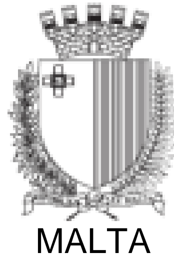

COURT OF CRIMINAL APPEAL

THE HON. MR. JUSTICE -- ACTING PRESIDENT RAYMOND C. PACE

THE HON. MR. JUSTICE DAVID SCICLUNA

THE HON. MR. JUSTICE JOSEPH ZAMMIT MC KEON

Sitting of the 20 th January, 2011

Number 17/2008

The Republic of Malta

v.

Eduardo Navas Rios

The Court:

1. This is an appeal from part of a judgement delivered by the Criminal Court on the 12th October 2009 in respect of preliminary pleas raised by appellant Eduardo Navas Rios. The appeal was lodged on the 15th October 2009.

2. Eduardo Navas Rios was charged, by means of a Bill of Indictment filed by the Attorney General on the 7th November 2008, with having (1) on the 5th March 2007 and in the preceding months, by several acts even though committed at different times but constituting a violation of the same provisions of law and committed in pursuance of the same design, rendered himself guilty of carrying out acts of money laundering by: (i) 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; (ii) concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity; (iii) 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; (iv) retaining property without reasonable excuse knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity; (v) attempting any of the matters or activities defined in the above foregoing paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code; (vi) 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 sub-paragraphs (i), (ii), (iii), (iv) and (v); (2) rendered himself guilty of theft aggravated by person, place, time and amount of the thing stolen; (3) rendered himself guilty of keeping in any premises or having in his possession, under his control any firearm or ammunition without a licence.

3. By means of a note of pleas of the 15th December 2008, the said Eduardo Navas Rios pleaded “1. The nullity of the first count of the bill of indictment in view of

the fact that the Attorney General's direction in terms of subsection (2A) of section 3 of the Prevention of Money Laundering Act (Cap. 373) was not given; 2. Without prejudice to the first plea, the nullity of the first count of the bill of indictment in view of the fact that the facts stated therein do not constitute, in substance, the offence stated or described in the said count of the indictment; 3. Without prejudice to the first two pleas, the first paragraph of the first count of the bill of indictment, particularly its second and final sentence, is merely intended to unduly prejudice the accused since the facts stated therein are unrelated to the accusation as premised in the same indictment and should be therefore deleted; 4. The inadmissibility of the evidence tendered by Dr. Stefano Filletti as well as the inadmissibility of his report (Dok. SF1) filed on the 8th November 2007, in view of the fact that section 2 of the Prevention of Money Laundering Act (Cap. 373) does not empower the Court to nominate an expert to draw up an inventory."

4. On the 16th March 2009 Dr. Joseph Giglio for the accused declared before the Criminal Court that "provided the presiding judge in the trial will emphasize to the jurors that not what is stated in the narrative part of the Bill of Indictment is to be taken into consideration but the facts that result from the evidence produced during the course of the trial, he is prepared to withdraw this [third] plea". A note was consequently filed withdrawing said third plea.

5. By means of its judgement delivered on the 12th October 2009, the Criminal Court rejected the remaining three pleas after having considered:

"With regards to accused's first plea of the nullity of the first count of the bill of indictment in view of the fact that the Attorney General's direction in terms of subsection (2A) of Chapter 373 was not given, accused submits that according to the 2008 amendment to Chapter 373 the Attorney General is bound to order whether the case is to be disposed of by the Court of Magistrates as a Court of Criminal Judicature or by this Court. As the bill of indictment

was filed on the 7th November 2008 and procedural amendments should come into effect forthwith, in pending cases, the order required by law was lacking in this case. The bill of indictment was a charge and did not remove the need of such an order.

“Counsel for the Prosecution countered by submitting that this case was instituted in 2006, when this order was not required by law.

“Now, whereas the accused is correct in submitting that by virtue of Legal Notice 105 of 2008, article 3 of Chapter 373 was amended ‘inter alia’ by the addition of a new subarticle (2A) (a) which stated textually:-

‘Every person charged with an offence against this Act shall be tried in the Criminal Court or before the Court of Magistrates……, as the Attorney General may direct …’

and that normally such procedural amendments come into application with immediate effect, in this particular case, proceedings had been instituted against the accused in 2006 when similar cases could only be tried by the Criminal Court, in view of the punishment prescribed by law. Accordingly, the Magistrates’ Court acting as a Court of Criminal Inquiry, had already commenced the compilation of evidence against accused, a compilation of evidence which could have led to the present proceedings. When the compilation of evidence was concluded, the Attorney General, decided to file the present bill of indictment according to normal procedure in similar cases, where the punishment applicable exceeds the ordinary competence of the Magistrates’ Court.

“Although this appears to be the first time that such a plea is being raised in connection with proceedings taken under Chapter 373 of the Laws of Malta, an analogy can be drawn from two judgments delivered on similar though not identical pleas raised in connection with criminal proceedings undertaken

under chapters 37 and 101 of the Laws of Malta, where provisions identical to those introduced by subarticle (2A) (a) exist.

"Two important principles emerge from these judgments. The first is that the commencement of the compilation of evidence does not depend on the 'order' issued by the Attorney General but on all the other provisions found in the Criminal Code. Such an order is only required for the purposes of determining which Court is to try the case. (Vide: Criminal Appeal : "Ir-Repubbblika ta' Malta vs. George Mifsud" [5.2.1996]). The same principle was re-affirmed by the Court of Criminal Appeal in its superior jurisdiction in the judgment: "Ir-Repubbblika ta' Malta vs. Joseph Mifsud" [29.5.2008] wherein it was stated that:

'L-ordni skond l-imsemmi artikolu 22(2) (of Chapter 101 in that case) jinhareg fil-bidu tal-proceduri quddiem il-Qorti tal-Magistrati ghall-iskop biss biex dik il-Qorti tkun tista' tirregola ruhha u tara ghandhiex tipprocedi bhala Qorti ta' Gudikatura Kriminali jew bhala Qorti Istruttorja fir-rigward ta' dawk l-imputazzjonijiet li jkunu jipotizzaw reat skond il-Kap.101. …. L-iskop ta' l-ordni (in that case dealing only with one of the charges eventually filed against the accused in the bill of indictment) … intlahaq meta l-Qorti Inferjuri (Sic!) pprocediet ghall-kumpilazzjoni, u gie ri-affermat bl-att ta' l-akkuza….li permezz tieghu akkuzi migjuba kontra Joseph Mifsud….effettivament tressqu quddiem il-Qorti Kriminali.'

"This Court rules that once the compilation of evidence legally and regularly leading to these present proceedings had already been initiated under the law as it stood at the time, when the 'order' in question was not required by law, there was no need for the Attorney General to give the directive under subarticle (2A)(a) when the 2007 amendment came into effect, as this would have been utterly superfluous and would have been tantamount to an order given by the Attorney General to himself to file

a bill of indictment at the end of the compilation of evidence.

“Procedural rules have to be applied in a practical and sensible way and not in such a way as to get criminal proceedings tied up in knots and obstructed from taking their natural legal course in the true administration of justice. The Court of Criminal Appeal in its superior jurisdiction in re” ”Ir-Repubblika ta’ Malta vs. Kevin Attard.” [20.11.2008] aptly commented that in such matters:-

‘Il-procedura hija intiza biex tghin u tippromwovi l-amministrazzjoni tal-gustizzja, mhux biex wiehed jinqeda biha biex jipprova jaghti gambetti; u fejn il-ligi ma tikkominax in-nullita` espressament, il-Qorti ghandha tkun kawta hafna qabel ma tiddikjara xi att jew xi procedura nulla.’

“In any case, this would certainly be a case where one should apply the legal maxims:-

‘interpretatio fienda est ut res magis valeat quam pereat’ and ‘benedicta est expositio quando res redimitur a destructione…’ (vide Criminal Appeal “Il-Pulizija vs. Russell Bugeja” (per V. De Gaetano C. J. [29.2.008]).

“The Court is therefore dismissing the first preliminary plea of the accused.

“With regard to his second plea relating to the nullity of the first count of the bill of indictment, accused submitted the following:- He states that the issue that has to be addressed relates to what, in actual fact, constitutes money laundering. The Attorney General was basically saying in the first count that since the accused’s economic/financial situation was such that he could not have lawfully earned the amount of money transferred to Panama, then, since such money was transferred to Panama and since it was acquired from “highly illicit activities”, this amounts

to money laundering. He submits that the acts of money laundering mentioned in the definition contained in Section 2 of Chapter 373 must be so carried out precisely for the purposes of laundering such proceeds emanating from the criminal activity. One cannot consider the acts in a vacuum and presume that whenever a transfer/acquisition/retention of money involving illicit earnings takes place, then the legislator is automatically contemplating a scenario of an additional charge of money laundering. This is because money laundering is a separate and distinct offence from the predicate offence that alone is merely one of the constituent ingredients of money laundering. If this were not the case, then the commission of any criminal offence from which some benefit is derived would automatically bring with it a charge of money laundering. To launder money by one of the acts mentioned in the said definition means precisely to give a legitimate appearance to proceeds that have an illegitimate origin. This is the raison d'etre of Chapter 373. He goes on to give examples of the illogical situation that may result out of the way the Attorney General was interpreting the law.

"The Attorney General retorted in his submissions on this plea that the facts outlined in this count of the bill of indictment gave a much clearer chronology and description of events which gave rise to the investigation and eventual prosecution of accused for money laundering than those stated by accused. The sum involved was substantial and unjustifiable considering the lifestyle of the accused and his partner Simone Sciberras. The latter had alerted the authorities when she deposited the sum of E65, 240 at one go in her account and this led to a more in depth investigation. Then it transpired that the money had come from illegal activities. The accused made numerous transactions to transfer the money out of Malta in the aggregate sum of E51,700 over a period of time and even helped rebuild his mother's house in

his homeland. In so doing accused 'cleaned' the provenance of the money which related to criminal activity.

"In this case the predicate offence was two-fold. Primarily, in the months leading up to the arrest of accused, the police were investigating a major drug and money laundering racket between Malta and Panama where the accused was being observed as possibly being one of the persons involved. Accused admitted that he had stolen the money from his cousin and it transpires that accused suspected all along that the money he took was most likely drug money He committed the theft of 'dirty money' and used same to his advantage and to that of his family. Therefore the Prosecution was contending that the laundered money appears to emanate from two predicate offences – the drug racket and the theft committed by accused himself. Finally the accused carried out transactions with said money, thus rendering it clean-looking as a result. The predicate offence in the circumstances need not be proved beyond reasonable doubt. Suspicion thereof is sufficient for the purpose of a money laundering conviction.

"The definition of money laundering in Chapter 373 is very wide in its interpretation in that it presents numerous scenarios giving rise to and constituting money laundering. The examples given by accused in his note of submissions are regulated by separate provisions and by different categorisations in our legal system. The situation in this case is rather different in that one was referring to a substantial amount of money emanating directly or indirectly, knowingly or suspiciously from criminal activity, which proceeds were knowingly retained without reasonable excuse, converted, transferred, acquired or possessed so as to conceal the provenance thereof. In view of the facts of the case it appeared clear that the intention of accused was to launder the money all along. Therefore the Attorney General

submitted that the elements and circumstances presented before this Court as constituting the facts of the first and second counts of the bill of indictment are indeed an accurate representation of the offence of money laundering for all intents and purposes of law.

"Having considered that this second plea of accused appears to be based on paragraph (b) of the proviso to sub-article (5) of article 449 of the Criminal Code which refers to the case where 'the fact stated in the indictment does not constitute, in substance, the offence stated or described in such indictment.'

"Now for such a plea to be upheld by the Court it is necessary that the facts as described in the bill of indictment or in a particular count which is being contested do not constitute in substance the offence with which accused is being charged in that bill or that particular count. (Vide: a judgement of this Court dated 20th June 1995 in re: 'Ir-Republika ta' Malta vs. Aibrahim Bashir Ben Matue' [Bill of Indictment 4/95) confirmed on appeal on the 15th February 1996, 'Ir-Repubblika ta' Malta vs. Lawrence Gatt et' [6.12.2002], confirmed by the Court of Criminal Appeal on the 22nd May 2003, "Ir-Repubblika ta' Malta vs. Domenic Bonnici" [5.1.2004] and confirmed on appeal on the 22nd April 2004 and other judgements).

"In these judgements the Court quoted from extensive case law wherein it was held that in examining whether the facts, as described, are related to the accusatory part of that particular count of the bill of indictment, the Court should refer to the facts as stated in the bill of indictment and not on the facts as resulting from the records of proceedings in the compilation of evidence or as they may result in the eventual trial by jury.

"It has also been constantly held by our Courts that the reason for the annulment of a bill of indictment should emanate from the document itself and the

Court should and need not enter into the merits of the truth or accuracy of the facts mentioned in the bill of indictment but its exercise should be limited to ascertaining whether the formalities prescribed by law have been adhered to.

"In 'Rex vs. Strickland' [21.3.1923] (Vol. XXV, p.iv., p.833) it was held that:-

'Tanto secondo la nostra gurisprudenza quanto secondo quella inglese, la nullita` dell'atto d'accusa non si accorda per ragioni nel merito ma per difetti sostanziali recanti un pregudizio, non altrimenti rimediabile nell'accusato, risultanti dalla faccia dello stesso atto che si impugna..... Da altre sentenze stampate risulta che quando si e` trattato della nullita` o meno dell'atto di accusa, tale atto e` stato sempre esaminato per se stesso, indipendentemente dal merito e delle prove.'

"Having considered;

"That in the narrative part of the first count of the bill of indictment the Attorney General mentions a chronology of facts which, according to him, should lead to a conviction of the offence of money laundering contemplated in sections 2, 3(1), 3(2A)(a)(i), 3(3) and 3(5) of Chapter 373.

"Having examined the wording of this part of the first count of the bill of indictment which has been reproduced verbatim in the introductory part of this judgement (and which therefore need not be repeated here) this Court is satisfied that the facts therein stated, if proven in the course of the trial by jury and if the jury is properly addressed by the presiding judge on the relative points of law related to the offence or offences in question, could conceivably lead to a conviction as requested in the first count. In other words it is clear that there exists the nexus - required by law and case law for the bill of indictment not to be defective - between the facts as stated in the

narrative part of the first count and the part thereof containing the charge itself (vide Rex. vs G.C.B. et altri" - 8.3.05 Vol. XIX; iv. P.18)".

"Accordingly this Court does not deem that the facts as described in the first count do not in substance constitute the offence as charged and on the contrary considers that the requirements of the law have been adhered to and that there is no case for annulling the bill of indictment on this score. Hence the court is rejecting the second plea raised by accused.

"With regard to accused's fourth plea regarding the admissibility of Dr. Stefano Filletti's evidence and report (doc. SF1), accused submits that article 2 of Chapter 373 does not empower the Court to nominate [recte: 'appoint'] an expert to draw up an inventory.

"Counsel for the prosecution countered by submitting that according to article 5 of Chapter 373, once the law provides for the issue of a freezing order, it was necessary for the Court to determine what assets were being frozen. Hence the need of the inventory which could be compiled by an expert appointed for the purpose. In this case the Prosecution had requested the Court of Magistrates to appoint an expert for the purpose (vide fols. 7 and 8 of the records).

"Having considered;

"That article 5(1) of Chapter 373 provides that :-

'Where a person is charged under article 3, the Court shall at the request of the prosecution make an order-

(a) attaching in the hands of third parties in general all moneys and other immoveable property due or pertaining or belonging to the accused, and
(b) prohibiting the accused from transferring, pledging, hypothecating or otherwise disposing of any moveable or immoveable property.'

“The law then goes on to list various powers of the court in the application of such a ‘freezing’ order.

“Clearly, the powers therein mentioned would necessitate a detailed research regarding the assets possessed by accused, a research that a Court of Law can by virtue of article 650 of Chapter 9, definitely delegate to an expert, in this case a legal expert familiar with the notions of law mentioned in said subarticle. There is certainly nothing in the law - and in particular in Chapter 373 - precluding the Court from appointing an expert on such a technical matter, providing that the information therein obtained by the expert is obtained under oath by the person or persons from whom it is obtained and that all the procedures required by law have been adhered to.

“The plea under review however is not based on the inadmissibility of evidence not so collated but merely on the alleged lack of authority of the Court of Magistrates as a Court of Criminal Inquiry to appoint such an expert in proceedings undertaken under Chapter 373.

This Court is therefore dismissing accused’s fourth plea. However, it reserves to rule on the admissibility of Dr. Filletti’s evidence and of his report, in the course of the trial by jury, if needs be, on other considerations not mentioned in accused’s plea as aforestated.”

6. As stated, the accused appealed from this part of the judgement and as results from his application of appeal, his three grievances refer to the Criminal Court’s decision rejecting his first, second and fourth pleas. These are going to be dealt with *seriatim*.

7. Appellant’s first grievance consists in the fact that his first plea should not have been dismissed. Appellant states that it is an uncontested fact that the Attorney General’s direction in terms of subarticle (2A) of article 3

of the Prevention of Money Laundering Act (Cap. 373) was not given. He says that the Criminal Court, on the basis of two judgements delivered by the Court of Criminal Appeal, argued that once proceedings had been initiated at a time when the order was not required by law, there was no need for the Attorney General to give the directive under the said provision. Appellant disagrees with the Criminal Court's conclusion, submitting that:

"the parts of the judgement in the names *Ir-Repubbblika ta' Malta v. George Mifsud* (05.02.1996) that are pertinent to the present case seem to have been overlooked. In fact, in that case the Court also stated that the Attorney General's function according to article 22(2) of the Dangerous Drugs Ordinance does not come into play as a pre-requisite for criminal procedings to be instituted but as a pre-requisite to choose the Court that will eventually judge the accused.

"That in the above-mentioned case the Court also stated that, in fact, the Attorney General may even wait until the end of the compilation of evidence before making his order in terms of the said article 22(2).

"That it is amply clear from the above that the Attorney General was obliged to give his direction in the present case and his failure to do so brings about the nullity of the first count of the bill of indictment. Furthermore, counsel for the prosecution's submission that since this case was instituted in 2006, the order was not required by law, is expressly in violation of the principle enunciated in section 27 of the Criminal Code."

8. It is in the first instance to be pointed out that the Criminal Court, in making reference to the George Mifsud judgement, did state that "the compilation of evidence does not depend on the 'order' issued by the Attorney General but on all the other provisions found in the Criminal Code", and that "such an order is only required

for the purposes of determining which Court is to try the case." It is true that the first Court did not refer to what that judgement further stated, that is to say that the Attorney General may even wait until the end of the compilation of evidence before making such an order.[1] However, what appellant is missing – and contrary to the situation in the George Mifsud case – is the fact that when he was arraigned under arrest before the Court of Magistrates (Malta) as a Court of Criminal Inquiry on the 24th March 2007, subarticle (2A) of article 3 of Chapter 373 of the Laws of Malta did not exist and a direction by the Attorney General was not required. The requirement for a direction was introduced by article 44 of Act XXXI of 2007 which came into force on the 15th January 2008 in virtue of Legal Notice 10 of 2008 – not Legal Notice 105 of 2008 as inadvertently stated in the appealed judgement. Consequently this case, which indeed started as a compilation of evidence, took and could continue taking its normal course in terms of the relevant provisions of the Criminal Code. Nor is appellant correct in stating that this is in violation of article 27 of the Criminal Code.[2] That article remains fully applicable and has no bearing on the issue at hand.[3] The Attorney General's decision whether a case should be tried by the Criminal Court or by the Court of Magistrates in any case depends on the seriousness of the offence/s concerned. And even the Court of Magistrates had decreed on the 19th April 2007 that there were sufficient grounds for the trial of the accused on indictment. Appellant can only conjecture whether, had the law been as it now stands, the Attorney General would

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[1] "Seta' effettivament gie skopert illi fl-istadju inoltrat li kienet ga` waslet fih il-kumpilazzjoni, ma kien hemm assolutament ebda rodni fit-termini ta' l-artikolu 22(2) tal-Kap. 101 u xorta wahda l-Avukat Generali kien ikun ghad ghadu fi zmien illi jipprezenta ordni anke fl-ahhar mument biex jindika liema Qorti kienet ser tiddecidi l-kaz." (**Ir-Repubblika ta' Malta v. George Mifsud**, 5 ta' Frar 1996, Vol. LXXX.IV.38)

[2] Article 27 of Chapter 9 of the Laws of Malta provides: **"If the punishment provided by the law in force at the time of the trial is different from that provided by the law in force at the time when the offence was committed, the less severe kind of punishment shall be awarded."**

[3] It would appear that the law as it stood at the time provided for the punishment of a fine not exceeding Lm1,000,000, or imprisonment not exceeding fourteen years, or to both such fine and imprisonment, meaning that the minimum punishment of imprisonment was that of one day.

have opted for the case to be tried by the Court of Magistrates. Finally, this Court reiterates what it said in its judgement in the names **Ir-Repubblika ta' Malta v. Kevin Martin Lorence Silvio Angelo Attard** delivered on the 20th November 2008 and even referred to by the first Court:

"Il-procedura hija intiza biex tghin u tippromuovi l-amministrazzjoni tal-gustizzja, mhux biex wiehed jinqeda biha biex jipprova jaghti l-gambetti; u fejn il-ligi ma tikkomminax in-nullita` espressament, il-Qorti ghandha tkun kawta hafna qabel ma tiddikjara xi att jew xi procedura nulla."

Consequently appellant's first grievance is dismissed.

9. Appellant's second grievance consists in the fact that his second plea should not have been dismissed. Appellant maintains that the facts stated in the first count of the bill of indictment do not constitute, in substance, the offence of money laundering. He says that the Attorney General contends that the fact that applicant stole an amount of money from his cousin and used such money to create a better living for his mother and for himself in Panama constitutes the offence of money laundering. Nevertheless, appellant continues, during his oral submissions the Attorney General elaborated by stating that the laundered money 'appears' to emanate from two predicate offences, the other offence being the drug racket. Appellant further submits:

"That, apart from applicant's alleged actions, the Attorney General also throws into the said count of the indictment a number of insinuations that are unrelated to the accusation and to the accused and that are simply intended to unduly influence the jurors with facts that do not constitute the predicate offence, that are not mentioned in any other count of the indictment and that, moreover, are mere conjectures.

“That one cannot consider acts in a vacuum and presume that whenever a transfer/acquisition/retention of money involving illicit earnings takes place then the legislator is automatically contemplating a scenario of an additional charge of money laundering. This is because money laundering is a separate and distinct offence from the predicate offence that alone is merely one of the constituent ingredients of money laundering. Indeed if this were not the case, then the commission of any criminal offence from which some benefit is derived would automatically bring with it a charge of money laundering. This is because the acts mentioned in the definition contained in section 2 of the Prevention of Money Laundering Act cover not only transfer of proceeds but also all other modes of coming into some form of contact with such proceeds. In fact the said provision encompasses all imaginable verbs including acquisition and retention. To launder money by one of the acts mentioned in the said definition means precisely to give a legitimate appearance to proceeds that have an illegitimate origin. This is the very scope of the Prevention of Money Laundering Act.

“That, therefore, the fact that the descriptive part of the first count of the indictment refers to facts that do not constitute the offence of money laundering and, moreover, does not in any way refer to some action on the part of the applicant tending to give a legitimate appearance to proceeds that have an illegitimate origin renders this count of the indictment null.”

10. Appellant’s second plea is clearly based on paragraph (b) of the proviso to subarticle (5) of article 449 of the Criminal Code which refers to the case where “the fact stated in the indictment does not constitute, in substance, the offence stated or described in such indictment.” In this respect this Court has examined what the first Court said in the appealed judgement and it concurs fully with the considerations made. Appellant concedes that section 2

of the Prevention of Money Laundering Act refers to all modes of coming into some form of contact with proceeds of criminal activity, such criminal activity being a drug trafficking offence as provided in the First Schedule of the Act or “any criminal offence” as provided in the Second Schedule to the Act. From a proper reading of the narrative part of the first count of the Bill of Indictment it is evident that if the facts therein stated are proven in the course of the trial by jury and, as the first Court stated, “if the jury is properly addressed by the presiding judge on the relative points of law related to the offence or offences in question”, such facts – which indicate the provenance of the funds allegedly transferred by appellant – could conceivably lead to a conviction. Appellant’s second grievance is therefore also dismissed.

11. Appellant’s third grievance refers to his fourth plea and he maintains that said plea should not have been dismissed. He says that article 2 of the Prevention of Money Laundering Act does not empower the Court to appoint an expert to draw up an inventory and consequently the evidence tendered by Dr. Stefano Filletti as well as his report are inadmissible. Appellant says that the Criminal Court stated that this plea is not based on the inadmissibility of evidence but that it was based on the alleged lack of authority of the Court of Magistrates to appoint such an expert. He says that this is incorrect and that the wording of the plea clearly refers to the inadmissibility of said evidence and report. According to appellant, whether or not such evidence and report could possibly be required for purposes relating to article 5(1) of the Prevention of Money Laundering Act is irrelevant. He is pleading the inadmissibility of the evidence and report vis-à-vis the merits of the case and such decision should be taken at this preliminary stage and not in the course of the trial by jury since this is not merely an issue of relevance.

12. Here again this Court will have to concur with the first Court’s decision on the matter. The wording of appellant’s plea is very specifically couched: “The inadmissibility of the evidence tendered by Dr. Stefano Filletti as well as the

inadmissibility of his report (Dok. SF1) filed on the 8th November 2007, in view of the fact that section 2 of the Prevention of Money Laundering Act (Cap. 373) does not empower the Court to nominate an expert to draw up an inventory" (underlined by this Court). This is clearly not a plea as to the inadmissibility of the evidence and report vis-à-vis the merits of the case, as appellant is contending, but a plea based on what appellant believes to be the absence of power of the Court to appoint such an expert. Now, the fact that in the First Count of the Bill of Indictment appellant is being accused of having committed offence/s in breach of the Prevention of Money Laundering Act does not mean that the provisions of the Criminal Code are to be forgotten. Article 650 of the Criminal Code indeed authorises the appointment of experts by the Court "where for the examination of any person or thing special knowledge or skill is required." Moreover, Chapter 373 itself does not preclude the appointment of experts. Accordingly, appellant's third grievance is also dismissed. Any other considerations there may be, as the first Court held, will have to be dealt with during the trial by jury.

13. For these reasons the Court dismisses the appeal entered by Eduardo Navas Rios from the judgement of the Criminal Court of the 12th October 2009 and orders that the record be forthwith sent back to that Court for the case to proceed according to law.

< Final Judgement >

---------------------------------END---------------------------------