MALTA

QORTI CIVILI
PRIM' AWLA
(GURISDIZZJONI KOSTITUZZJONALI)
ONOR. IMHALLEF
JACQUELINE PADOVANI GRIMA

Seduta tad-9 ta' Lulju, 2014
Referenza Kostituzzjonali Numru. 79/2013

Il-Pulizija (Spettur Fabian Fleri)

Vs

Nazzareno Grech

Il-Qorti ,

Rat ir-Referenza Kostituzzjoanli tad-9 t'Ottubru 2013, li taqra hekk:

"Dan id-digriet huwa wiehed illi jitratta dwar allegat ksur tal-Artikoli 6(3)(c) u 6(1) tal-Konvenzjoni. Dan gie nstigat mit-talba tal-Prosekuzzjoni biex jittiehdu kampjuni ta' kitba tal-imputat minghand l-imputat.

Illi ghalhekk il-Qorti ntalbet referenza Kostituzzjonali taht il-pretest illi tali talba - jekk u darba milqugha, tilledi d-drittijiet fundamentali tal-imputat, billi timmina b'mod serju d-dritt moghti lill-imputat, dritt sagrosant illi qatt ma jinkrimina jew jigi mgieghel jinkrimina lilu nnifsu.

Issa certament l-Artikolu 397 tal-Kapitolu 9 tal-Ligijiet ta' Malta, jistabilixxi l-poteri tal-Qorti f'dak illi hija tista' tordna lill-imputat jaghmel, ghalhekk tista' ggieghel li partijiet tal-gisem tal-imputat jigu ezaminati. Tista' anke l-Qorti tordna li l-imputat jaghtieha mpronti digitali, jigi fotografat u anke mkejjel - dejjem dan kollu taht dawk id-direttivi li Hi jidhrilha xieraq.

Issa d-Difiza targumenta li sa hawn biss tista' l-Qorti tinterferixxi fuq l-imputat. Sa hawn huwa permess illi provi jingabru minn fuq gisem l-imputat. Targumenta d-Difiza abazi tal-principju, "ubi lex volit, lex dixit".

Intalbet ghalhekk referenza Kostituzzjonali ai termini tal-Artikolu 46(3) tal-Kostituzzjoni.

Illi certament illi l-poteri moghtija lill-Qorti miktuba fil-Ligi, biex tigbor provi u evidenza minn fuq l-imputat, li jistghu anke jirrizultaw inkriminanti ghall-imputat, huma dawk elenkati fl-Artikolu tal-Kapitolu 9 tal-Ligijiet ta' Malta hawn fuq citat; il-mistoqsija hija jekk tali poteri humiex dawn biss ad eskluzjoni ta' ohrajn considerando z-zmien li gie promulgat il-Kapitolu 9 tal-Ligijiet ta' Malta, u l-progressi li ghamlet id- dinja llum fil-kamp finanzjarju u fl-informatika per ezempju.

Ghalhekk dan wahdu jfisser illi l-Qorti hija prekluza tmur oltre, jew di piu' jekk Qorti tmur oltre dak elenkat, qieghda tikser id-drittijiet fundamentali tal-imputat?

Biex tigi risolta din il-problema, il-Qorti tat harsa lejn diversi decizjonijiet moghtija mill-Qorti Ewropea ghad-Drittijiet Fundamentali tal-Bniedem u l-izviluppi hemm maghmula fir-rigward tal-Artikolu 6(1) taht id-dritt illi l-imputat ma jinkriminax lilu nnifsu. Issemmi din il-Qorti l-izviluppi maghmula f'decizjonijiet bhal "Saunders vs UK".

Gie stabbilit kif fil-fatt hu, illi dan l-Artikolu huwa ntiz biex jigi assigurat illi l-istat ma jihux evidenza bil-forza minghand jew minn fuq l-akkuzat.

Qalet hekk il-Qorti:

"As commonly understood in the legal systems of the Contracting Parties to the Convention and elsewhere, it does not extend to the use in criminal proceedings of material which may be

obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as inter alia, documents acquired pursuant to a warrant, breath, blood and urine samples, and bodily tissue for the purpose of DNA testing." (Harris O'Boyle & Warbrick : Law of the
European Convention on Human Rights, Second Edition, Page 260).

Saru pero diversi zviluppi ta' tali principju, zviluppi fir-rigward ta' element ta' "compulsion" illi stat jista' juza biex jottieni evidenza minghand jew minn fuq l-imputat. Issemmi din il-Qorti decizjonijiet bhal Jalloh vs Germany (2006 – IX, 44 EHRR); Funke vs France (1993,EHRR 297).

In konsiderazzjoni ta' tali zvilupp tal-kuncett ta' "compulsion" fil-konfront tad-dritt in ezami, l-Qorti pero ma tistax ma taghmilx ir-referenza segwenti:

"The right not to incriminate oneself does not generally extend to the use in criminal proceedings of material which may be obtained from the accused under compulsory powers but which has an existence independent of the will of the suspect (for example documents or materials produced by the normal functioning of the body such as breath,
blood, hair, tissue or voice samples). When obtaining the material goes beyond the mere passive endurance of a minor interference with bodily integrity, a problem may arise as in "Jalloh vs Germany", where an emetic was forcibly administered to induce the regurgitation of swallowed drugs. This was at risk to the applicant's health and most importantly a procedure which violated the prohibition of inhuman and degrading treatment under Article 3. The use as evidence of material obtained in this way infringed and rendered the trial unfair." (Karen Reid's "A Practitioner's Guide to the European Convention on Human Rights, 4th Edition, Page 250)

Il-Qorti f'dan ir-rigward ser tghaddi wkoll ghas-segwenti citazzjoni mehuda mis-sit http://biotech.law.lsu.edu. "Criminal Law, Applying the Constitutional Protections" Privilege against Self-incrimination" :

"The fifth amendment of the Constitution established the privilege against self-incrimination. This prevents the government from forcing a person to testify against himself. Although the founders were particularly concerned about persons being tortured into incriminating

themselves, the Courts have extended the privilege to any forced testimony. The result of the privilege against self-incrimination is that the state must prove its case without the help of the defendant. If the defendant stands silent, he
wins unless the state can produce sufficient evidence of his guilt. At trial, the defendant can refuse to take the stand and testify, and the prosecution may not comment on the defendant's silence: that is, no remarks about why the defendant will not take the stand and explain what really, happened.

The privilege against self-incrimination also applies to the investigation of a case. A defendant can refuse to talk to the police, but cannot refuse to appear before the grand jury. The defendant can refuse to answer questions that he believes will incriminate him, which is called "taking the fifth". The privilege applies to any crime, state or federal, so the defendant can take the fifth when he is being investigated by the state because he is concerned about implicating himself for a federal crime.

Witnesses, however, who are not defendants or potential defendants, cannot refuse to testify, and may even be imprisoned for contempt of Court if they refuse. In some circumstances, the prosecution can get around that defendant's privilege against self-incrimination by offering the defendant immunity for the crimes he might mention in testifying. Once immunized against the possibility of prosecution, the witness can no
longer refuse to testify by invoking the privilege against self-incrimination.

The privilege against self-incrimination is limited to testimony. Defendants can be forced to give hair samples, blood samples, and other bodily fluids. They can be forced to produced writing samples, and in some cases to give over information such as combinations to safes or the location of bank accounts. These are governed by the rules on searches and seizures, rather then those governing self-incriminations." (enfasi tal-Qorti)

Illi minn tali referenzi maghmula, wiehed jista' jargumenta - ghax donnu hekk qed jinghad, illi fil-fatt jekk il-Qorti tiehu minghand l-imputat kampjuni tal-kitba tieghu, ma tkun qed tiksirlu ebda dritt fundamentali taht l-Artikolu citat tal-Konvenzjoni. Din il-Qorti pero qed tghid biss illi hekk jidher mhux li hu, anke ghax dan il-punt huwa wiehed ta' kamp ta' kompetenza gudizzjarja ohra! Thoss fil-fatt illi r-referenza lilha mitluba, kif gia' esposta, mhix fic-cirkostanzi wahda frivola u vessatorja, u ghaldaqstant, ai termini tal-Artikolu 43(3)

tal-Kostituzzjoni, tibghat din il-lanjanza, cioe' jekk kampjun tal-kitba tal-imputat mehud minghandu jiksirx id-dritt tieghu li ma jinkriminax lilu nnifsu, ghall-ezami aktar approfondit mill-Qorti kompetenti, cioe' il-Prim Awla tal-Qorti Civili, Sede Kostituzzjonali."

Rat id-digriet ta' din il-Qorti tal-10 t'Ottubru 2013 fejn appuntat l-atti tar-referenza ghas-smiegh ghal-Hamis 7 ta' Novembru 2013 fil-9.45am;

Rat li l-partijiet gew notifikati bir-referenza, d-digriet u bl-avviz tas-smiegh;

Rat ir-risposta tal-Avukat Generali tal-31 t'Ottubru 2013 li taqra hekk:

1. *"Illi fir-riferenza kostituzzjonali odjerna din l-Onorabbli Qorti qeghda tigi mitluba biex tiddetermina jekk it-talba tal-prosekuzzjoni ghal kampjun ta' kitba tal-imputat Nazzareno Grech, jekk u darba milqugha, tilledix id-drittijiet fundamentali tal-istess imputat li ma jinkriminax lilu nnifsu a tenur tal-Artikoli 6 (3) (c) u 6 (1) tal-Konvenzjoni Ewropea ghad-Drittijiet u l-Libertajiet Fundamentali tal-Bniedem.*

2. *Illi fl-ewwel lok u a skans ta' kull ekwivoku, l-esponent jibda billi jirreferi ghall-argument tad-difiza msemmi fid-digriet ta' riferenza u sa certu punt ghall-konsiderazzjonijiet tal-Qorti riferenti nfisha li donnu jimplikaw li ghax l-Artikolu 397 tal-Kap 9 tal-Ligijiet ta' Malta ma jispecifikax b'mod kategoriku t-tehid ta' kampjun ta' kitba f'dak l-Artikolu, allura jekk il-Qorti tordna tali tehid, hija potenzjalment tkun qed tmur "oltre" l-poteri taghha u li jekk tmur oltre tista' tkun qed tilledi d-drittijiet fundamentali tal-imputat.*

3. *Illi bir-rispett kollu l-esponent ma jaqbilx ma' dan l-argument. Anzi, fost il-poteri li l-Qorti Struttorja ghandha skont l-Artikolu 397 (1) tal-Kap 9, hija ".... tista' tordna.....<u>kull haga ohra li tinhtieg biex il-gabra tal-provi tal-kawza tkun kompluta minn kollox</u>." Isegwi ghalhekk li apparti mpronti digitali, fotografija tal-imputat ecc li huma espressament imnizzla fl-Artikolu 397 imsemmi, jekk il-Qorti tqis li kampjun ta' kitba huwa mehtieg ghal finijiet ta' gbir ta' provi, hija dejjem ghandha s-setgha kollha li taghmel dan skont il-ligi u minghajr allura ma tmur oltre l-poteri taghha*

4. *Illi sorvolat dan il-punt, l-esponent jeccepixxi li jekk it-talba tal-prosekuzzjoni ghall-kampjun tal-kitba tintlaqa' mill-Qorti riferenti, m'ghandu jirrizulta li hemm ebda lezjoni tad-drittijiet fundamentali tal-bniedem.*

6. *Illi dwar il-principju tad-dritt li persuna ma tinkriminax ruhha, fil-kaz Tirado Ortiz and Lozano Martin v. Spain* [1] *intqal hekk mill-Qorti Ewropea ghad-Drittijiet tal-Bniedem:*

"The applicants alleged that their conviction for serious failure to obey orders for refusing to submit to a breath test infringed the principle that anyone charged with a criminal offence has the right not to make self-incriminating statements... The right not to incriminate oneself is primarily concerned, however, with respecting the will of an accused person to remain silent .. .it does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as, inter alia, documents acquired pursuant to a warrant; breath, blood and urine samples; and bodily tissue for the purpose of DNA testing..."

7. *Illi inoltre f' kaz aktar ricenti fl-ismijiet Niculescu v Romania deciz fil-25 ta' Gunju 2013* [2]*, il-Qorti Ewropea qalet hekk:*

" As regards the privilege against self-incrimination or the right to remain silent, the Court reiterates that these are generally recognised international standards which lie at the heart of a fair procedure. Their aim is to provide an accused person with protection against improper compulsion by the authorities and thus to avoid miscarriages of justice and secure the aims of Article 6. The right not to incriminate oneself is primarily concerned with respecting the will of an accused person to remain silent and presupposes that the prosecution in a criminal case seeks to prove the case against the accused without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see Saunders v. the United Kingdom, 17 December 1996, §§68-69, Reports 1996-VI). In examining

[1] *App Nru 43486/98, deciz fit-22 ta' Gunju 1999*
[2] *App Nru 25333/03*

whether a procedure has extinguished the very essence of the privilege against self-incrimination, the Court must examine the nature and degree of the compulsion, the existence of any relevant safeguards in the procedures and the use to which any material so obtained is put (see Bykov v. Russia [GC], no. 4378/02, § 92, 10 March 2009)[3]*."*

5. *Illi b'applikazzjoni tal-principji suesposti ghall-fattispecie tal-kaz odjern 1-esponent jeccepixxi li l-uzu tal-prova in kwistjoni hi permissibli u hi legalment producibbli. Id-dritt tal-imputat Nazzareno Grech li ma jinkriminax lilu nnifsu ma jipprekludix lill-pulizija milli tinvestigah fuq suspett li kkommetta reat kriminali u wisq inqas jipprekludi lill-Qorti tal-Magistrati bhala Qorti Struttorja, issa li l-imputat tressaq quddiemha milli tordna li jsir dak kollu necessarju sabiex jingabru l-provi fil-proceduri li ghaddejjin kontrih. Sakemm tali provi, inkluz it-tehid ta' kampjun tal-kitba, jingabru bil-prekawzjonijiet kollha mehtiega sabiex jigu salvagwardati id-drittijiet tal-imputat m'ghandu jinholoq ebda dubju li l-imputat jista' jigi meqjus li nkrimina lilu nnifsu jew li ser jigi mgieghel jinkrimina lilu nnifsu.*

   Ghaldaqstant u fid-dawl tas-suespost l-esponent jitlob lil din l-Onorabbli Qorti sabiex twiegeb ghall-kwistjoni riferita lilha mill-Qorti tal-Magistrati bhala Qorti Struttorja bid-digriet taghha tad-9 ta' Ottubru 2013 billi ssib li t-tehid ta' kampjun tal-kitba tal-imputat Nazzareno Grech ma jilledix id-drittijiet fundamentali tieghu li ma jinkriminax lilu nnifsu a tenur tal-Artikoli 6 (3) (c) u 6 (1) tal-Konvenzjoni Ewropea ghad-Drittijiet u l-Libertajiet Fundamentali tal-Bniedem.

   Salvi eccezzjonijiet ulterjuri."

Rat in-nota ta'sottimissjonijiet ta'Nazzareno Grech tat-12 ta' Frar 2014;

Rat in-nota ta'sottimissjonijiet tal-Avukat Generali tat-13 ta' Marzu 2014;

Rat id–dokumenti ezebiti u l-atti kollha tal-kaz;

[3] *Paragrafu 111 tas-sentenza*

Rat il-verbal tat-2 ta' Mejju 2014 illi bih il-partijiet qabblu li din il-Qorti tista' tirreferi ghall-atti processwali pendenti quddiem il-Qorti tal-Magistrati Malta bhala Qorti ta' Gudikatura Kriminali fl-ismijiet il-Pulizija (Spettur Fabian Fleri) vs Nazzareno Grech;

Semghet it-trattazzjoni tal-partijiet;

Ikkonsidrat:

Ir-Referenza Kostituzzjonali tal-Qorti tal-Magistrati tad-9 t'Ottubru 2013, tikkoncerna t-tehid ta' kampjun ta'kitba tal-imputat u jekk dan jillediex id-dritt tal-imputat li ma jinkriminax ruhu.

Il-Qorti ma tistghax tibda bl-analizi taghha jekk kemm-il darba ma jigix apprezzat u studjat l-Artikolu 397 tal-Kapitolu 9 tal-Ligijiet ta' Malta li jistabilixxi l-poteri ta' Qorti Istruttorja u l-ordnijiet li tista' taghmel fil-konfront tal-imputat ghat-tehid ta' kampjuni mill-gisem tal-imputat u testijiet forensici ohra illi tista' tordna illi jsiru.

L-Artikolu 397 tal-Kapitolu 9 tal-Ligijiet ta' Malta jaqra testwalment hekk:

> ***397. (1) Il-qorti tista' tordna t-taħrika ta' xhieda u l-produzzjoni ta' provi li jkun jidhrilha meħtieġa, kif ukoll il-ħruġ ta' ċitazzjonijiet jew mandati ta' arrest kontra kull awtur ieħor jew kompliċi li hija tikxef. Il-qorti tista' tordna wkoll aċċessi, perkwiżizzjonijiet, esperimenti, u kull ħaġ'oħra li tinħtieġ biex il-ġabra tal-provi tal-kawża tkun kompluta minn kollox.***
>
> ***(2) Il-qorti tista' wkoll, taħt dawk il-kawtieli li jidhrilha meħtieġa sabiex titħares id-deċenza, teżamina jew tordna li tiġi eżaminata minn periti xi parti tal-ġisem tal-imputat jew tal-persuna li fuqha jew li magħha jkun jingħad li sar id-delitt, kemm-il darba l-qorti tkun tal-fehma li***

minn dak l-eżami tista' toħroġ prova kontra jew favur l-imputat.

(3) Il-qorti tista' tordna wkoll, fuq talba tal-Pulizija, li l-imputat jiġi iffotografat, meqjus jew li jittieħdu l-istampi ta' subgħajh:

Iżda, jekk imputat, li qabel ma jkun ġie qatt ikkundannat fuq delitt, jiġi illiberat, il-fotografiji kollha (negattivi u kopji), l-istampi kollha tas-subgħajn, u n-notamenti kollha fuq il-qisien hekk meħuda, għandhom jiġu meqruda jew mogħtija lill-persuna illiberata.

(4) Il-fotografiji, l-istampi tas-swaba u l-qisien imsemmijin fl-aħħar subartikolu qabel dan, jiġu meħuda skont ir-regolamenti li minn żmien għal ieħor jiġu magħmula mill-Ministru responsabbli għall-ġustizzja.

(5) Il-qorti tista' wkoll tordna l-arrest tal-imputat li ma jkunx ġa taħt arrest.

Ikkonsidrat:

Il-Qorti taghraf illi t-tehid tal-kaligrafija tal-imputat jista' jigi klassifikat bhala wiehed mill-perkwiżizzjoniet l-anqas invasiv li jezisti sal-gurnata tal-llum.

Illi mill-Artikolu 397 tal-Kapitolu 9 tal-Ligijiet ta' Malta fuq kwotat, huwa evidenti li l-ligi Maltija tipermetti l-ezamijiet tal-partijiet tal-gisem tal-imputat kemm ghall-dak li jirrigwardja kampjuni intimi kif ukoll ghall-dawk mhux intimi li jkopru sintendi kampjun tal-kaligrafija moghti mill-imputat. Il-Kodici Kriminali fl-Artikolu 397 (1) jippreciza dan il-poter tal-Qorti Istruttorja meta jghid: ***"... Il-qorti tista' tordna wkoll aċċessi, perkwiżizzjonijiet, esperimenti, u kull ħaġ'oħra li tinħtieġ biex il-ġabra tal-provi tal-kawża tkun kompluta minn***

kollox”.Illi din l-ahhar parti tal-Artikolu 397 li giet sottolinejati minn din il-Qorti, kienet intiza mill-Legislatur Malti biex tkopri dawk l-izviluppi xjentifiki u forensici li, mal-medda taz-zmien, jigu skoperti, minghajr il-htiega ta’ bdil kontinwu fil-legislazzjoni. Ix-xjenza tal-kaligrafija hija wahda minn dawn l-izviluppi forensici.

Il-Qorti tghaddi biex tezamina jekk kemm-il darba t-tehid tal-kaligrafija tal-imputat jilleediex id-dritt fundamentali tieghu taht Artikolu 6 tal-Konvenzjoni Ewropea ghad-Drittijiet u l-Libertajiet Fundamentali tal-Bniedem.

Dwar l-Artikolu 6 tal-Konvenzjoni Ewropea, jinghad:

> ***“While the conformity of a trial with the requirements of Article 6 must be assessed on the basis of the trial as a whole, a particular incident may assume such importance as to constitute a decisive factor in the general appraisal of the trial overall.”*** (Karen Reid's A Practitioner's Guide to the European Convention on Human Rights, 3rd Edition, Page 70)

> ***“The Court’s task with regard to a complaint under Article 6 is to examine whether the proceedings, taken as a whole, were fair and compiled with the specific safeguards stipulated by the convention.”*** – vide “The European Convention on Human Rights”, - Jacobs, White and Ovey.

Ikkonsidrat:

Id-dritt tal-imputat li ma jinkriminax lilu nnifsu fil-proceduri kriminali gie dikjarat bhala:

> “the privilege ***– a bastion of human freedon from oppression by the state ...:***
>
> ***The privilege against compulsory self-incrimitaion is part of the common law of human rights. It is based on the desire to protect personal freedom and human dignity. These social***

> ***values justify the impediment the privilege presents to judicial or other investigation. It protects the innocent as well as the guilty from the indignity and invasion of privacy which occurs in compulsory self-incrimination. It is society's acceptance of the inviolability of human personality."***

Vide per Murphy J in Pyneboard Pty Ltd v Trade Practices Commission (1983) 152 CLR 328 at 346, kwotat fi **Cross & Tapper- On Evidence** - 8th Edition a fol. 454.

Infatti, *"the right to silence and right not to incriminate oneself are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6"* (vide **Saunders vs Uk** App Nru 19187/91 deciz fis-1**7 ta' Dicembru 1996**.)

It-tehid sfurzat tal-kaligrafija tal-imputat, ai termini tal-Artikolu 397 tal-Kapitolu 9 jista' jigi ekwiparat mad-dritt li imputat li ma jinkriminax ruhu?

> ***"In such cases the privilege may not be invoked to prevent such construction when it would frustrate the whole purpose of the investigation. Where an aspect of evidence falls outside the ambit of the Code the general law applies, and in principle the gathering of evidence for the purposes of a criminal prosecution is not subject to the privilege. This has been held to permit the gathering of real evidence, such as the sound of a person's voice (R v Deenik (1992) Crim LR 578); samples from a person's body (R vs Apicella (1985) 82 Cr App Rep 295; Schmerber vs California 384 US 757 (1966)); subject only to obedience to the normal rules related to trespass and assault, and not to be controllable by reference to the privilege against self incrimination. Indeed in such cases, it seems that adverse comment could be made upon, and adverse inferences drawn from, the accused's exercise of his right of refusal."***

> *(vide **R vs Smith** (1985) Crim LR 590)*" **Cross & Tapper - On Evidence -** 8th Edition at page 456.

Is-sinjifikat korett tal-kuncett kardinali li l-imputat ma jinkrimax lilu innifsu fi procedura kriminali gie mfisser fil-kawza **Jalloh vs Germany** App nru 54810/00 deciz fil-**11 ta' Lulju 2006**, fejn il-**Grand Chamber tal-Qorti Ewropea ghad-Drittijiet tal-Bniedem** irriteniet:

> ***"The Court has consistently held however that the right not to incriminate oneself is primarily concerned with respecting the will of an accused person to remain silent. As commonly understood in the legal systems of the Contracting Parties to the Convention it does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory power but which has an existence independant of the will of the suspect such as, inter alia, documents acquired pursuant to a warrant, breath, blood, urine, hair, or voice samples and bodily tissue for the purposes of DNA testing."***

Vide **Saunders vs Uk** App Nru 19187/91 deciz fis-**17 ta' Dicembru 1996** a fol. 69; **Choudhary v UK** App Nru 40084/98 deciz fil-**4 ta' Mejju 1999**; **JB vs Switzerland** App Nru 31827/96 deciz fit-**3 ta' Mejju 2001**, u **Tirado Ortiz and Lozano Martin v. Spain** App Nru 43486/98, deciz fit-**22 ta' Gunju 1999**.

Kif tajjeb gie citat mill-Qorti tal-Magistrati fir-referenza taghha datata 9 t'Ottubru 2013,

> ***The privilege against self-incrimination is limited to testimony. Defendants can be forced to give hair samples, blood samples, and other bodily fluids. They can be forced to produced writing samples, and in some cases to give over information such as combinations to safes or the location of bank accounts. These are governed by the rules on searches***

and seizures, rather then those governing self-incriminations."

Il-Qorti trid tezamina ukoll *"...the nature and degree of the compulsion, the existence of any relevant safeguards in the procedures and the use to which any material so obtained is put,"* skond dak ritenut fis-sentenza tal-Qorti Ewropea fi **Bykov v. Russia** [GC], no. 4378/02, § 92, **10 March 2009** u **Niculescu v Romania** deciz fil-**25 ta' Gunju 2013** App Nru 25333/03.

Il-Qorti tqis illi t-tehid tal-kaligrafija tal-imputat, kif inghad aktar kmieni, huwa wiehed mill-perkwizizzjonijiet mill-anqas invasi permessi mill-Kodici Kriminali u t-tehid tieghu minnu nnifsu ma jinvolviex xi riskju ghas-sahha ghall-imputat, lanqas ma tesponieh ghal trattament inuman jew degradanti. Illi di piu' l-uzu tal-kaligrafija tal-imputat ser jigi analizzat minn espert tal-kaligrafija bis-salvagwardi kolha li taghti il-ligi.
Ghal dawn il-mottivi l-Qorti tqis illi it-talba da parti tal-prosekuzzjoni ghat-tehid tal-kampjun tal-kitba tal-imputat minghand l-imputat ma timminax id-dritt tieghu li ma jinkriminax lilu innifsu u ghaldaqstant ma jivvjolax l-Artikolu 6 tal-Konvenzjoni Ewropea ghad-Drittijiet u l-Libertajiet Fundamentali tal-Bniedem.

Il-Qorti tordna li kopja ta' din is-sentenza tintbaghat lill-Qorti tal-Magistrati (Malta) bhala Qorti Struttorja, biex tigi inserita fl-atti tal-Kumpilazzjoni l-**Pulizija (Spettur Fabian Fleri) vs Nazzareno Grech**.

Spejjez marbuta ma' din id-decizjoni jibqghu bla taxxa bejn il- partijiet.

Moqrija.

< Sentenza Finali >

----------TMIEM----------