest Ewropew (MAE) maħruġ kontra individwu (Tupikas) li kien ikkundannat *in absentia* għall-proċess kriminali fil-pajjiż li hareġ il-mandat. Il-Qorti tal-Ġustizzja tal-Unjoni Ewropea kienet mitluba tiddefinixxi x'jikkostitwixxi "*l-proċess li wassal għad-deċiżjoni*" u taht liema ċirkostanzi għandha tkun obbligatorja l-estradizzjoni ta' persuna hekk ikkundannata.

Il-Qorti ddeċidiet li l-kunċett ta' "*proċess li wassal għad-deċiżjoni*" għandu jinkludi dawk il-proċeduri li jiddeċiedu b'mod awtoritattiv dwar il-htija tal-persuna u jimpongu piena definittiva, anke jekk dawn isiru fil-qorti tal-appell. Jigifieri, il-ġudizzju ma jittqisx bħala finali jekk għad hemm xi appell pendenti li jista' jbidel jew ibbaża ruħu mill-ġdid fuq il-mertu tal-każ. (enfazi ta din l Onorabbli Qorti)

F'każijiet fejn il-persuna tkun giet ikkundannata *in absentia*, il-Qorti qieset li l-awtoritajiet ġudizzjarji li għandhom jiddeċiedu dwar is-sottomissjoni għandhom obbligu li jissottomettu lill-persuna jekk fil-MAE jkun speċifikat li ġew rispettati ċerti

salvagwardji taht l-Artikolu 4a(1) tad-Dispożizzjoni tal-MAE. Dawn is-salvagwardji jinkludu, pereżempju, li l-persuna giet infurmata b'mod adegwat dwar il-proċess jew li tkun se tinghata garanzija ta' proċess gdid wara s-sottomissjoni. Jekk tali informazzjoni ma tkunx ipprovduta b'mod ċar fil-MAE, l-awtorità għudizzjarja li teżegwixxi għandha tirrikorri għall-Artikolu 15(2) u titlob informazzjoni addizzjonali minghand l-Istat li hareġ il-mandat qabel ma tiddeċiedi jekk għandhiex teżegwixxi s-sottomissjoni.

B'rabta mal-każ odjern, gie stabbilit bħala fatt li hemm appell pendenti fil-Greċja, dan ifisser li l-proċedura legali kontra l-individwu għadha mhux konkluziva.

Illi l-konkluzjonijiet milhuqa fil-każ C-270/17 PPU - Tupikas, deċiż mill-Qorti tal-Ġustizzja tal-Unjoni Ewropea fit-10 ta' Awwissu 2017 huwa simili ferm għal każ C-271/17 PPU - Zdziasek deċiż ukoll mill-Qorti tal-Ġustizzja tal-Unjoni Ewropea fit-10 ta' Awwissu 2017. F'dan il-każ kien inhareġ Mandat ta' Arrest Ewropew (MAE) kontra ċittadin Pollakk, Zdziasek, li kien jgħix fl-Olanda. Il-MAE kien mahruġ mill-awtoritajiet Pollakki sabiex tiġi eżegwita piena ta' prigunerija, li kienet ittiehdet permezz ta' kumulazzjoni ta' diversi sentenzi preċedenti. Il-Qorti fl-Olanda bagħtet numru ta' mistoqsijiet preliminari lill-Qorti tal-Ġustizzja tal-UE sabiex tiċċara jekk il-MAE setax ikun validu f'dawn iċ-ċirkostanzi, b'mod partikolari f'dawk il-każijiet fejn is-sentenza kienet saret wara proċeduri ta' appelli jew fl-assenza tal-akkużat.

Il-Qorti ċċarat li l-kunċett ta' "*proċess li wassal għad-deċiżjoni*" (li fuqha jista' jinbena MAE) jinkludi wkoll proċeduri ta' appell jew dawk ta' kumulazzjoni ta' sentenzi, meta dawn iwasslu għal deċiżjoni finali fuq il-htija u s-sentenza. Jiġifieri, jekk il-ġudizzju għadu sugġett għal appell jew għal proċess ieħor li jista' jbidel is-sentenza, dan ma jistax jitqies bħala deċiżjoni finali għall-finijiet ta' MAE. Il-Qorti saħqet ukoll li kwalunkwe proċedura sussegwenti li tinvolvi eżami shih u diskrezzjonarju tas-sustanza tal-każ għandha tiġi meqjusa parti mill-proċess originali.

Ghalhekk, il-kaz *Zdziaszek* ikkonferma li l-eżekuzzjoni ta' MAE għandha tkun ibbażata fuq deċiżjoni ġudizzjarja finali, li tkun ngħatat wara li jkunu ġew eżawriti l-proċeduri kollha ta' appell jew reviżjoni. (enfazi ta' din l-Onorabbli Qorti)

Fid-dawl tas-sentenza li qed tingħata din il-Qorti ma thossx li huwa li kaz li tidhol u tiratta mal-aggravji l-oħra imresqa mill-istess Ali Ahmed.

Fid-dawl ta' din il-konkluzjoni u fid-dawl tal-fatt li l-appellant tressaq peress li mfittex mill-awtoritajiet kompetenti ġudizzjarji fil-Greċja sabiex iservi sentenza ta' prigionerija meta effettivamente is-sentenza ta' prigionerija għadha *sub judice* u ghalhekk preżentement ma hemm ebda sentenza ta' prigionerija li huwa għandu jservi, din il-Qorti qegħda tilqa' l-appell tal-appellant Ali Ahmad, thassar id-deċiżjoni mogħtija fis-26 ta' Mejju 2025 u minflok tordna li f'dan l-istadju ma għandux jiġi estradit Ali Ahmad.

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

**Maria Grech
Deputat Registratur**