



## Qorti tal-Appell Kriminali

Onor. Imhalledf Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

**Appell Numru: 150 / 2019**

Il-Pulizija

Spettur Mario Haber

Spettur Daryl Borg

vs

**Claus Peter Reisch**

Illum, 7 ta' Jannar, 2020

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellant Claus Peter Reisch, detentur tal-passaport Germaniz bin-numru CF75M07TP, akkuzat quddiem il-Qorti tal-Magistrati (Malta) talli:

1. Fis-27 ta' Gunju 2018 u fil-jiem ta' qabel din id-data, bhala il-Kaptan tal-Vapur M.V. Lifeline, uza l-imsemmi dghajsa jew bastiment fl-ibhra territorjali jew interni ta' Malta, meta din id-dghajsa jew bastiment ma hux registrat ma' l-Awtorita fir-registru ghal-Bastimenti Zghar mwaqqfa skont regolament maghmula taht dan l-artikolu, jew meta l-imsemmi dghajsa jew bastiment ma hux registrat taht l-Att dwar il-Bastimenti Merkantili, jew meta l-imsemmi

dghajsa jew bastiment ma hux registrat jew dokumentat ghas-sodisfazzjon tal-Awtorita taht ligi ta' xi pajjiz iehor li mhux Malta;

2. Talli fl-istess cirkostanzi, fis-27 ta' Gunju 2018 u fil-jiem ta' qabel din id-data, bhala il-Kaptan tal-Vapur M.V. Lifeline, uza ghal jew b'konnessjoni ma xi kummerc, negozju jew zjara fl-ibhra territorjali u interni ta' Malta l-imsemmija dghajsa jew bastiment meta l-istess dghajsa jew bastiment ma kellix il-licenzja mehtiega mill-Awtorita ghat-Trasport f'Malta ghal dak il-kummerc, negozju jew zjarar.

Din il-Qorti giet bir-rispett mitluba sabiex skont dak li jistipula l-artikolu 23 tal-kodici Kriminali tordna l-konfiska tal-corpus delicti u tal-istrumenti li servew jew li kien mahsub li jservu sabiex isir id-delitt, partikolarment tal-Vapur M.V. Lifeline.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) tal-14 ta' Meju, 2019, fejn il-Qorti ma sabitx lill-imputat hati tat-tieni (2) imputazzjoni u minnha illiberatu u wara li rat l-Artikoli 4(1) u 42 tal-Kap 352 tal-Ligijiet ta' Malta sabet lill-imputat hati tal-ewwel (1) imputazzjoni u ikkundannatu ghaxart elef ewro (€10,000) multa.

Il-Qorti irrakomandat lill-Gvern li l-multa imposta jew ekwivalenti taghha meta tithallas, titqassam b'mod ugwali lil dawn l-istituzzjonijiet li tant jahdmu biex jghinu l-ifqar fost il-fqar lil persuni li jsibu refugju f'pajjizna: Is-Sorijiet tal-Ursolini, Is-Salesjani ta' Don Bosco, Dar Emmaus f'Ghawdex u Dar Merhba Bik.

Stante li l-bastiment involut mhux propjeta' tal-imputat, il-Qorti ma setghetx tilqa' t-talba tal-Prosekuzzjoni li jkun issekwestrat M.V. Lifeline.

Il-Qorti ordnat li hekk kif din is-sentenza tghaddi in gudikatat l-M.V. Lifeline ma jibqax fil-kustodja tar-Registratur tal-Qorti.

Rat ir-rikors tal-appellanti Claus Peter Reisch minnhu pprezentat fl-24 ta' Mejju, 2019, fejn talab lil din il-Qorti joghgobha tirriforma s-sentenza fuq indikata tal-erbghatax (14) ta' Mejju tas-sena 2019 moghtija mill-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali billi tikkonferma l-konkluzjoni tal-Ewwel Qorti fir-rigward tat-tieni akkuza u fir-rigward tat-talba ghall-konfiska tal-corpus delicti, filwaqt li tirrevoka l-htija marbuta mal-ewwel akkuza tilliberah minnha.

Rat illi l-aggravji tal-appellant Claus Peter Reisch huma cari u manifesti u dan jinsab fil-fatt illi l-Ewwel Qorti ma ghamiltx, bir-rispett kollu, apprezzament tajjed bizejjed tal-fatti kif jirrizultaw mill-provi prodotti, u dan qieghed jinghad limitament u esklussivament dwar l-ewwel akkuza.

#### L-Ewwel Aggravju – Nuqqas ta' l-Ahjar Prova

Fl-umli fehema ta' l-imputat appellant, l-Ewwel Onorabbli Qorti naqset milli tosserva nuqqasijiet tal-prosekuzzjoni, meta din rressqet ix-xhieda taghha. Dan jirrigwardja ix-xhieda ta' l-Awtoritajiet Olandizi, li tant kienet importanti ghal Prosekuzzjoni sabiex tipporva li l-bastiment ma kellhiex registrazzjoni ai fini tal-akkuzi mahrugin kontra l-imputat appellant. Ghal Prosekuzzjoni, kienet din ix-xhieda li tholl jew torbot l-akkuzi fil-konfront ta' Claus Peter Reisch.

Mill-atti tal-process johrog il-fatt illi meta il-prosekuzzjoni bghatet il-mistoqsijiet rogatorji taghha flimkien ma' xi dokumenti ghall-apprezzment tal-Awtoritajiet Olandizi fir-rigward tal-validita' o meno tar-registrazzjoni tal-bastiment M.V. Lifeline, il-prosekuzzjoni naqset milli taghti kopja tac-certifikat imsemmi 'International Certificate for Pleasure Craft' (ICP).

Illi b'kull dovut rispettt, kien jinkombi fuq il-prosekuzzjoni illi sabiex tigbor informazzjoni korretta u kompluta, kellha tressaq dan id-dokument ghall-attenzjoni tal-Awtoritajiet Olandizi sabiex dawn tal-ahhar jkollom il-possibilita' li jaghtu l-informazzjoni mehtiega u relevanti fuq dan id-dokument ukoll. Qieghed jigi sottomess illi kien ikun hekk biss illi l-prosekuzzjoni kienet tkun qedgha tressaq l-ahjar prova. Bhala stat ta' fatt, dan ma sarx.

A fol. 350 tal-process hemm dikjarat is-segwent:

“The certificate under ‘Doc A’ is a valid registration certificate that gives the ship the Dutch Nationality (note of reporting authorities: Document A has not been submitted by the Maltese Authorities).”

Allura l-Awtoritajiet Olandizi ma setawx jirrispondu u jaghtu il-fehma taghhom dwar ir-registrazzjoni tal-bastiment fid-dawl ta' dan id-dokument importantissimu f' din il-kawza. Ladarba il-prosekuzzjoni qedgha tistrieħ tant fuq ix-xhieda tal-Awtoritajiet Olandizi, kien jinkombi fuq il-prosekuzzjoni illi taghti l-informazzjoni kollha lill-Awtoritajiet Olandizi sabiex din il-Qorti tkun tista taghmel l-apprezzament shih taghha. Ghaldaqstant, il-prosekuzzjoni naqset milli taghmel ezercizzju li tassigura illi tressaq il-provi kollha li hi kellha tal-kaz u li bl-istess ezercizzju allura li tressaq l-ahjar prova ghal kaz.

Dwar dan l-argument kienet ikkumentat il-Qorti tal-Magistrati fis-sentenza fl-ismijiet Il-Pulizija vs Eucharist Baldacchino et deciza 12 ta' Novembru tas-sena 2003 fejn intqal:-

*“Huwa minnu li l-Prosekuzzjoni stqarret li l-imputati odjerni ma dehrux fih pero xorta l-obbligu tal-Prosekuzzjoni hu li tressaq kull prova favur u kontra l-akkuzat, kif provdut fl-artikolu 356 tal-Kap 9 tal-Ligijiet ta' Malta. (sottolinear tal-Qorti)”*

L-istess sentenza imbgħad għamlet referenza għas-sentenza tal-Qorti tal-Appell Kriminali fl-ismijiet Il-Pulizija vs Victor Sammut deciza 24 ta' Lulju tas-sena 2000 fejn elaborat dwar l-obbligu tal-Prosekuzzjoni li tressaq "*il-provi kollha li tkun gabret fuq reat.*" Skond is-sub artikolu 1 tal-artikolu 356 tal-Kap 9 tal-Ligijiet ta' Malta u l-kliem 'kull informazzjoni oħra li jista jkollha dwar r-reat. Fis-sub artikolu 2 tal-istess artikolu l-obbligu tal-Pulizija Ezekuttiva li johrog mill-artikolu 365(1) tal-Kap 9 hu li jharrek ix-xhieda sew għall-akkuza kif wkoll għal imputat, biex jidhru quddiem il-Qorti tal-Magistrati necessarjament jimplika jew li hemm proceduri gudizzjarji quddiem dik il-Qorti jew li jkunu ser jinbdeu dawk ilproceduri. F'tali sitwazzjoni il-Pulizija Ezekuttiva hi obligata li tharrek dawk ix-xhieda li tkun taf bihom u li jistghu jagħmlu prova favur l-imputat, kif wkoll li tharrek kull persuna oħra li tigi talvolta indikata mill-imputat bhala xhud in difesa.

L-istess argument gie kkonfermat f'sentenza aktar ricenti deciza mill-Qorti tal-Appell Kriminali nhar it-13 ta' Settembru tas-sena 2018 fl-ismijiet il-Pulizija vs Maxine Rose Zammit fejn qalghet hekk:

*"Therefore, the appellant is correct when in his appeal he states that the prosecution has to prove its case in the best way and is bound to bring forward all evidence against and in favour."*

Fil-kaz odjern mhux qed nitklemmu dwar tahrik ta' persuni izda qedghin nitkellmu dwar dokumenti illi dwarhom il-Prosekuzzjoni gabret xhieda mill-Awtoritajiet Olandizi. Minkejja dan, il-principju jibqa l-istess ilghaliex kif diga ingħad, ladarba intalbet assistenza li wiehed jista jqisa bhala wahda teknika jew anke esperta, mela allura l-istess kejl kellhu jintuza sabiex tingabar din l-evidenza dwar id-dokument ICP imsemmi izjed il-fuq. Izda dan ma sarx. Minflok il-Prosekuzzjoni għazlet li tressaq xhud sabiex jixhed fuq certifikat li għal finijiet ta' dan il-process ma ntwerix lill-istess xhud.

Is-sentenza fl-ismijiet Repubblica ta' Malta vs. George Spiteri deciza mill-Qorti tal-Appell Kriminali nhar il-5 ta' Mejju tas-sena 2002 jipprovdi s-segwenti:

*"Huwa principju fundamentali fil-process kriminali li l-ligi tesigi li kull min jrid jipprova xi haga, ghandu jressaq l-ahjar prova, u dan jista' biss jaqa' fuq prova sekondarja kemm il-darba din l-ewwel jew l-ahjar prova mhix disponibbli".*

Ir-relevanza ta' din is-sottomissjoni hija spjegata ahjar fis-sentenza fl-ismijiet Il-Pulizija vs Matthew Borg moghtija mill-Qorti tal-Magistrati nhar l-10 November tas-sena 2014 fejn jinghad is-segwenti:-

*"Illi fid-awl tas-suespost u cioe' x'inhw l-ahjar prova, il-Qorti tissottolinea li huwa ben saput li l-apprezzament tal-provi ghandu jsir mhux biss b'mod spezzettat w individwali izda l-provi ghandhom jigu analizzati flimkien fl-assjem taghhom sabiex wiehed jara x'inferenzi jew interpretazzjoni ragjonevoli u legali jista' jaghti lil daww il-provi hekk interpretati. Ma tistax tinstab htija jew nuqqas ta' htija semplicement fuq analizi ndividwali jew separata tal-provi. Dawn ghandhom jigu kkunsidrati kemm individwalment kif ukoll kompleksivament."*

Bl-istess mod, sabiex l-Awtoritajiet Olandizi setghu jaghtu pozizzjoni korretta u cara dwar ir-registrazzjoni tal-bastiment, kellhom jitpoggew fil-possibilita li jevalwaw id-dokumenti kollha mressqa lilhom u jaghmlu evalwazzjoni b'mod kompleksiv, u mhux b'mod spezzat jew individwali. Izda kif diga imghad, dan ma sarx.

Jigi enfassizat ukoll illi li titressaq l-ahjar prova mhix biss possibilita' li ghandha tigi esplorata mill-prosekuzzjoni sabiex taghmel il-kaz taghha izda huwa stabbilit mill-Qorti illi il-prosekuzzjoni hija obbligata li tipprezenta l-ahjar prova. – Il-Pulizija vs Brian Sciberras – Appell Kriminali 2 April 2014

Illi dan kollu qieghed jinghad fid-dawl tal-fatt li fil-mistoqsijiet li gew maghmula mill-prosekuzzjoni lill-Awtoritajiet Olandizi, apparti li ma giex ezebet ic-certifikat hawn fuq imsemi, il-prosekuzzjoni taghmel referenza ghal dikjarazzjoni maghmula mill-Awtoritajiet Olandizi fil-konfront ta' bastiment iehor li jgib l-isem ta' M.V. Seefuchs.

A fol. Numru 391 hemm dikjarat:

*"It is an answer to a question from Gordon Isler on behalf of Seefuchs. It is therefore a different case. (Seefuchs from Sea Eye). But it is a similar case of another German organisation. It is a question put to the Dutch Coast Guard. The Coast Guard forwarded the question to us. And we answered the question. And the email that you submitted to us is that answer."*

Sussegwentament l-Awtoritajiet Olandizi jiddikjaraw li hargu dikjarazzjoni ohra dwar Lifeline, pero referenza ghal din id-dikjarazzjoni saret minghajr ma kellha kopja ta-certifikat ICP li tiffirma mertu ta'dan il-kaz. Konsegwentament ma nistghux inkunu certi li referenza qedgha ssir ghall-istess certifikat.

Ghalhekk il-konkluzzjonijiet ta' l-Awtoritajiet Olandizi, ghall-finijiet ta'dan il-process, huma biss assunsonijiet fuq 'e-mail' li ntbaghat in rigward bastiment iehor u cioe 'M/V Seefuchs'. Il-fatt li l-Awtoritajiet Olandizi sostnew li s-sitwazzjoni tal-bastiment 'M/V Lifeline' huwa l-istess bhal 'M/V Seefuchs' m'huwiex bizzzejjed. Huma kienu qedghin jaghmlu dikjarazzjonijiet minghajr ma gew ipprezentati b'kopja ta-Certifikat ICP. Ghalhekk l-Ewwel Onorabbli Qorti minflok hadet in konsiderazzjoni ta'dan il-fatt strahet b'mod shih fuq il-konkluzzjonijiet li ghamlu l-Awtoritajiet Olandizi.

It-Tieni Aggravju - Nuqqas ta'Apprezzament fuq il-Provi dwar ir-Registrazzjoni tal-Bastiment.

Illi dan l-aggravju huwa minghajr pregudizzju ghall-aggravju suespost.

(i) Nuqqas ta' Evalwazzjoni mill-Ewwel Qorti dwar in-natura tal-International Certificate for Pleasure Craft (ICP)

Ic-certifikat ta' registrazzjoni li kien abbord il-bastiment M.V. Lifeline kien 'International Certificate for Pleasure craft' (ICP) mahrug minn Koninklijk Nederlands Watersponrt Verbond. Fuq dan ic-certifikat ezebit, jidher car illi l-Bandiera li tahta huwa registrat il-bastiment in kwistjoni hija dik Olandiza u illi l-Home Port huwa Amsterdam.

Illi l-imputat appellant jaghmel referenza lejn ix-xhieda ta' Ivan Sammut datat 5 ta' Lulju 2018 fejn gie sostnut is-segwentu dwar ic-certifikat ICP:

*"Difiza: Ara sur Sammut inti gejt mistoqsi x' jidhirlek meta tara dan ic- certifikat, inti ghandek xi hjiel MH 10 ic-certifikat li dan ic-certifikat huwa falz jew huwa nvalidu b' xi mod? Xhud: Le."*

Dan ifisser li r-Registratur Generali tal-bastimenti merkantili u l- bahhara fil-Merchant Shipping Directorate fi hdan Transport Malta huwa tal-konvinzjoni li dan id-dokument m'huwiex falz jew invalidu. Il-punt imqajjem mix-xhud, kif ukoll mill-prosekuzzjoni huwa jekk dan ic-certifikat jistax jiqies bhala dritt li jtajjar il-bandiera Olandiza.

Fuq dan il-punt l-espert mqabblad mill-Qorti Dr. Adrian Attard bhaa espert legali fil-Ligi Marittima, fir-rapport tieghu jistipula s-segwentu:

*"Illi mir-ricerki li ghamel l-esponent, ma jidhirx li hemm gurisprudenza ddetaljata fir-rigward l-ambitu ta'dan l-Artikolu u dan wisq probabli ghaliex l-ksur o meno tal-istess Artikolu normalment jiddependi fuq stat ta'fatt – jekk il-bastiment huwiex registrat skond il-ligi nostrana jew skond il-ligijiet fil-pajjiz tal-bandiera li l-istess bastiment qed itajjar".*



Illi ghaldaqstant u peress li l-bastiment allegatament qed itajjar il-bandiera Olandiza, fil-fehma umli tal-esponent l-qofol tal-kwistjoni ticcentra madwar il-fatt jekk dan il-bastiment MV Lifeline huwiex registrat ghas-sodisfazzjoni tal-Istat Bandiera u cioe tal-Awtoritajiet Olandizi.”

Illi ic-certifikat li jissejjah ‘International Certificate for Pleasure craft’ (ICP) inhareg abbazi tar-Risoluzzjoni numru 13 tal-Kumitat tat-Trasport Intern tan-Nazzjonijiet Uniti, adottata mill-Grupp ta’ Hidma dwar it-Trasport tal-Ilma Interni fit-13 ta 'Novembru 1986. Illi skond id-dokumenti li gew ezebiti mall-mistoqsijiet lill-Awtoritajiet Olandizi gie konfermat ukoll illi l-imsemmija rezoluzzjoni giet ratifikata mill-Istat Olandiz.

Artikolu 2 ta’ din ir-risoluzzjoni jistipula s-segwenti:

*“Requests Governments to inform the executive Secretary of the Economic Commission for Europe whether they accept this resolution and, if so:*

*(a) To recognise in their territory the documents issued by Government which have accepted this resolution, by bodies approved by them or by qualified bodies;*

*(b) To communicate to the secretariat, where appropriate:*

*- The restrictions applicable;*

*- The standards they apply for the construction and fitting out of vessels;*

*- The name of the authority or bodies qualified to issue the documents to in paragraph 1 above.”*

Referenza issir ukoll li Artikolu 2 (a) rezoluzzjoni numru 40 (International Certificate for Operators of Pleasure Craft) u f’liema dokument a fol 380 hemm dikjarat is-segwenti:

*“Requests Governments to inform the Executive Secretary of the Economic Commission for Europe whether they accept this resolution and its annexes and, if so:*

*(a) Within their national shipping police regulations to recognize in their territory the documents issued by the competent authorities or by bodies approved by Governments.”*

Illi fid-dikjarazzjonijiet tagħhom l-Awtoritajiet Olandizi m’humieq qedghin jirrikonoxxu dan il-bastiment bhala responsabilita ta’ l-Olanda u konsegwentament qedghin jikkonkludu li il-bastiment m’huwieg qiegħed itajjar il-Bandiera Olandiza. Din il-posizzjoni giet accettata mill-Ewwel Onorabbli Qorti.

Illi bir-rispett kollha wieħed ma jistax jiehu l-posizzjoni tal-Awtoritajiet Olandizi bis-serjeta. L-istat Olandiz specifkament qiegħed jitlob stati ohrajn sabieg jirrikonoxxu l-bastimenti registrati ai fini ta’ dawn l-istrument internazzjonali. Għalhekk l-awtoritajiet Olandizi m’huwieg qedghin ikunu konsistenti fid-dikjarazzjonijiet tagħhom fid-dawl tal-obbligi internazzjonali tagħhom. L-istess rizoluzzjoni addottata mill-Istat Olandiz a fol numru 376 jagħti l-kriterji ta’ l-elementi li għandhom jigi inkluzi fic-certifikat. Wieħed minn dawn l-elementi huwa ‘National Flag’!

Illi apparti dan kollu domanda numru 5 fil-mistoqsijiet lill-Awtoritajiet Olandizi mid-Difiza saqsiet is-segwent: “

*“Could you confirm that the purpose of of an ICP Certificate is to regularize the navigation of the vessels from country to another?” Ir-risposta kienet “No. ICP is more intended for pleasure crafts, to make it easier to prove their ownership.”* Pero imkien fl-istrumenti legali hawn fuq imsemmija hemm iddikjarat li dan id-dokument huwa semplicament sabieg tipprova minn hu s-sid tal-bastiment. Apparti dan jekk bastiment huwa registrat fir-registru merkantili ta’ pajjiz il-propjetarju jrid jigi indikat.

Referenza qedgha issir lejn il-Artikolu 6 (1) tal-United National Convention on Conditions For Registration of Ships li jistipula: *“The State of registration shall enter in its register of ships, inter alia, information concerning the ship and its owner or owners.”* Ghalhekk wiehed jistaqsi ghaliex l-Awtoritajiet Olandizi qedghin jirrikonoxxu li l-ICP huwa certifikat Internazzjonali, pero m’huwiex bizzzejjed ghat-thabbir f’ibhra internazzjonali? Ghal dan il-ghan il-bastiment irid ikun registrat fir-registru merkantili tal-pajjiz. Pero il-propjetarju huwa indikat f’dan ir-registru. Konsegwentament, skond ir-ragunament tal-Awtoritajiet Olandizi l-uzu ta-Certifikat ICP sabiex jipprova minn huwa s-sid huwa superflowu.

(ii) Dwar l-Entita li harget dan ic-certifikat

Illi referenza qedgha ssir lejn id-dokumenti li gew ipprezentati mill-imputat appellant mal-mistoqsijiet li hija ghamlet lill-Awtoritajiet Olandizi partikolarment a fol. 373 li hija Skeda tar-Rizoluzzjoni numru 13 tal-Kumitat tat-Trasport Intern tan-Nazzjonijiet Uniti, adottata mill-Grupp ta’ Hidma dwar it-Trasport tal-Ilma Interni fit-13 ta 'Novembru 1986. F’ Artikolu 4 hemm stipulat is-segwentanti:

*“Bodies authorized to issue documents relating to navigation for pleasure.*

*Governments shall make known to the executive Secretary:*

(1) *The bodies they may authorize to issue the certificate provided for in paragraph 2 above;*

(2) *The bodies qualified to issue the international card*

*They shall keep the executive Secretary informed of changes made in the list of approved bodies for keeping it up to date.”*

A fol numru 378 tal-process gie pprezentat dokument imsejjah rezoluzzjoni numru 40 u f'liema dokument a fol 385 jindika liema huma dawk l-awtoritajiet kompetenti sabiex jawtorizzaw hrug ta' certifikati hawn fuq imsemmija. Illi ghall-pajiz Olandiz u allura fejn hemm indikat l-Olanda, hemm indikat l-isem 'Stiching VAMEX'. Illi immedjatement a fol 387 tal-istess dokument jidher estratt mill-website tal-imsemmi 'Stiching VAMEX' li jindika lill-assocjazzjoni Koninklijk Nederlands Watersponrt Verbond, li hija l-entita' li harget ic-certifikat ICP li jappartjeni lill-bastiment M.V. Lifeline. Illi gie kkonfermat ukoll illi, l-Watersportsverbond, l-entita' li harget ic-certifikat hawn fuq indikat (ICP) hija awtorizzata illi tohrog dawn it-tip ta' dokumenti. Din l-entita tiffirma parti minn Stichting Vamex, u da skond Fol. 387 tal-process.

(iii) Dwar kif id-dokumenti pprezentati mix-Xhud Axel Steier urew li l-bastiment kien qiegħed jtajjar bandiera Olandiza

L-ewwel Onorabbli Qorti skartat għal kollow ix-xhieda ta' Axel Steier. Partikolarment, ir-rapprezentant tal-ghaqda Mission Lifeline, Axel Steier, xehed u spjega kif dan il-bastiment gie akkwistat mill-ghaqda Mission Lifeline e.V. u dan minghand l-ghaqda Sea Watch e.V. u gie pprezentat dokument 'Bill of Sale' li huwa xhieda tat-trasferiment tat-titolu. Gie spjegat illi meta sar l-akkwist mis-sid kurrenti, għal finijiet ta' registrazzjoni, sar biss bdil fl-isem tal-bastiment u bdil fis-sidien tal-bastiment u xejn izjed.

Ix-Xhud Steier spjega kif ha l-passi kollha necessarji sabex jagħmel it-tibdil necessarju fir-registrazzjoni tal-bastiment skond il-Ligi Olandiza u pprezenta lill-Ewwel Onorabbli Qorti numru ta' dokumenti b'rabta ma' dan.

Referenza qedgha ssir lejn email datat 12 ta' Settembru 2017 li fih Axel Steier għamel kuntatt ma kumpanija maghrufa bhala "Pavillon Hollandais" li literalment tfisser

“Bandiera Olandiza” bil-Franciz. Din il-kumpanija hija maghrufa wkoll bhala Vogue La Galrie Distribution. Fl-email lil din il-kumpanija Axel Steier jiddikjara hekk:

*“The ship was sailing the dutch flag before, so it’s just a change of the ownership and the name. Is it possible to register the ship without changing the MMSI Number?”*

Huwa mbaghad ghadha sabiex jipprezenta numru ta’ dokumenti mibghuta lilu minn “Pavillon Hollandais” sabiex jsir it-trasferiment tas-sid fuq ir-registrazzjoni tal-bastiment. Dawn id-dokumenti jinkludi s-segwenti:

1. Pleasure boat registration in the Netherlands
2. Application Form / Dutch Flag – li juri li l-Home Port huwa Amsterdam;
3. Pokura sabiex jista jsir ir-registrazzjoni mall-Awtoritajiet kompetenti Olandizi
4. Boats flying Dutch Flag – Radio Equipment Registration Request

Illi mill-qari ta’ dawn id-dokumenti johrog car x’kienet l-intiza tal-applikant u cioe illi jirregistra l-bastiment fuq isem l-ghaqda Mission Lifeline e.V. u huwa mexa mal-proceduri mitluba minnhu sabiex jsir dan. Fl-ebda punt ma zgwidha jew ta’ informazzjoni skoretta lill-Awtoritajiet. Infatti fil-prokura hawn fuq imsemmija u esebita minn Axel Steier a nom tas-sid il-bastiment indika li huwa qiegħed japplika ‘in order to proceed to the registration of the boat to the competent Dutch authorities’.

Illi a bazi ta’dawn id-dokument, is-socjeta “Pavillon Hollandais”, permezz ta’email datat 13 ta’ Settembru 2019 iddikjara s-segwenti:

*“We send immediately the new registration request to the Dutch authorities for the new Dutch flag certificate to be issued within 5 working days. The MMSI will not change as it is attached to the boat. However please send me a copy of the existing dutch Radio License.”*

Illi din il-kumpanija zammet mal-kelma tagghom u fil-19 ta' Settembru 2017, literalment hamest ijiem wara, hargu c-certifikat ICP u dan wara li gew iffirmati ruxmata dokumenti li juru li s-sidien kienu qedghin jiffirma ghal registrazzjoni taht il-bandiera Olandiza.

(iv) Dwar MMSI number assenjat mill-Ministeru tal-affarijiet Ekonomici tal-Olanda

Illi il-bastiment kien anke mghammar mill-Ministeru tal-Affarijiet Ekonomici liema certifikat jikkonferma l-assenjazzjoni ta' MMSI number lill-bastiment in kwistjoni. L-MMSI number fil-fatt ghandu il-prefiss 244 li huwa l-prefiss tal-Olanda. Illi wiehed ghandu jistaqsi allura jekk Ministeru ta' Stat kienx ser johrog certifikat assenjat lill-bastiment jekk dak l-istess bastiment m'ghandux xi forma ta' rikonoxxenza minn dak l-Istat. Ghaldaqstant, din ukoll hija prova fiha nnifisa illi sabiex Ministeru jaccetta li johrog certifikat ta' din in-natura lill-bastiment, bilfors jirrizulta li dak il-bastiment huwa rikonoxxut b'xi mod minn dak il-Ministeru li qieghed jagixxi ghan-nom ta' Stat.

Fuq dan il-punt tajjed li ssir referenza lix-xhied ta' Ivan Sammut. Huwa korrettament qal li l-MMSI, fih innifsu mhux rikonnokiment ta' bandiera pero dan ma jezistix wahdu! Ghalhekk l-MMSI ma jistax jezisti f'izolament. Ghal dan il-ghan referenza qedgha ssir lejn is-segwenti parti tax-xhieda tieghu:

*“Difiza: Tajjed, mela kieku kelli nigi jien bil-Lifeline llum taghtini MMSI number bhala Registratur?*

*Xhud: Le.”*

Huwa ddikjara hekk ghaliex wiehed ma jistax jmur fuq stat u jitlob MMSI minghajr ma jkollu l-ebda rabta ma dak l-istat.

It-Tielet Aggravju - Dwar responsabbilta' krimanli tal-kaptan fuq ir-registrazzjoni tal-bastiment

Illi dan l-aggravju huwa minghajr pregudizzju għall-aggravji suesposti.

(i) Il-Kaptan kien in bona fede, a bazi ta' dokumenti mahrugjin skond il-ligi

Illi l-Ewwel Onorabbli Qorti allokat ir-responsabilita kollha fuq l-imputat appellant meta huwa ma kienx involut fir-registrazzjoni. Apparti dan meta qiehed juza l-kejl ta' bonus pater familias, id-dokumenti li kellu f'idejh kienu juru li l-bastiment kien registrat taht il-bandiera Olandiza.

Irid jigi enfazizat illi sid il-bastiment u cioe l-entita' Mission Lifeline e.V. ghamlet dak kollhu li hu mistenni minnha meta hija akkwistat il-bastiment sabiex tassigura li dan kien registrat skond il-ligi. Sid il-bastiment allura strahet, ragonjevolment, fuq il-procedura stabbilita tar-registrazzjoni. Kif diga inghad, fil-fatt l-bastiment inhargila certifikat (ICP) liema certifikat huwa msejjes fuq il-ligi.

Ghaldaqstant, is-sidien tal-bastiment ma kellhomx għalfejn jiddubitaw r-registrazzjoni tal-bastiment. Apparti dan il-fatt illi l-kaptan innifsu ma kienx involut fir-registrazzjoni tal-imsemmi bastiment u dan kif konfermat mid-diversi xhieda, bl-istess logika spjegata iktar qabel, lanqas il-Kaptan ma kellhu għalfejn jiddubita ir-registrazzjoni tajba tal-bastiment M.V. Lifeline ilghaliex kif xehed hu stess, huwa kellhu fil-pussess tieghu certifikat mahrug minn entita' legalment awtorizzata illi tohrog dak ic-certifikat, u liema certifikat kien jindika illi l-bastiment in kwistjoni seta jtajjar il-bandiera Olandiza.

Dan kollu jwassal għall-konkluzjoni illi mhux biss l-akkuzat ma kellux l-intenzjoni jew l-għarfien illi huwa kien qieghed jinnaviga bastiment minghajr ir-registrazzjoni appozita, izda għal kuntrarju, in vista tad-dokument ICP hawn fuq imsemmi hu kien

qiegħed jinnaviga il-bastiment b'mod legali u allura ma kien hemm xejn illi kien qiegħed jimpedixxi lill-akkuzat milli jbahhar bil-bastiment M.V. Lifeline. Allura dan kollu jwassal għall-punt kruċjali illi l-prosekuzzjoni naqset milli tressaq xi prova, liema prova fil-kamp kriminali trid tkun lill hinn minn dak dettat mir-raguni, illi l-akkuzat kellhu l-intenzjoni li jagħmel uzu mill-bastiment mingħajr dan ma kellu r-registrazzjoni korretta. Wieħed lanqas ma jista jargumenta illi l-kaptan agixxa b'mod negligenti ilgħaliex apparti li dan m'huwiex il-kaz, lanqas ma ngabet prova f'dan is-sens. Il-kaptan ragjonevolment strah fuq dokument legali, li jinhareg skond procedura legali u rikonoxxuta gewwa l-Olanda (kif konfermat mir-risposti rogatorji) u liema dokument li kien jindika l-bandiera Olandiza bhala l-bandira tal-bastiment.

Allura mhux talli l-akkuzat ma kienx qed jagixxi b'għarfien dwar xi irregolarita' fir-registrazzjoni tal-bastiment, u mhux talli l-akkuzat ma kienx negligenti fil-verifiki tiegħu, talli l-imputat appellant kien totalament 'in bona fede' meta huwa nnaviga il-bastiment tiegħu fuq l-ibhra territorjali ta' Malta ilgħaliex kollox kien jindika li seta jagħmel dan bil-bastiment M.V. Lifeline.

Wieħed irid jistabilixxi, minn tal-inqas, element ta' dubju da parti tal-imputat appellant sabiex jkun jista jigi argumentat illi l-akkuzat ma kienx 'in bona fede'. Dan ma sarx mil-prosekuzzjoni u anzi għal kuntrarju, l-akkuzat xehed u dejjem ipprotesta mhux biss l-innocenza tiegħu izda li sa fejn jaf hu, ma kienet tezisti l-ebda problema bir-registrazzjoni tal-bastiment.

Illi huwa principja baziku illi sabiex jissussiti r-reat kriminali, huwa mehtieg mhux biss l-actus reus izda anke il-mens rea, u dan tal-ahhar zgur huwa nieqes f'dan il-kaz stante illi ma tressqet l-ebda prova illi l-kaptan kien konxju jew kien negligenti dwar xi stat ta' fatt ta' xi irregolarita' fir-registrazzjoni tal-vapur u li kellhu l-volonta' li jagixxi xorta illegalment.



Dwar dan kollhu, il-Qorti tal-Magistrati fil-kawza Il-Pulizija vs Christian Demnauele ghamlet analizi bir-reqqa dwar x'prova hija rikjesta sabiex tigi pruvata l-intenzjoni ta' persuna addebitata' b'reat u fl-istess sentenza kwotat minn sentenzi precedenti, partikolarment mis-sentenza tal-Appell Kriminali fl-ismijiet Il-Pulizija vs Kevin Sammut fejn dwar l-element tal-intenzjoni kien intqal is-segwenti:-

*"...ma jistax pero` jinghad li ghax xi hadd messu ragjonevolment kif jaf xi haga allura necessarjament isegwi li dak li jkun kien jaf dik ix-xihaga. Fi kliem iehor, il-kwistjoni tibqa' dejjem dik ta' x'kellu verament f'mohhu l-agent fil-mument li wettaq l-att materjali u mhux x'seta kellu f'mohhu li kieku kien bniedem ta' intelligenza ordinarja jew ta' sagacja ordinarja jew ..... kieku kien bonus pater familias. Argument analogu (u fil-kuntest ta' reati differenti) gie elaborat minn din il-Qorti (kollegjalment komposta) fis-sentenza taghha tat-12 ta' Dicembru 2007 fil-kawza fl-ismijiet Ir-Repubblika ta' Malta v. John Polidano et. F'dik issentenza nghad hekk:*

*"Ghalkemm huwa veru li wiehed irid jiddesumi l-intenzjoni ta' dak li jkun kemm mill-att materjali kif ukoll mic-cirkostanzi antecedenti, konkomitanti u sussegwenti ghall-istess att materjali, l-intenzjoni dejjem tibqa' kwistjoni soggettiva – jigifieri x'kellu f'mohhu l-agent (l-akkuzat) fil-mument li ghamel l-att – u mhux semplicement kwistjoni oggettiva ta' x'missu anticipa jew x'kienet tanticipa l-persuna ta' intelligenza ordinarja. Jigifieri m'ghandhiex issir enfasi preponderanti fuq il-konsegwenzi li rrizultaw mill-att. Kif jispjega Gerald Gordon fil-ktieb tieghu *The Criminal Law of Scotland* 2:*

*"Intention, then, is subjective, but is proved objectively. Or at least this is so in most cases. Since it is in the end subjective, the jury cannot be prevented from claiming intuitive knowledge of the accused's state of mind, or from believing his account of his state of mind against all the objective evidence. Or at least they should not be so prevented, if they are, as they are always said to be, the judges of fact. The law should not at one and the same time lay down a subjective criterion, and then require the jury to determine whether the criterion has been satisfied by*

*reference solely to an objective standard, the standard of the reasonable man. It has from time to time been said that a man is presumed to intend the natural consequences of his acts, but in the first place this is at most a presumption, and in the second place it applies only if "natural" is read as meaning "blatantly highly probable": if this were not so, all crimes of intent would be reduced to crimes of negligence."*

Illi ghalhekk il-mistoqsija li trid tigi interposta issa hija jekk fil-kaz odjern l-appellant kienx konsapevoli li c-certifikat ICP hawn fuq imsemmi kienx wiehed irregolari jew qarrieq minhabba li kien jikkontjeni xi fatti li m'humiex konformi mal-verita.

Illi fil-fehma tal-appellant u ghar-ragunijiet elaborati f'dan l-appell, kemm dwar il-fatti innifishom u kemm dwar l-element intenzjonali rikjest, ir-risposta hija le, u cioe illi l-appellant bhala kaptan ma kienx konsapevoli illi ic-certifikat in kwistjoni kien irregoarli jew jikkontjeni xi fatti li m'humiex konformi mal-verita. Ghal kuntrarju, in vista tal-fatti kolla hawn fuq spjegati, l-appellant kien konvint minn dak ic-certifikat ICP li kien jixhed li l-bastiment M.V. Lifeline kien irregistrat mal-bandiera Olandiza u ghalih il-kontenut ta' dak ic-certifikat kienu kolla fattwali u korretti.

Fuq punt relatat ma' dan tal-ahhar, minghajr pregudizzju ghas-suespost qieghed jinghad ukoll illi anke jekk ghal gieh l-argument biss il-Qorti jidhrila illi l-akkuzat kellu xi forma ta' gharfien dwar irregolarita', huwa qatt ma kellhu l-intenzjoni li jinnaviga l-bastiment lejn Malta izda huwa nnaviga lejn Malta fuq struzzjonijiet tal-Awtoritajiet Maltin illi huwa obda.

(ii) Dwar tibdil fl-International Certificate for Pleasure Craft (ICP)

Illi huwa car daqs il-kristall li l-Awtoritajiet Olandizi ma kienux cari dwar dan ic-certifikat ghal numru ta'snin. Issa li sehh dan il-kaz tal-M.V. Lifeline huma ddecidew ifarfri u tefghu r-responsabilita kollha fuq il-Kaptan.

Issir referenza ghall email a fol 392 fejn Luc Smulders ghall-Awtoritajiet Olandizi ddikjara hekk:-

*“We acknowledge the fact that the document (card/certificate) used as ICP could give the wrong impression. Therefore we’ve recently requested both the ‘Watersportverbond’ and the ‘koninklijke Nederlandsche Motorboot Club’ to amend the contents of the ICP issued by them. From now on an ICP will indicate “not applicable” after ‘national flag’.*

*Secondly the following statements has been addedd to the document: “this document cannot be interpreted as giving Dutch nationality to the craft, nor does it constitute the right to fly the flag of the Kingdom of the Netherlands as defined by Article 91 of the United Nations Convention on the Law of the Sea (UNCLOS). Consequently the Kingdom of the Netherlands does not accept any of the responsibilities listed in article 94 of UNCLOS.”*

Dan iffiser li l-Awtoritajiet Olandizi stess qedghin jammettu li s-sistema tal-ICP kienet qed tigi nterpretata li l-bastiment permezz ta’dan ic-certifikat jakkwista l-bandiera Olandiza. Fid-dawl ta’ din l-ammissjoni certament id-dubju ghandu jiffavorixxi l-imputat anke fid-dawl tal-fatt li ma kienx involuti fir-registrazzjoni tal-bastiment.

Illi di piu kif jirrizulta mill-atti u mix-xhieda tal-akkuzat u anke ta’ Axel Steier, ic-certifikat imsemmi gie sostitwit b’certifikat gdid mahrug mill-Awtorita’ wara li qamet din il-kwistjoni kollha dwar id-dokumenti tar-registrazzjoni tal-bastiment Lifeline. Ic-certifikat gdid ma ntabx mis-sidien tal-bastiment jew mill-imputat. Dan ic-certifikat ircevewh bil-posta go ‘envelope’ miftuh u minghajr ebda pre-avviz. Jigi nnutat li f’dan ic-certifikat fejn hemm indikat il-bandiera, din giet sostitwita bil-kliem ‘not applicable’ mentri fejn hemm il-kliem ‘Home Port’, din baqghet tindika ‘Amsterdam’. Din hija kontradittorja ilghaliex bastiment ma jistax ikollu home port minghajr ma fl-istess hin

jkun awtorizzat li jtajjar il-bandiera Olandiza. Illi dan kollu juri tahwid kbir minn naha ta l-Awtoritajiet Olandizi.

Illi fir-rigward tal-konkluzjoni tal-Ewwel Qorti dwar it-tieni akkuza, l-appellant jilqa l-konkluzjoni li waslet ghalihom l-istess Qorti fejn irrikonoxxiet illi l-bastiment ma kienx qiegħed jintuza b'rabta ma' xi kummerc, negozju jew zjara fl-ibhra territorjali u interni ta' Malta stante illi mill-provi hareg car illi l-unika raguni ilghaliex il-bastiment sab ruhu f'Malta hija peress illi l-appellant inghata struzzjonijiet mill-Awtoritajiet Maltin sabiex ibahhar il-vapur lejn il-Port Valletta u dan minhabba li kien għadu kif wettaq salvatagg ta numru kbir ta' nies u għalhekk kellhu sitwazzjoni umanitarja abbord.

Bl-istess mod, l-appellant jilqa bis-shih il-konkluzjoni tal-Ewwel Qorti fir-rigward tat-talba għall-konfiska tal-corpus delicti stante li l-istess Qorti irrikonoxxiet illi l-bastiment mhux propjeta' tal-imputat izda huwa propjeta' tas-socjeta estera Mission Lifeline e.V. u li għalhekk il-bastiment ma setghax jigi konfiskat mill-Ewwel Qorti.

Ikkunsidrat;

Illi in breve, il-fatti kienu s-segwenti:

1. Fit-tlethax (13) ta' Gunju tas-sena elfejn u tmintax (2018) il-vapur Mission Lifeline e.V. hareg mill-Port ta' Malta. Dak in-nhar il-kaptan kien l-appellant;
2. Il-vapur Mission lifeline e.V salva madwar mija u ghoxrin (120) persuna u għaddeu lil dawn l-imigranti lil ' *cargo vessel Viking Amber*<sup>1</sup>;

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<sup>1</sup> Skont ix-xhieda mogħtija mill-appellant fit-tmintax (18) ta' Dicembru tas-sena elfejn u tmintax (2018)

3. Sussegwentement jirrizulta li fil-wiehed u ghoxrin (21) ta' Gunju tas-sena elfejn u tmintax (2018) l-appellant bhala kapitan ta' dan il-vapur tella abbord mitejn u hamsa u tletin (235)<sup>2</sup> immigranti li instabu fuq dghajes fragli;

2. Jirrizulta li salv ghal wiehed minn dawn l-immigranti li kellu jittiehed l-Isptar b'helicopter, il-kumplament tal-immigranti iddahhlu f'Malta fis-sebgha u ghoxrin (27) ta' Gunju tas-sena elfejn u tmintax (2018) wara li l-Gvern Malti awtorizza li l-vapur Mission Lifeline e.V. jidhol Malta b'dawn l-immigranti abbazi ta' '*humanitarian grounds*'<sup>3</sup>;

3. Minn investigazzjonijiet li saru, rrizulta li dan il-vapur kellu certifikat u cioe' 'International Certificate' ghal 'Pleasure Crafts', li din il-Qorti sejra tirreferi ghalih bhala 'ICP' izda l-Awtoritajiet Olandizi ma accettawx li dan it-tip ta' certifikat huwa konferma ta' registrazzjoni tal-vapur mal-Istat Olandiz izda skonthom kien biss *ai fini* ta' prova ta' min huwa s-sid ta' dan il-vapur;

4. Illi kien ghalhekk li nhargu l-imputazzjonijiet fil-konfront tal-appellant;

5. Illi l-Ewwel Qorti sabet lill-appellant hati tal-ewwel (1) imputazzjoni filwaqt li lliberatu mit-tieni (2) imputazzjoni.

Illi l-ewwel aggravju tal-appellant jirrigwarda l-allegata nuqqas tal-ahjar prova. L-appellant jissottometti li l-Ewwel Qorti naqset milli tosserva nuqqasijiet tal-

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<sup>2</sup> Fl-atti xi kultant hemm indikat in-numru mitejn u erbgha u tletin (234) u xi waqtiet ohra mitejn u hamsa u tletin (235);

<sup>3</sup> Fl-ittra elettronika li tinsab a fol 73 jirrizulta li intbaghat '*Without prejudice to Malta's position at international law, and solely on a humanitarian basis, please be informed that access to Valletta port is now available. You will be receiving further instructions in due course. In the meantime you are directed to follow P62 instructions.*'

prosekuzzjoni, meta din rissqet ix-xhieda taghha. Li x-xhieda tal-Awtoritajiet Olandizi kienet importanti ghal prosekuzzjoni li kienet tholl jew torbot l-akkuzi fil-konfront tal-appellat izda li mill-atti jirrizulta li meta il-prosekuzzjoni bghatet il-mistoqsijeit rogatorji taghha flimkien ma' xi dokumenti ghall-apprezzament tal-Awtoritajiet Olandizi fir-rigward tal-valdita' o meno tar-registrazzjoni tal-bastiment M.V. Lifeline, il-prosekuzzjoni naqset milli taghti kopja ta-certifikat imsemmi 'International Certificate for Pleasure Craft' (ICP). Li skont l-appellant kien jinkombi fuq il-prosekuzzjoni li sabiex tigbor informazzjoni korretta u kompluta, kellha tressaq dan id-dokument ghall-attenzjoni tal-Awtoritajiet Olandizi sabiex dawn tal-ahhar jkollhom il-possibilita' li jaghtu l-informazzjoni mehtiega u relevanti fuq dan id-dokument ukoll. Li kien ikun hekk biss li l-prosekuzzjoni kienet tkun qiegghda tressaq l-ahjar prova. L-appellant ghamel referenza ghal principju legali u cioe' li l-Prosekuzzjoni ghandha l-obbligu li tressaq il-provi kollha li tkun gabret fuq ir-reat u li hija obbligata li tressaq l-ahjar prova.

Jirrizulta li l-Ispettur Mario Haber fis-seduta tat-tnejn (2) ta' Lulju tas-sena elfejn u tmintax (2018) ipprezenta dan ic-certifikat u cioe' Internatinal certificate' ghal 'Pleasure Crafts'. Kopja ta' dan ic-certifikat huwa mmarkat bhala Dok MH6 u jinsab a fol 24 u 25 filwaqt li fl-envelop li jinsab a fol 31 u mmarkat bhala Dok MH10 hemm ic-certifikat ICP originali. L-espert mahtur mill-Qorti l-Ing. Kurt Gutteridge fir-rapport tekniku tieghu immarkat bhala Dok KG1 a fol 141, senjatament a fol 145 dwar 'International Certificate - Pleasure crafts, issued by 'Watersportverbond,' The Neherlands' tnizzel li:

*'The certificate is the same one referred to as Dok MH6 in the court documents except for the fact that the certificate seen on board was noted to bear an additional signature in the 'Signature of the owner' section. Ref. Annex 2.'*

Filfatt a fol 164 fl-istess rapport hemm ritratt ta' Dok MH6 li ghandu firma wahda u stranament ritratt iehor tal-istess certifikat izda li fih firma addizzjnali. Skont l-espert Ing Kurt Gutteridge dan ic-certifikat b'zewg firem huwa dak li ra abbord. Din il-Qorti

izda tinnota li c-certifikat originali fl-envelop immarkat bhala Dok MH10 fih firma wahda fuq 'Signature of the Owner'.

Jirrizulta li fl-ittri rogatorji mighuta permezz ta' European Investigation Order (EIO) a fol 233 et seq ghalkemm giet ipprezentata rezoluzzjoni dwar 'INTERNATIONAL CERTIFICATE (INTERNATIONAL CARD) FOR PLEASURE CRAFT' u bhal speci ta' template b'informazzjoni li dan ic-certifikat normalment jikkontjeni, ma giex ipprezentat ic-certifikat in kwistjoni u cioe' dak intestat f'isem 'Lifeline' u ghalhekk dan l-ICP ma ntbaghatx mal-ittri rogatorji.

Dan huwa anke kkonfermat mit-twegibiet tal-Awtoritajiet Olandizi ghal mistoqsijiet in kontro-ezami meta a fol 415 mistoqsija '2) *L-awtoritajiet Olandizi jirrikonoxxu d-dokument bhala certifikat ICP?*' Mireille Loth bhala Konsulent legali Senior u Smulders Luc wiegbu li '*Iċ-certifikat mhux inkluz mad-dokumenti*'. Jirrizulta izda li minkejja li l-Awtoritajiet Olandizi fl-ittri rogatorji ma kellhomx ic-certifikat in kwistjoni anness mal-ittri rogatorji li ntbaghtu lilhom tramite l-European Investigation Order (EIO), huma setghu jirrispondu dwar il-validita' o meno ta' certifikat ICP *ai fini* ta' registrazzjoni ta' vapur biex jivjagaw minn pajjiz għall-iehor fejn per eżempju fir-risposta għad-domanda in kontro-ezami numru hamsa (5) '*Tista' tikkonferma li l-għan ta' certifikat ICP hu biex jirregola vapuri li qed jivvjaġġaw minn pajjiz għal-iehor?*' wiegbu '*Le ICP hu intiż iktar għal opri ta' divertiment sabiex ikun iktar faċli biex wiehed jipprova l-proprjeta' tiegħu barra minn pajjizu.*'

Fid-dokumentazzjoni ipprezentata minn Ivan Sammut fis-seduta tal-hamsa (5) ta' Lulju tas-sena elfejn u tmintax (2018) u cioe' korrisondenza mal-Awtoritajiet Olandizi a fol 98 fejn John Jacobs kieteb li '*MV Lifeline is using an International Certificate for Pleasure Craft (ICP) which can be used to demonstrate ownership of the vessel when travelling abroad. And although the document itself may give the impression that the Lifeline is sailing under the flag of the Netherlands, that is actually not the case.*' A fol 97 jirrizulta li Ivan Sammut

baghat ittra elettronika lil Luc Smulders fejn hemm imnizzel li *'... the master presented the attached document, which clearly states that the vessel is flying the Dutch flag. In view of the attached grateful if you were to confirm that the below statement still stands and that the vessel is not flying the Dutch flag, thus making the vessel a Stateless flagin terms of UNCLOS.'* Luc Smulders wiegeb li *'Just to confirm that what was mentioned before still stands. As can be seen on the International Certificate for Pleasurecraft (ICP) attached to your e-mail this has been issued by the Royal Netherlands Yachting Union ("Koninklijk Nederlands Watersport Verbond"). The ICP is not to be regarded as a registration or nationality provision to a ship. The Royal Netherlands Yachting Union provides such documents to ship owners as an unofficial proof of ownership. This prevents, for example, ship owners in foreign ports from paying import duties on the ship they are sailing with. There is thus no question of a public-law act, but solely of the implementation of a non-binding recommendation of the Transport Commission of the UN-ECE (resolution 13).'* Ghalhekk minn dik il-korrispondenza jirrizulta li kienet intbaghat kopja tal-ICP, izda fl-atti ma gie prezentat l-ebda certifikat ma dik il-korrispondenza permezz ta' ittri elettronici. Meta xehed Ivan Sammut quddiem l-Ewwel Qorti huwa xehed li *'dan ic-certifikat nikkonferma li jiena rajt kopja tieghu skenjata wara li l- pulzija elevaw dan ic-certifikat originali minn abbord. U l-kopja li giet mibghuta lilna wara l- ewwel konferma li kellna mid-Dutch Authority ergajna bghatna kopja ta' dan ic-certifikat biex appuntu wkoll jikkonfermaw u qieghda hemm hekk fil-korrispondenza wkoll dak li diga kienu qalulna qabel.'*

Ghalkemm din il-Qorti hija tal-fehma li l-ahjar prova giet ipprezentata fl-atti meta il-Prosekuzzjoni ipprezentat mhux biss fotokopja ta' dan l-ICP izda addirittura anke ipprezentat l-original u cioe' dak id-dokument bil-kulur blu li jinsab fl-envelop immarkat bhala Dok.MH10, din il-Qorti temfasizza l-importanza li l-Prosekuzzjoni kellha flimkien mal-ittri rogatorji tibghat dan ic-certifikat lil Awtoritajiet Olandizi ghall-iskrutinu tagghom.



Din il-Qorti tinnota li filwaqt li l-Prosekuzzjoni f'Dok CPR1 u cioe' l-ittri rogatorrji senjatament a fol 208 fit-tieni mistoqsija tal-prosekuzzjoni taghmel referenza ghal certifikat u cioe' meta tistaqsi *'If the certification presented to the Maltese Authorities (copy attached marked as Doc. A) is a valid registration certificate which gives the Dutch Nationality to MV Lifeline'*, ma hemm l-ebda Doc. A anness, l-anqas sussegwentement mal-European Investigation Order (EIO) a fol 233. Ghalhekk ghalkemm il-Prosekuzzjoni setgha kellha l-hsieb li jintbaghat dan ic-certifikat flimkien mal-ittri rogatorrji, ma jirrizultax li dan intbaghat.

Minkejja li c-certifikat ma kienx ipprezentat flimkien mal-ittri rogatorrji, madankollu l-Awtoritajiet Olandizi kkonfermaw li dan it-tip ta' certifikat ma ghandu l-ebda valur *ai fini* ta' registrazzjoni ta' vapur ma pajjiz. Ghalhekk minkejja in-nuqqas tal-prosekuzzjoni milli tipprezenta dan ic-certifikat lill-Awtoritajiet Olandizi flimkien mal-ittri rogatorrji, dan ma jfissirx li l-appellant kellu jigi liberat abbazi ta' hekk. Ghalkemm dan l-aggravju qiegħed jigi michud, din il-Qorti tissottolinea li gialadarba is-sottomissjonijiet imqajma mill-appellant f'dan l-aggravju kienu gia imqajma mill-appellant fin-nota ta' sottomissjonijiet tieghu quddiem l-Ewwel Qorti, din il-Qorti kienet tistenna li l-Ewwel Qorti fis-sentenza appellata tindirizza dawn is-sottomissjonijiet, dan izda ma jirrizultax li sar fis-sentenza appellata.

Ikkunsidrat;

Illi t-tieni aggravju jirrigwarda n-nuqqas ta' apprezzament fuq il-provi dwar ir-registrazzjoni tal-bastiment. Jissottometti dwar in-nuqqas ta' evalwazzjoni mill-Ewwel Qorti dwar in-natura tal-International Certificate for Pleasure Craft (ICP) mahrug minn Kninklijk Nederlands Watersponrt Verbond fejn il-bandiera li tahta huwa registrat il-bastiment in kwistjoni hija dik Olandiza u li l-Home Port huwa Amsterdam. Jissottometti li c-certifikat inhareg abbazi tar-Rizoluzzjoni numru tlettax (13) tal-Kumitat tat-Trasport Intern tan-Nazzjonijiet Uniti, adottata mill-Grupp ta' Hidma dwar

it-Trasport tal-ilma interni fit-13 ta' Novembru 1986. Li skont id-dokumenti li gew esebiti mal-mistoqsijiet lill-Awtoritajiet Olandizi gie kkonfermat ukoll li l-imsemmija rezoluzzjoni giet ratifikata mill-Istat Olandiz. Li l-Awtoritajiet Olandizi mhumiex qeghdin jirrikonoxxu dan il-bastiment bhala responsabilta' tal-Olanda u konsegwentament qeghdin jikkonkludu li l-bastiment m'huwiex qieghed itajjar il-Bandiera Olandiza. L-appellant jissottometti li wiehed ma jistax jiehu l-pozizzjoni tal-Awtoritajiet Olandizi bis-serjeta'. L-istat Olandiz qieghed jitlob stati ohrajn sabiex jirrikonoxxu l-bastimenti registrati *ai fini* ta' dawn l-istrument internazzjonali u li ghalhekk l-awtoritajiet Olandizi mhumiex qeghdin ikunu konsistenti fid-dikjarazzjonijiet taghhom fid-dawl tal-obbligi internazzjonali taghhom. L-appellant jissottometti ukoll li r-risoluzzjoni addottata mill-Istat Olandiz a fol 376 jaghti l-kriterji tal-elementi li ghandhom jigi inkluzi fic-certifikat u li wiehed minn dawn l-elementi huwa 'National Flag'. Jissottometti li mkien fl-istrumenti legali ma hemm iddikjarat li dan id-dokument huwa semplicament sabiex tipprova min hu s-sid tal-bastiment u li apparti dan, jekk bastiment huwa registrat fir-registru merkantili ta' pajjiz il-proprjetarju jrid jigi indikat.

L-appellant f'dan l-aggravju jaghmel ukoll sottomissionijiet dwar l-entita li harget dan ic-certifikat. Jissottometti r-risoluzzjoni numru 40 a fol 385 jindika l-awtoritajiet kompetenti f'kull pajjiz ghal hrug ta' dawn ic-certifikati li fil-kaz tal-Olanda huwa 'Stichting VAMEX' u li a fol 387 'fuq estratt ta' website hemm indikat "Watersportverbond" l-entita' li harget c-certifikat ICP.

Ikkunsidrat;

Illi din il-Qorti tqis li ma hemmx dubju li l-Awtoritajiet Olandizi mhumiex jirrikonoxxu dan il-vapur bhala responsabbilta' tal-Olanda. Mill-atti jirrizulta car li ghall-Awtoritajiet Olandizi l-ghan tal-ICP mhumiex *ai fini* ta' registrazzjoni ma' pajjiz izda biss bhala prova tal-proprjeta' u cioe' ownership tal-bastiment. Jirrizulta li l-ICP certificate fl-

envelop a fol Dok MH10 fost dettalji ohra, fejn 'Country' hemm imnizzel 'Duitsland', bhala 'home port' hemm imnizzel 'Amsterdam' u hdejn 'Flag' hemm imnizzel 'Dutch'. Dan huwa mahrug minn 'Koninklijk Nederlands Watersport Verbond'. Meta l-Awtoritajiet Olandizi gew mistoqsija in kontro- ezami '6) Tista' tikkonferma li VAMEX hi responsabblu biex tohrog tali certifikat ICP?' wiegbu 'Le, ma nistghux nikkonfermaw dan.' Il-fatt jekk l-istituzzjoni li harget dan ic-certifikat kelliex is-setgha biex taghmel dan mhuwiex il-pern tal-kwistjoni u ghalkemm din il-Qorti tissottolinea li d-dokument fol 387 ma huwiex prova bizzjed li l-entita' li harget dan ic-certifikat kellha l-awtorizzazzjoni biex taghmel dan, izda dak li huwa kkontestat mill-Prosekuzzjoni u mill-Awtoritajiet Olandizi huwa l-validita' ta' dan ic-certifikat *ai fini* ta' vjaggar minn pajjiz ghall-iehor. Filfatt l-awtoritajiet Olandizi mhumiex jirrikonoxxu dan il-vapur bhala r-responsabbilta' tagghom u ghalhekk jinnegaw li b'xi mod jew iehor l-ICP jaghti xi forma ta' nazzjonalita' lil vapur.

Ikkunsidrat;

Qabel ma din il-Qorti tqis dak li xehed Alex Steier u d-dokumenti prezentati minnu, sejra tqis parti ohra mit-tieni aggravju u cioe' dwar MMSI number assenjat mill-Ministeru tal-affarijiet Ekonomici tal-Olanda. L-appellant jissottometti li l-bastiment kien anke mghammar mill-Ministeru tal-Affarijiet Ekonomici, liema certifikat jikkonferma l-assenjazzjoni ta' MMSI number lil bastiment in kwistjoni. Jissottometti li l-MMSI number ghandu l-prefiss 244 li huwa l-prefiss tal-Olanda u li ghalhekk wiehed ghandu jistaqsi jekk Ministeru ta' Stat kienx ser johrog certifikat assenjat lil bastiment jekk dak l-istess bastiment m'ghandux xi forma ta' rikoxzenza minn dak l-Istat. Skont l-appellant din hija prova fiha nnifisha li sabiex Ministeru jaccetta li johrog certifikat ta' dan in-natura lil bastiment, bilfors jirrizulta li dak il-bastiment huwa rikonoxxut b'xi mod minn dak il-Ministeru li qieghed jagixxi ghan-nom ta' Stat. Saret referenza ghal dak li qal Ivan Sammut fix-xhieda tieghu fejn meta mistoqsi '*kieku kelli nigi jien bil-Lifeline illum taghtini MMSI number bhala Registratur?*' wiegeb le, u l-appellant jghid li dan

peress li ma jkollu l-ebda rabta ma dak l-istat. Din il-Qorti dwar dan l-ahhar punt taghmilha cara li din hija interpretazzjoni tal-appellant li l-Qorti ma taqbilx maghha, il-Qorti zzid li kwalunkwe prova li tinghata permezz ta' xhieda ghandha tkun cara minghajr ma thalli lok ghal interpretazzjoni. Din il-Qorti sejra ghalhekk tibda biex tqis ix-xhieda ta' Ivan Sammut f'dak li jirrigwarda l-MMSI number.

Ivan Sammut li xehed fis-seduta tal-hamsa (5) ta' Lulju tas-sena elfejn u tmintax (2018) bhala registratur Generali tal-bastimenti merkantili u l-bahhara fi hdan il-Merchant Shipping Directorate fi hdan Transport Malta. Huwa fost affarijiet ohra spjega li '*l-kaz tal- Lifeline beda jizviluppa fit-tnejn u ghoxrin (22) ta' Gunju li l- Lifeline kien il- barra mill-ibhra Maltin u ahna kien hemm kumminikazzjonijiet mill- Awtoritajiet Maltin kompetenti biex bhala Registru nikkomunikaw mal- counter parts taghna gewwa l- l- Olanda biex nikkonfermaw jekk il- vapur Lifeline kienx registrat taht il-bandiera Olandiza. Ahna ghamilna dan through il-kuntatti taghna, tkellimna mal- counter parts taghna, ma niex gholja fl-amministrazzjoni Olandiza u dawn tawn bil-miktub konferma li l-vapur Lifeline ma kienx registrat taht il-bandiera Olandiza a fini konvenzjonijiet internazzjonali, mainly Article 94 of the UNCLOS Convention li taghti n- nationality lil vapur, dawn qalulna, kkonfermawlna li l- vapur kien biss registrat bhala pleasure yacht fil-Yacht Club gewwa n- Netherlands u din ma taghti ebda dritt ta' nationality lil dan il- bastiment. Tajjed hawnhekk li nispecifica li in terms of internnational conventions vapur minghajr stat, minghar bandiera, minghar nationality ma jistax isalpa f' ibhra nternzzjonali. Jigifieri b' din il-konferma li ahna gibna u ghandna bil- miktub u nistghu nipprezentawha jidher fic-car li dan il- vapur kien a stateless vessel, jigifieri ma kienx registrat imkien.'* Xehed li '*dan it-tip ta' yacht u din it-tip ta' certifikat li kien mahrug minn dan il- club, li tajjed nghidu mhijiex perti, entita tal-Govern Olandiz, kienet biss an unofficial proof of ownership tal-bastiment li ma jaghtik l- ebda dritt..'* Meta in kontro-ezami mistoqsi '*... dak id-dokument li ga wriek l-Ispettur jaghti MMSI number hux hekk, tista tispjega lill-Qorti x' inhu MMSI number?'* wiegeb '*Mela bazikament inti abbord il-bastimenti u bcejec tal- bahar ikollok equipment tar-radio, kull bicca equipment tar-radio jrid ikollha l- call sign u l- MMSI number li jidentifika lil dak il- bastiment, ir-raguni hija biex jekk Alla hares qatt jigri xi haga mill- MMSI*

number il-vapur li kien involut f' dak l- incident jista jkun jigi identifikat is-search and rescue competent authorities.' Huwa spjega li 'bazikament inti abbord il- bastimenti u bcejec tal-bahar ikollok equipment tar-radio, kull bicca equipment tar-radio jrid ikollha l- call sign u l- MMSI number li jidentifika lil dak il- bastiment, ir-raguni hija biex jekk Alla hares qatt jigri xi haga mill- MMSI number il-vapur li kien involut f' dak l- incident jista jkun jigi dentifikat is-search and rescue competent authorities.' Xehed li 'dak id-dokument kif juri wkoll id-dokument huwa mahrug mill- Ministeru ta' l-Ekonomija ta' l-Olanda. Dan id-dokument kien ukoll trasmess lilna, dan id-dokument kien trasmess lill- Awtoritajiet Olandizi biex jikkonfermaw ezattamentx' inhu, xi drittijiet u jeddijiet jaghti lil dan il- bastiment.' Meta mistoqsi 'Issa ha naghmel referenza lejn in- numru ta' l-MMSI li jibda 244, tista tispjegalna l- ewwel tliet (3) numri fuq MMSI number xi jfissru?' wiegeb li 'Bazikament daww kull membru stat ghandu l- ewwel tliet (3) numri assenjati ghalihim, issa dan id-dokument mahrug mill- Olanda u t- 244 jirrapresenta lir-Radio Communications Authority Olandizi.' Meta mistoqsi 'Issa nghid sew li allura awtorita fl- Olanda taf bil- bastiment Lifeline jekk hargulu l- MMSI? Jekk thossok li ma tafx ahjar tghid li ma tafx ghax jien qed insaqsik fejn qabel oggezzjonajt, to be fair qed insaqsik fuq xi haga li taghmel l- Olanda.' Wiegeb 'Hekk hu, bazikament grazzi tal- mistoqsija, kien appuntu dak id-dubju li qed tqajjem int li ahna ridna nikkonfermaw ma l-awtoritajiet Olandizi u fil-korrispondenza li esebejna hemm komunika unequivocal mill- awtoritajiet Olandizi x' inhu dak id-dokument, x' jirrapresenta u xi drittijiet jaghtilill-bastiment.' Meta mistoqsi 'nghid sew li biex inti ikollok bandiera Maltija jrid ikollok MMSI number?' wiegeb 'Mhux necessarjament, l- MMSI number huwa assocjat biss ma l-equipment li inti ghandek abbord, fil-fatt nerga nirreferi ghal korrispondenza li rciovejna mill-Awtoritajiet Olandizi fejn qed jiccaraw li dak in- numru jinhareg wara li ssir applikazzjoni mis-sellers ta' l-equipment.' Meta mistoqsi 'Issa dan it-tip ta' bastiment kieku kellu jigi registrat hawn Malta, ma nidhlux fid-detalji tieghu etc, jigifieri kieku kellu jigi registrat hawn Malta jinghata MMSI number dan il- bastiment.' wiegeb 'Jiddependi mill- equipment li ghandu abbord, nerga nirrepeti irrespective jekk il- vapur ikunx registrat kull forma ta' radio equipment on board u l- MMSI number huwa assocjat mhux mal-bandiera tal- bastiment, huwa assocjat ma l-equipment li inti ghandek abbord.' Spjega li 'r- rikonoximent u n- nazzjonalita tinghata biss b'certificate of registry mahrug in terms of Article

24 of the UNCLOS Convention.' Meta mistoqsi jekk 'kieku kellu nigi jien bil- Lifeline llum taghtini MMSI number bhala Registratur?' wiegeb le. Mistoqsi ghala mela f'sitwazzjoni li mar l-Olanda u tawh MMSI number wiegeb li 'saqsejnihom u qieghda fil- korrispondenza, again kif diga ghidt hemmhekk hemm konferma mill-awtoritajiet Olandizi u li nafu lil persuni koncernati u kif jahdmu l-amministrazzjoni Olandizi fic-cert li kien hrmm ukoll koordinament fejn l- entitajiet kollha koncernati gewwa l- Olanda...'

Din il-Qorti taghmel ukoll referenza ghal mistoqsijiet maghmulha mid-difiza in kontro- ezami fl-ittri rogatorji fejn a fol 417 l-Awtoritajiet Olandizi gew mistoqsija '12) Jekk ma tirrikonoxxux il-bastiment, tista' tispjega għalfejn il-bastiment hu mgħammar b'numru MMSI Olandiż (244870698)?' fejn ix-xhieda Mireille Loth u Luc Smulders wiegbu li 'It-talbiet għal dan in-numru huma differenti mir-registrazzjoni tal-vapur. Dan hu indipendenti mill-istat tal-bandiera. Din hi purament ir-registrazzjoni tat-tagħmir tax-xandir. Mal-Ministeru għall-Affarijiet Ekonomiċi u l-Klima.' Meta permezz ta' mistoqsija 13 id-difiza staqsiet 'Tista' tispjega x'inhi l-pożizzjoni li l-Awtorita' Olandiża għandha wara li tat numru MMSI għal vapur li mhux rikonoxxut jew approvat mill-Awtorita' Olandiża?' wiegbu 'M'hemmx rabta bejn ir-registrazzjoni tal-vapur fir-Registru Olandiż tal-Vapuri u l-ħruġ ta' numru MMSI.' Mistoqsija ukoll 'L-Awtorita' Olandiża toħroġ numru MMSI għal bastiment li mhux rikonoxxut minnha jew li għalihom ma tieħu l-ebda responsabbilta'?' wiegeb 'Iva. Numru MMSI jinħarġu għal vapuri li għalihom l-Olanda ma tieħux ir-responsabbilta' tal-istat tal-bandiera'. Ghalhekk ma hemmx dubju mit-twegibiet moghtija permezz tal-ittri rogatorji li bl-ebda mod ma jista numru ta' MMSI ikun allacjat ma' tehid ta' responsabbilta' mill-Istat Olandiż ghal xi vapur u ghalhekk il-fatt li vapur ikollu numru MMSI ma jfissirx li dak il-vapur ikun gie rikonoxxut mill-Istat Olandiż.

Ikkunsidrat;

Permezz tat-tieni aggravju l-appellant jaghmel ukoll sottomissionijiet dwar id-dokumenti pprezentati mix-xhud Axel Steier fejn skont l-appellant dawn urew li l-

bastiment kien qieghed itajjar bandiera Olandiza. L-appellant jissottometti li l-Ewwel Qorti skartat ghal kollox ix-xhieda ta' Axel Steier. Saret referenza ghal dak li xehed u li prezenta dan ix-xhud dwar l-akkwist ta' dan il-vapur. Jghid li l-intiza tal-applikant kien li jirregistra l-bastiment fuq isem l-ghaqda Mission Lifeline e.V. u li mexa mal-procedurimitluba minnu sabiex isir dan. Issottometta li l-prokura esebita minn Axel Steier ghan-nom tas-sid il-bastiment indika li huwa qieghed japplika 'in order to proceed to the registration of the boat to the competent Dutch authorities'. Jissottometti bazi ta' dawn id-dokument, is-socjeta "Pavillon Hollandais", permezz ta' email datat 13 ta' Settembru 2019 iddikjara s-segwenti:

*"We send immediately the new registration request to the Dutch authorities for the new Dutch flag certificate to be issued within 5 working days. The MMSI will not change as it is attached to the boat. However please send me a copy of the existing dutch Radio License."*

Din il-Qorti qieghda tifhem li l-appellant qieghed jaghmel referenza ghall-ittra elettronika datata t-tlettax (13) ta' Settembru tas-sena elfejn u sbatax (2017) li tinsab a fol 704 u mhux tas-sena elfejn u dsatax (2019) kif erronjament indikata fl-appell. Jissottometti li fid-dsatax (19) ta' Settembru tas-sena elfejn u sbatax (2017) litteralment hamest'ijiem wara hargu c-certifikat ICP u dan skontu wara li gew iffirmata ruxmata dokumeti li juru li s-sdien kienu qeghdin jiffirmaw ghal registrazzjoni taht il-bandiera Olandiza.

Din il-Qorti sejra ghalhekk tghaddi biex tqis ix-xhieda ta' dan Axel Steier prodott mid-difiza u d-dokumentazzjoni ipprezentata minnu. Stante li dan ix-xhud xehed bil-lingwa Ingliza, din il-Qorti sejra tkun qieghda tirreferi ghal-partijiet relevanti fix-xhieda tieghu moghtija bl-Ingliz. Huwa xehed fit-tnejn (2) ta' April tas-sena elfejn u dsata (2019) fejn spjega li huwa l-fondatur tal-NGO, jghid li huwa 'member of port and so I am deciding auditing together as aboard.' L-NGO hija Mission Lifeline biex isalva nies minn sitwazzjonijiet perikoluzi speċjalment fil-Mediterran. Spjega li 'we sail ships and look for

people in distress and after we emm call this official MRCC and rescue them.' Dwar 'international certificate of registration' wiegeb li 'this international certificate of registration emm show us emm that vessel MV Lifeline is a Mission Lifeline'. Jghid li 'the home port is Amsterdam.' Dan id-dokument li jirregola pleasure crafts u cioe l-ICP rega gie ipprezentat kopja tieghu a fol 652. Dwar il-bill of sale li pprezenta spjega li 'The bill of sale says that emm Sea Watch, the former owner, emm will handover the ship to us and emm there you can read also home port Amsterdam in the Netherlands so you can retail also e the flag status.' Jikkonferma li l-bejjeigh kien Sea Watch NGO fil-Germanja u x-xerrejja kienu Mission Lifeline, l-NGO tagghom. Dan il-bill of Sale gie prezentat a fol 654 u mmarkat bhala AS2. F'dan id-dokument datat is-sebgha (7) ta' Settembru tas-sena elfejn u sbatax (2017) hemm imnizzel taht 'Number, year and port of registry' 'Amsterdam, The Netherlands'. Dwar Dok AS4 jghid li Mission Lifeline xtara dan il-vapur bil-bandiera tal-Olanda. Ghalkemm din il-Qorti tissottolinea li dan id-dokument huwa bil-Germaniz. Huwa spjega li kull ma ghamlu kien li bidlu s-sid, spjega li 'because e in this e you can keep the MMSI and you can keep the flag just changing the names in the document e you get from e Netherlands' authority. So, we got it and e about that we have emm email, emm email with this emm, with these guys who e organise this process.' Spjega ukoll 'It's application for the Dutch flag and e for a home port Amsterdam which is yeah a common home port in Netherlands and yeah this is the application form.' Jghid li 'It states emm that we emm in order to proceed e to the registration of the boat to the competent Dutch authorities that, that it means that it was not a cancellation of the flag or e change in the flag. It was to keep the flag and to proceed e in that way. Only changed the mission.' Dan b'referenza ghal Dok AS 9 u cioe 'In order to proceed to the registration of the boat to the competent Dutch authorities We declare that the mentioned pleasure craft is being used for purposes of recreational and not for financial gain' A fol 676 taht 'Owner of the boat' hemm imnizzel 'Dutch flag certificate n<sup>o</sup>' u fil-kaxxa ta' hdejha hemm imnizzel 'P201...'. Xehed ukoll li 'Then we presented e to the public certificate of registration so everybody could notice and in September so after the Court starts for trial, e we got a new international certificate e from, from the Netherlands water sport, which is very interesting because now e there is no flag in it but port Amsterdam is still in it. It's very



*interesting because why they changed it, we were wondering in September we got this in an open envelope from the Netherlands.'* Xehed li ghalkemm ma talbux certifikat iehor biex jinhareg, inhareg certifikat iehor u jghid li *'Because now we know they changed their mind in Netherlands.'* Jirrizulta li a fol 671 gie ipprezentat id-dokument AB7 u cioe applikazzjoni intitolata *'Pleasure boat registration in the Netherlands'* fejn hemm innizzel *'Change in ownership (boat already flying Dutch flag)'*. F'dan id-dokument a fol 672 taht *'Your choice of home port:'* giet immarkata *'Amsterdam'*. A fol 694 giet prezentata korrisondenza ta' ittri elettronici fejn fit-tlettax (13) ta' Settembru tas-sena elfejn u sbatax (2017) kien inkiteb li *'We send immediately the new registration request to the Dutch authorities for the new Dutch flag certificate to be issued within 5 working days. The MMSI will not change as it is attached to the boat. However, please send me a copy of the existing Dutch radio license...'* Interessanti huwa l-fatt li ghalkemm f'dak ic-certifikat u cioe' l-ICP li kien fis-sehh meta l-akkuzat gie arrestat taht Flag kien hemm innizzel *'Dutch'*, f'dak ipprezentat minn dan ix-xhud a fol 710 u immarkat bhala AS18, jirrizulta li inhareg certifikat iehor fejn ghalkemm hdejn *'Country'* hemm innizzel *'Duitsland'* u hdejn *'Home port'* *'Amsterdam'*, taht *'Flag'* tnizzel *'not applicable'* minkejja li d-date of issue hija l-istess bhal dak precedenti, in-numru tac-certifikat huwa differenti.

Ghalhekk ghalkemm jirrizulta li l-bastiment in kwistjoni kellu in vigore ICP certificate, dan skont l-Awtoritajiet Olandizi mhuwiex ekwivalenti ghal registrazzjoni tal-bastiment taht il-bandiera Olandiza. Din il-Qorti mhijiex tilqa' t-tieni (2) aggravju izda stante li ma jistax izda jigi nnegat li dan ic-certifikat dak iz-zmien mhux biss kien jindika l-Olanda bhala homeport izda bhala bandiera kien hemm anke innizzel *'Dutch'*. dak li sejra tistharreg fl-aggravju li jmiss din il-Qorti huwa jekk l-appellant kellu intenzjoni kriminuza mehtiega sabiex jissusti r-reat, u biex taghmel dan sejra anke tikkunsidra uhud mis-sottomissjonijiet maghmulha mill-appellant fit-tieni aggravju.

Ikkunsidrat;

Fl-ewwel lok, l-artikolu 4(1) tal-Kapitolu 352 tal-Ligijiet ta' Malta jaqra:

*'L-ebda dgħajsa jew bastiment ma għandu jintuza fl-ibhra territorjali jew interni ta' Malta, jekk dik id-dgħajsa jew bastiment ma jkunx registrat ma' l-Awtorità f'Registru għal Bastimenti Żgħar mwaqqaf skont regolamenti magħmula taħt dan l-artikolu, jew jekk dik id-dgħajsa jew bastiment ma jkunx registrat taħt l-Att dwar il-Bastimenti Merkantili, jew jekk dik id-dgħajsa jew bastiment ma jkunx registrat jew dokumentat għas-sodisfazzjon tal-Awtorità taħt il-ligi ta' xi pajjiż ieħor li mhux Malta.'*

L-ewwel imputazzjoni taqra:

*'fis-27 ta' Gunju 2018 u fil-jiem ta' qabel din id-data, bhala il-Kaptan tal-Vapur M.V. Lifeline, uzajt l-imsemmi dgħajsa jew bastiment fl-ibhra territorjali jew interni ta' Malta, meta din id-dgħajsa jew bastiment ma hux registrat ma' l-Awtorità fir-registru għal-Bastimenti Żgħar mwaqqaf skont regolament magħmula taħt dan l-artikolu, jew meta l-imsemmi dgħajsa jew bastiment ma hux registrat taħt l-Att dwar il-Bastimenti Merkantili, jew meta l-imsemmi dgħajsa jew bastiment ma hux registrat jew dokumentat hhas-sodisfazzjon tal-Awtorità taħt ligi ta' xi pajjiż ieħor li mhux Malta'.*

Ghalhekk għalkemm jirrizulta li l-appellant kien il-kaptan ta' dan il-vapur u li dahal fl-ibhra territorjali jew interni ta' Malta u li rrizulta li dan il-vapur ma kienx rikonoxxut mill-Awtoritajiet Olandizi fis-sens li ma kienx registrat mal-Istat Olandiz u ghalhekk mhux awtorizzat biex jivvjagga barra l-Olanda għal pajjizi ohra, din il-Qorti sejra tistharreg jekk l-appellant kellux responsabbiltà kriminali u cioe' kienx konnoxenti tal-fatt li dan il-bastiment ma kienx registrat ma' Stat u li ghalhekk ma setghax jidhol fl-ibhra territorjali jew interni ta' Malta.

L-appellant issottometta li l-Ewwel Qorti allokat ir-responsabbiltà kollha fuq l-appellant meta huwa ma kienx involut fir-registrazzjoni. Li apparti minn hekk, meta qieghed juza

l-kejl ta' bonus pater familias, id-dokumenti li kellu f'idejh kienu juru li l-bastiment kien registrat taht il-bandiera Olandiza. L-appellant jghid li sid il-bastiment u cioe' l-entita' Mission Lifeline e.V. ghamlet dak kollu li hu mistenni minnha meta hi akkwistat il-bastiment sabiex tassigura li dan kien registrat skond il-ligi. Sid il-bastiment allura strahet, ragjonevolment, fuq il-procedura stabbilita tar-registrazzjoni. Jissottometti li l-bastiment inhargila certifikat, liema certifikat huwa msejjes fuq il-ligi. Li l-kaptan ma kienx involut fir-registrazzjoni tal-bastiment u li ma kellux ghalfejn jiddubita ir-registrazzjoni tajba tal-bastiment M.V. Lifeline ghaliex kif xehed hu stess, huwa kellu fil-pussess tieghu certifikat mahrug minn entita' legalment awtorizzata li tohrog dak ic-certifikat, u liema certifikat kien jindika illi l-bastiment in kwistjoni seta jtajjar il-bandiera Olandiza. Jissottometti li mhux biss l-akkuzat ma kellux lintenzjoni jew l-gharfien li huwa kien qieghed jinnaviga bastiment minghajr ir-registrazzjoni appozita, izda ghal kuntrarju, in vista tad-dokument ICP hu kien qieghed jinnaviga il-bastiment b'mod legali u allura ma kien hemm xejn illi kien qieghed jimpedixxi lill-akkuzat milli jbahhar bil-bastiment MV Lifeline. L-appellant jissottometti li l-prosekuzzjoni naqset milli tressaq xi prova, liema prova fil-kamp kriminali trid tkun lil hinn minn kull dubju dettat mir-raguni li l-akkuzat kellu l-intenzjoni li jaghmel uzu mill-bastiment minghajr dan ma kellu r-registrazzjoni korretta. Jissottometti li lanqas ma huwa l-kaz li l-kaptan agixxa b'mod negligenti il ghaliex apparti li dan mhuwiex il-kaz, lanqas ma ngabet prova f'dan is-sens. Jissottometti li l-kaptan strah fuq dokumenti legali, li jinhareg skond procedura legali u rikonoxxuta gewwa l-Olanda u liema dokument li kien jindika l-bandiera Olandiza bhala l-bandiera tal-bastiment. Jissottometti li l-appellant kien totalment 'in bona fede' meta huwa nnaviga l-bastiment tieghu fuq l-ibhra territorjali ta' Malta il ghaliex kollox kien jindika li seta jaghmel dan bil-bastiment M.V. Lifeline. Jissottometti li l-mens rea huwa nieqes stante li ma tressqet l-ebda prova li l-kaptan kien konxju jew kien negligenti dwar xi stat ta' att ta' xi irregolarita' fir-registrazzjoni ta-vapur u li kellu l-volonta' li jagixxi xorta illegalment.

Ghalhekk jissottometti li wiehed irid jikkonsidra jekk l-appellant kienx konsapevoli li l-ICP hawn fuq imsemmi kien wiehed irregolari jew qarrieq minhabba li kien jikkontjeni xi fatti li m'humiex konformi mal-verita. Jissottometti li ma kienx konsapevoli li c-certifikat kien irregolari jew li jikkontjeni xi fatti li m'humiex konformi mal-verita. Li l-appellant kien konvint minn dak ic-certifikat ICP li kien jixhed li l-bastiment M.V. Lifeline kien irregistrat mal-bandiera Olandiza u ghalih il-kontenut ta' dak ic-certifikat kienu kollha fattwali u korretti. Jissottometti li qatt ma kellu l-intenzjoni li jinnaviga l-bastiment lejn Malta izda li nnaviga lejn Malta fuq struzzjonijiet tal-Awtoritajiet Maltin li huwa obda. L-appellant jaghmel ukoll sottomissjonijiet dwar tibdil fl-International Certificate for Pleasure Craft (ICP). Jissottometti li l-Awtoritajiet Olandizi stess qeghdin jammettu li s-sistema tal-ICP kienet qed tigi interpretata li l-bastiment permezz ta' dan ic-certifikat jakkwista l-bandiera Olandiza. Li c-certifikat imsemmi gie sostitwit b'certifikat gdid mahrug mill-Awtorita' wara li qamet din il-kwistjoni kollha dwar id-dokumenti tar-registrazzjoni tal-bastiment Lifeline, liema certifikat ma ntabx mis-sidien tal-bastiment jew mill-imputat. Ic-certifikat ircevewh bil-posta go envelope miftuh u minghajr ebda pre-avviz. F'dan ic-certifikat, filwaqt li home port baqa jindika 'Amsterdam', fejn hemm il-bandiera, giet sostitwita bil-kliem 'not applicable'.

Ikkunsidrat;

Illi din il-Qorti tibda billi taghmel referenza ghall-istqarrija rilaxxata mill-akkuzat fit-tmienja u ghoxrin (28) ta' Gunju tas-sena elfejn u tmintax (2018) u mmarkata bhala Dok MH3. Fost affarijiet ohra l-appellant spjega li kien ilu kaptan tal-vapur Lifeline mill-ewwel (1) ta' Jannar ta' dik is-sena. L-iskop tan-navigazzjoni tal-Lifeline hi li isalvaw il-hajjiet. Bil-lifeline ghamel erba' (4) salvataggi, kienet misjoni wahda b'erba' (4) salvataggi. Spjega li l-vjagg '*Beda fit-tlettax ta Gunju. Tlaqna minn Malta. Ivojjaggajna lejn is-search and rescue zone li qieghda fin-nofsinhar ta Malta. Kellna salvatag fil-punent tal-Libya u ittrasferjena xi nies li salvajna fuq vapur kummercjali viking Amber. Wara dan morna minhabba bdil fit-temp morna fil-Lvant ta Tripoli. Fil-wiehed u ghoxrin kelna tlett salvatagi*

ohra. Mill-ewwel zewg salvataggi tal-wiehed u ghoxrin hadna xi nies aboard minn fuq zewg dinghies. Wara dan ircevejna struzjonijiet mill-coast guards Libyani biex ninavikaw fir-rotta zero zero zero, jigifieri North. Dan kollu hu irrekordjat fuq telephone privat ta wiehed mill-ekwipagg. Ahna morna North u matul il-lejl ircevejna distress call mill-vapur Alexander Mearsk, li hu vapur tal-containers li kien ghadu kif sab dinghy iehor b'madwar mija u tmintax il-persuna aboard. Kien hemm ukoll helicopter Taljan jew militari. Ahna ofrejna l-assistenza taghna biex insalvaw il-persuni, ghax vapur kummercjali mhux attrezzat ghal salvatagg bhal dan. Tajna lil kulhad il-life jackets u resaqna id-dinghy ma genb il-vapur. Ahna ghenha in-nies jtitilghu fuq il-vapur Alexander Mearsk peress li il-dan kien vojta u il-gangway kienet il-fuq hafna. Kienet xi sitt metri il-fuq. Kien anke jidher il-propeller. Dan gara xi tmenin mil mill-Libya. Wara dan il-vapur Lifeline u l-Alexander Mearsk tlaqna North. Wara dan ppruvajna nsibu port sikur biex innizlu in-nies. Ktibna e-mails lil-RCC Malta u MRCC Rome u anke lil UNHCR, u lil Ministeru tal-Affarijiet Barranin Germaniz. Il-Maltin taw ir-responsabilita lit-Taljani u it-Taljani lil Libjani. U il-Libjani ma rrispondewx. Kulhadd beda jitfa ir-responsabilita fuq xulxien. Bil-Germaniz nghidu il-qattusa tigri wara denba. Bqajna f'din is-sitwazzjoni mil-wiehed u ghoxrin sal bierah.'

Stqarr li riedu port sigur u li ma kellhom l-ebda preferenza. Bdew jistennew lil awtoritajiet jghidulhom fejn imorru. Mistoqsi 'Taf kif hinu registrat il-vapur Lifeline?' wiegeb 'Huwa registrat l-Olanda. Ghandek ic-certifikat. Hemm miktub Pleasure Boat. Mhux vapur kummercjali.' Hu ma qabilx li qed jopera bhala Vapur kummercjali u qal li jimla l-crew list ghal baggage room. Li bilfors irid jaghtihom dawn id-dettalji. Mistoqsi fejn hu l-original tac-certifikat wiegeb li F'Dresden u li se jibghatulu l-original Malta u ma jafx ghala qieghed f'Dresden. Meta hu inghaqad mal-vapur f'Jannar dan id-dokument ma kienx abbord izda ra ic-certifikat originali fl-ufficju tal-organizzazzjoni Mission Lifeline f'Dresden. Ma jafx li hu l-obbligu li jkollok l-original aboard. Jghid li c-certifikat jintitolak ghal attivita mhux kummercjali. Jghid li hemm zewg kategoriji pleasure jew kummercjali u ma kienx qieghed jaghmel attivita ohra. Mistoqsi jekk ghalih igor immigranti jew isalva imiganti hijjex pleasure activity jghid li 'Jien niehu gost insalva il-

hajjiet. Jien ma kontx qed ingor l-immigranti. Ma hiejiex l-intenzjoni tiegħi ingorr immigranti imma jien kont qed insalva il-hajjiet.' Mistoqsi 'Ma jidhirlekk li attivita ta salvatagg tirrikjedi certifikazzjoni differenti minn dak ta pleasure boat?' wiegeb 'Ma nafx risposta għal din id-domanda imma ic-certifikat ma jgħid li ma nistax insalva hajjiet anzi għandi dover li nsalva il-hajjiet skont ir-regolameenti SOLAS (Safety of lives at seas).' Mistoqsi 'Ic-certifikat tal-vapur jindika li tista tagħmel attivitajiet sportivi biss u fil-baħar Olandiz, xi tghid rigward dan?' wiegeb 'Mhux veru. Dan hu certifikat internazzjonali u hu accettat fl-Ewropa kollha minn tal-inqas.' Mistoqsi 'L-Awtoritajiet Olandizi qalulna li l-attivita li kont qed tagħmel fil-Mediterran ma hiex skond ic-certifikazzjoni tal-vapur? Xi tghid dwar dan?' wiegeb 'Ma għandix xi ngħid dwar dan. Nixtieq nara dan bil-miktub.' Spjega li hu u l-crew ma jiehdu l-ebda pagamenti, li dan kollu hu volontnarju u li anke hallas il-vjagg biex gie mill-Germanja. Mistoqsi jekk hu u l-crew jiehdu xi flus mill-immigranti li jtellghu fuq il-vapur wiegeb li le qatt, kull ma jkollhom qalziet u t-shirt. Huwa dmiru u mhux business. Mhux minnu li l-Awtoritajiet Taljani ordnaw biex ma jtellghux abbord lill-immigranti. Ikkonferma li għandu apparat AIS fuq il-bastiment u li dan l-apparat mixgħul.

Mistoqsi fost ohrajn jekk jafx li dan il-garr ta nies huwa kontra il-ligi Maltija u dik ta' pajjizi ohra Ewropei wiegeb 'Jien ma kontx qed ingorr in-nies. Jien kont qed inwettaq salvatagg. U dan kien ir-raguni għalfejn telgħajt in-nies aboard. Kieku ma għamiltx hekk kienu imurtu in-nies. Kieku l-Awtoritajiet bagħtulna vapur konna nittrasferixxu lin-nies li salvajna fuq il-vapuri tal-awtoritajiet. La ma garax hekk l-għazla li kelna kienet li jew niehdom aboard jew inħalħuħom imutu fil-baħar.' Zied li jahseb li issalva il-hajjiet huwa dmir u mhux reat.

Meta l-appellant xehed quddiem l-Ewwel Qorti fit-tmintax (18) ta' Dicembru tas-sena elfejn u tmintax (2018) bil-lingwa Ingliża fost affarijiet ohra xehed li 'I have all German licences expect a license for astronomic navigation but astronomic navigation nobody uses today because we have GPRS and in the Mediterranean sea navigation with . . . . not really useful'. Spjega li '...my first journey from Malta to Licata to bring the ship to the shipyard there because it has to be on the dry dock to renew the . . . . and other things and there was also involved in the

. . . . and in the fundraising to bring the boat back in the water and on the 9th of June we left Licata, we arrived on the 10 of June in Malta to prepare the vessel for the search and rescue operation...' Waslu Malta fl-ghaxxa (10) ta' Gunju u tlett'ijiem wara jigifieri fit-tlettax (13) ta' Gunju 'we left to sail to the search and rescue area offshore Libya'.

Mistoqsi '...when you started your engagement with MV lifeline did you check the documents of the vessel ?' wiegeb 'Yes of course'. Xehed li 'It's normal thing to check the papers when you take over car, on a car hire you also look it's the same number plate written on the document and on the car for example'. Spjega li 'I checked the ICP the registration paper and check also the radio licence papers and also the certificates for the security equipments like the life rafts and the life jackets and the . . . . and these things because they shouldn't be expired when we sail out from the Harbour'. Jghid li 'i checked the owner because it has to be the right owner'. Is-sid huwa mission Lifeline, l-NGO. Jghid ukoll li 'And then I check the flag there is written flag Dutch and home port Amsterdam'. Spjega li 'the boat flies the Dutch flag and there is also written the homeport Amsterdam and it is written below, on the boat below the name . . . . And then you have to check the date of issue and the date of expiry. And the date of issue is 19th September 2017 and it's valid up to the 19th September 2019 so it looks good and it's up to no valid because' Mistoqsi ghala d-dokument kien a sodisfazzjoni tieghu wiegeb li li hemm l-istess dati fuq il-vapur u ra l-bandiera fuq il-vapur, hemm ukoll home port Amsterdam. Jghid li 'with the 2 ships I sailed for they were called CI and Sea fox they had the same type of document'. Jghid li 'we also had the radio registration from the Dutch authorities and in the radio, and in the radio registration of the, was given by the Ministry of Economics in Holland. I can read the same datas and also mms number is Dutch mms number because this mms number starts with its first three digits with a country code like in the telephone system you have a country code and this country code starts with 244 and this is Holland. Germany for example is 211 and this document is just given to a vessel which is registered in the Netherlands because otherwise Netherlands don't give you a radio certificate with the Dutch mms number for a . . . . . vessel or for German vessel'.

Meta l-appellant kien mistoqsi jekk Transport Malta kienux jafu dwar ir-registrazzjoni ta' Lifeline wiegeb *'they had to know this ship because this ship was formally sea watch 2 and it leaves and enters the port of Malta 2 years, for 2 years its minimum 50 more operations to check in and out and also to ask for duty free gasoline and diesel you have to show this document always to Transport Malta'* Jghid li *'Nobody from Transport Malta has been on the vessel since i am the Captain of the ship Lifeline'*. Jispjega li Transport Malta ghandha d-dokumenti *'because when we check in and out of the port we have to show them, our agent as to present he documents'*. Telqu Malta fit-tlettax (13) ta' Gunju u fis-sbatax (17) ta' Gunju *'we had the first rescue'* u spjega li *'with approximately 120 persons and we handed over the migrants to the cargo vessel Viking Amber'*. Mistoqsi *'Why did you rescue these 120 migrants on the 13th of June?'* wiegeb *'It's an obligation to save the lives of people in distress at sea. It's the law. You can read it on SOLAS Saving of Lives at sea from 1974 and all these laws says that you have to assist and to rescue people when they are in distress. This is a very normal thing to , it's a duty to have no other choice.'*

Spjega li fil-wiehed u ghoxrin (21) ta' Gunju madwar l-erbgha ta' filghodu (4:00am) lemhu tlett targets fuq ir-radar, l-ewwel marru fuq l-ewwel target li kien *rubber boat* b'kondizzjonijiet fragli u spjega li *'When we see the boat in this conditions yes we decide to evacuate the people from this really weak boat before something happens and we have a situation which is really difficult to treat because if you have 50 or more people in the water then this is a situation nobody wants to see.'* Meta marru fuq it-tieni target, din id-dghajsa kienet ukoll fragli. Ghalhekk fil-wiehed u ghoxrin (21) ta' Gunju gabru mitejn u hamsa u tletin (235) immigranti. Spjega li *'When we had the people on board the Libyans arrived with petrol vessel separata and I tried to come along side and we heard them before on the radio because they called us on the radio and they said on the radio go away, go away, help her help her I kill you, I kill you. It's a very trustful people'*. It-tielet *rubber boat* ma sabuhx. Spjega li salvaw l-immigranti fil-wiehed u ghoxrin (21) ta' Gunju u dahlu fil-port ta' Malta fis-sebgha u ghoxrin (27). Fis-sebgha u ghoxrin (27) ta' Gunju rcevw ittra elettronika li setghu jidhlu fl-ibhra Maltin ghal ragunijiet umanitarji. Spjega li *'I asked for this humanitarian reasons*



*for an allowance to enter Maltese waters and to search shelter position on the . . . side of the Maltese islands. And six hours later I got an email with an allowance to enter and position close to Marsaxlokk east from Marsaxlokk and during this wait to this position we got another email that we are allowed to enter Valletta harbour'.*

L-appellant xehed li ma kienx informat dwar bdil fl-ICP certificate sal-lum. Jghid li id-dokument wasal fil-posta ta' Mission Lifeline f'envelop miftuh fejn f'dan l-ICP fejn hemm miktub hdejn il-bandiera '*not applicable*'. B'referenza ghal webpage li din il-Qorti qieghda tifhem li hija dik a fol 567 huwa qal li '*On the 11th of December 2018 and they say that since July the ICP is no longer recognized by European Authorities as a title of navigation. This document has become absolute for navigation in territorial and international maritime waters.*' Spjega li '*When we sail out from Malta on the 13th for me and up to now all these documents are valid because I had originals in my hand. Should I, should I come to an idea that maybe these documents are not valid I had these documents for 3 vessels the same type of documents in my hand and never ever somebody says there is something wrong on this document*'.

In kontro-ezami fost affarijiet ohra kkonferma li c-certifikati ta' Lifeline kienu l-istess certifikat bhaz-zewg vapuri li huwa dderiga. Xehed li huwa normali ghal pleasure crafts li certifikat jinhareg minn assocjazzjoni. Mistoqsi '*You knew that before coming to Malta ? You knew that before come to Malta that it was issued by a water sports club and not by the Dutch Authorities?*' wiegeb '*yes but it's no problem because all these pleasure club registrations are issued not by the states, it's issued by an organisation who is allowed from the state to do that. This is normal*'. Xehed li '*I think to rescue people it's not needed to have a permission. This a duty, this is a law at sea. And this certificate it is an International certificate. It's not only valid in Dutch waters...*' Jghid li '*When it is not appropriate than it is a fault of the Maltese authorities because they don't come to check the documents. we brought the documents to check them by the Malta Transport Authorities*'. Gew Malta fl-ghaxra (10) biex jigbru l-crew u r-rescue equipment. Jghid li '*the ship was also based before 2017 and 2016 in Malta*'.

Ma kellux intenzjoni fis-sebgha u ghoxrin (27) li jidhol Malta izda gie ordnat mill-awtoritajiet Maltin meta baghtulu email biex jidhol fil-port ta' Malta. L-intenzjoni tieghu kienet li jsib '*Port of safety*'.

Din il-Qorti taghmel referenza ghal fol 76 fejn l-M.R.C.C. ROMA baghtet lil RCC Malta fost informazzjoni ohra li '*THE M/V LIFELINE IS ACTUALLY OVERCROWDED DUE TO MIGRANTS PRESENCE ON BOARD BECAUSE IT IS NOT A RESCUE VESSEL AND ALSO IT SEEMS THAT SHE DOES NOT HAVE THE REQUIRED SAFE CERTIFICATES.*' A fol 75 u 75 tirrizulta ittra elettronika mibghuta mill-Forzi Armati ta' Malta lil '*Duty Office MRCC Rome*' fejn hemm mnizzel fost informazzjoni ohra li '*Whilst we take note that the Master of MV LIFELINE is reportedly to have ignored the instructions of the responsible authority i.e. LNCG and decided to steam north outside the LY SRR into the MT SRR, this authority will not bear any responsibility any irresponsible actions taken by this vessel including overloading and disobeying the instructions of the coordinating authority and the appropriate authority. In addition if there were concerns related to the status os vessel that it should have been brought to the immediate attention of the responsible authority on 21 Jun 1710 hrs following the notification by the master that around 234 PAX were on board. Regarding the issue of vessel certifications this is not a competence of this RCC but that of the flag state. If it is not good now in the MT SRR it was not good before in the LY SRR.*' Din il-korrispondenza intbaghtet wara li sehħ is-salvatagg minn MV Lifeline izda qabel ma gie awtorizzat li jidhol Malta.

Din il-Qorti taghmel referenza ukoll ghal fol 269 u cioe' l-ittra elettronika datata l-ghoxrin (20) ta' Gunju tas-sena elfejn u tmintax (2018) li ntbaghtet dwar '*MV SEEFUCHS from Sea-Eye e.V*' u ghalhekk mhux dwar il-bastiment in kwistjoni izda f'din l-ittra elettronika Luc Smulders kieteb li '*We acknowledge the fact that the document (card/certificate) used as ICP could give the wrong impression. Therefore we've recently requested both the "watersportverbond" and the "Kominklijke Nederlandsche Motorboot Club" to amend the contents of the ICP issued by them.*' Tnizzel li '*From now on an ICP will indicate*

"not applicable" after 'national flag'. Secondly the following statement has been added to the document: "This document cannot be interpreted as giving Dutch nationality to the craft, nor does it constitute the right to fly the flag of the Kingdom of the Netherlands as defined by Article 91 of the United Nations Convention on the Law of the Sea (UNCLOS). Consequently the Kingdom of the Netherlands does not accept any of the responsibilities listed in article 94 of UNCLOS". Ghalkemm din l-ittra elettronika hija datata l-ghoxrin (20) ta' Gunju tas-sena elfejn u tmintax (2018) u ghalhekk wara li l-bastiment Lifeline hareg minn Malta fit-tlettax (13) ta' Gunju tas-sena elfejn u tmintax (2018) izda qabel ma' dahal lura Malta fis-sebgha u ghoxrin (27) ta' Gunju tas-sena elfejn u tmintax (2018), l-ittra elettronika tirrigwarda bastiment iehor. Filfatt din l-ittra elettronika tinstab ukoll a fol 392 u meta l-appellant gie mistoqsi dwar meta sar jaf dwar din l-ittra elettronika huwa wiegeb li 'It was around the 15th September of 2018 because this email is not addressed on our address, its addressed on CI foundation'. Huwa qal li ghandha l-istess registrazzjoni bhal MV Lifeline u mistoqsi kif jaf li ghandhom l-istess registrazzjoni wiegeb li 'i was kept three times on Sea fox and also two times on MV CI so I had the original of the registration of Sea fox and CI of course in my hands when I did the check in and checkout procedure' izda jghid li sar jaf b'din l-ittra elettronika ghal habta ta' nofs Settembru. Ghalhekk ghalkemm fil-passat l-appellant kellu konnessjoni mal-bastimenti mertu ta' dik l-ittra elettronika u cioe' MV Seefuchs u Sea-Eye e.v, ma tressqet l-ebda prova li l-appellant kien konnoxxenti ta' dik l-ittra elettronika, anzi cahad li kien jaf biha izda li sar jaf biha ghal habta ta' nofs Settembru u ghalhekk fil-mori ta' dawn il-proceduri. Meta mistoqsi 'Until the 27th of June 2018 were you ever informed of any changed in the ICP certificate that the MV Lifeline had?' wiegeb 'No up to today not. Up to today we have no letter or notice from the water sports . . . . that our certificate couldn't be maybe is not valid'. Jikkonferma izda li ntbaghtet ittra lil Mission Lifeline b'certifikat gdid.

Ivan Sammut fix-xhieda tieghu quddiem l-Ewwel Qorti meta mistoqsi dwar ic-certifikat ICP xehed ukoll li 'meta wiehed jara dan it-tip ta' ccertifikat l- ewwel impressjoni li jaghtik li dan il- vapur huwa registrat gewwa l- Olanda. Fil- fatt ghandek wahda mill-fields li fih

*dan ic-certifikat fuqu jghidlek Flag Dutch. Barra minn hekk imma hemm il- provisios cari li jghidulek li dan ic-certifikat ma jaghtik l- ebda nazzjonalita...'*

L-Ing. Kurt Gutteridge kien mahtur permezz ta' digriet moghti mill-Ewwel Qorti fil-hamsa (5) ta' Lulju tas-sena elfejn u tmintax (2018) sabiex isir inventarju tal-apparat u ingeni li jinsabu fuq il-bastiment MV Lifeline inkluz verifka tal-apparat u dettalji li jinsabu fic-certifikati prezentati Dok. MH5, Dok. MH6 u Dok. MH8. L-Ing. Kurt Gutteridge fir-rapport tekniku tieghu esebit bhala Dok KG1, senjatament a fol 146 et sequitur tnizzel li:

*'The undersigned finds that a clear distinction should be made between what is a Certificate of Registry and what the International Certificate for Pleasure Craft, issued by the Dutch Watersportverbond, actually represents. Whilst it is not within the undersigned's scope to delve into legal issues surrounding the matter, the following technical considerations are being amde based on the undersigned knowledge and experience in the industry in this regard:*

*A) A certificate of Ship Registry issued by the Kingdom of the Netherlands to the vessel was not seen by the undersigned. The absence of such certificate would signify that effectively the vessel does not have a nationality.*

*B) Further to point A above, based on the claim that the vessel is registered in The Netherlands as a 'Pleasure Yacht,' then the undersigned would expect the vessel to carry the following certificates, in view of The Netherlands being a signatory of the same Conventions requiring certification and compliance thereto:*

*i. International Tonnage Certificate issued in accordance with the International Convention on Tonnage Measurement of Ships, 1969;*

ii. *Navigation Lights Plan, approved by the administration or a recognized organization on its behalf, confirming compliance with the International Regulations for preventing collisions at sea;*

iii. *International Sewage Pollution Prevention Certificate, issued in accordance with Annex IV of the International Convention for the prevention of pollution from ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78)'*

iv. *Garbage Management Plan in accordance with Annex V of the MARPOL 73/78;'*

*When requested by the undersigned, the above documents were not presented or made available with Mr. Reisch claiming these were not required in view of the vessel being a 'Pleasure Yacht.' Nevertheless, the above conventions are applicable to all ships and are therefore applicable in this case. It is therefore the view of the undersigned that if indeed it were the case that the vessel was registered under the Dutch Flag, then such certification should have been carried on board. In addition it should be noted that the above considerations are based on the assumption that the Gross Tonnage indicated in the Ship Particulars (231) is correct. This could not be verified by the undersigned...'*

**Fl-istess relazzjoni tnizzel ukoll li:**

*'C. Further to the comments raised under item B, the undersigned would expect further additional certification requirements to apply were the vessel registered under Dutch flag as a 'Search & Rescue Vessel' as indicated on the IMO GISIS system as well as indicated on the AIS System. In such hypothetical case, the undersigned would expect the vessel to carry an International Load Line Convention in accordance with the 1966 International Convention on Load Lines. In this regard the undersigned notes that the vessel's hull remains marked with Plimsoll marks on her sides clearly indicating that such load line was previously assigned to the vessel in the past. In addition, it is also expected that the vessel would carry a safety certificate issued against the applicable Dutch Law for the intended operation and range.*

D) The document DOK MH6, represents what is known as an ICP (International Certificate Pleasure Craft) and as detailed above, it is in the opinion of the undersigned not a Certificate of Registry which effectively gives a Nationality to the vessel, even because it is not issued by the Kingdom of the Netherlands but rather by a non-Governmental body. Furthermore, the undersigned notes that since the registration of pleasure craft in the Netherlands is not strictly necessary for recreational craft the ICP serves as a means towards providing a proof of ownership.<sup>4</sup> In reality for the issuance of a Dutch Certificate of Registry which would constitute an equivalent to a Maltese Certificate of Registry issued by the Merchant Shipping Directorate within Transport Malta then the certification under item B above would be required and the process would have to go through the Dutch Kadaster (The Netherlands' Cadastre, Land Registry and Mapping Agency)<sup>5</sup>. The ICP registration in question is typically obtained via agent companies that offer the total service online, in this case it is believed that the company used by the owners was International Registration Services Limited (<https://www.yachtregistration.company/>) which is the same company that applied for and obtained the ship station licence (DOK MH8). Looking into the services offered by this company, it becomes immediately evident that the two separate options are offered as indicated in Annex 3.)

F'annex 3 a fol 166 hemm webpage fejn hemm erba' options ta' registrazzjonijiet u cioe' 'EU ICP Light Registration', 'MMSI & AIS Radio License Service', "'Premium" Belgian leisure yacht registration' u 'Dutch Worldwide Registration' bid-dettalji taht kull tip ta' registrazzjoni. Taht 'Dutch Worldwide Registration' fost dettalji ohra hemm innizzel 'Valid world wide' u 'Issue of Dutch certificate of Registry.' Filwaqt li taht 'EU ICP Light

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<sup>4</sup> <http://www.watersporters.nl/icp-aanvragen/meer-over-internationaal-certificaat-pleziervaartuigen/> (Din ir-referenza tinsab fit-tielet (3) nota ta' qiegh il-pagna tar-rapport tal-Ing Kurt Gutteridge a fol 148)

<sup>5</sup> <https://www.kadaster.com/about-kadaster> (Din ir-referenza tinsab fir-raba' (4) nota ta' qiegh il-pagna tar-rapport tal-Ing Kurt Gutteridge a fol 148)

*Registration'* hemm fost dettalji ohra imnizzel *'No ship inspection or annual yacht tax'* u *'Open to boat owners from outside the EU.'*

Ghalhekk l-Ing. Kurt Gutteridge fost spjegazzjonijiet ohra, mhux biss jaghti spjegazzjoni dettaljata dwar l-uzu ta' certifikat ICP izda anke jipprovdi dettalji ta' licenzji li ghandhom jinżammu abbord f'kaz ta' pleasure yachts, li f'dan il-kaz partikolari ma rrizultax li kienu abbord.

Dr Adrian Attard espert ukoll mahtur mill-Ewwel Qorti fir-rapport tieghu immarkat bhala Dok AA1 li jinsab a fol 320 et sequitur fejn senjatament a fol 323 irrelata li *'filwaqt li l-esponent jgharrafl li ghad irrid jiġi vverifikat jekk din l-assocjazzjoni KNWV ghandiex l-poter u l-awtorita' sabiex taghti n-nazzjonalita' Olandiza lil bastimenti, jirriżulta li l-bastiment MV Lifeline prezentament m'għandux Ċertifikat ta' Reġistrazzjoni maħruf mir-Reġistru Olandiz.*

*Huwa dan ċ-ċertifikat li normalment jservi bhala prova tar-reġistrazzjoni ta' bastiment go reġistru ta' pajjiz...'*

Din il-Qorti ghalhekk tissottolinea li gie ampjament ippruvat mill-Prosekuzzjoni li l-vapur in kwistjoni ma kienx irregistrat mal-Olanda u ghalhekk mhux biss ma setghax itajjar il-bandiera Olandiza izda ukoll konsegwenza ta' hekk dan il-vapur stateless ma setghax jidhol fl-ibhra territorjali u interni ta' Malta. Flimkien mal-ittri rogatorji giet ipprezetanta mid-difiza rizzoluzzjoni 13 u cioe *'INTERNATIONAL CERTIFICATE (INTERNATIONAL CARD) FOR PLEASURE CRAFT Resolution N. 13, revised (adopted by the Working Party on Inland Water Transport on 14 November 1986)'* fejn fost affarijiet ohra hemm miktub:

*'Decides to amend annexes I and II to resolution No. 13 accordingly,*

*1. Recommends the issue on request:*

- of an international certificate, made out by Governments or by bodies approved by them, for pleasure craft operators going abroad;

- of an international card made out by the qualified bodies of countries where no international certificate for pleasure craft operators going abroad is issued.

The international certificate (or international card) should so far as possible conform to the model in annex II to this resolution, having due regard to the minimum provisions in annex I;

Annex I li tinsab a fol 373 fost affarijiet ohra jiprovdi li 'A craft shall be deemed to be subject to the rules governing "international navigation for pleasure" in the territory of a State and in the coastal waters which form an integral part thereof if it meets the three following conditions...' Din ghalhekk fil-fehma ta' din il-Qorti ma taghtix l-impressjoni li dan ic-certifikat jaghti l-jedd ta' vjaggar internazzjonali.

A fol 381 u cioe' f'Annex I tal-International Certificate for Operators of Pleasure Craft, rezoluzzjoni numru 40 hemm imnizzel li 'The applicant has to prove in an examination

(a) sufficient knowledge of the regulations concerning pleasure craft operation and nautical and technical knowledge required for safe navigation on inland waters and/or coastal waters and

(b) the ability to apply this knowledge in practice.' (Emfazi u sottolinear mizjud minn din il-Qorti).

Filwaqt li f'annex II tal-International Certificate for Operators of Pleasure Craft, rezoluzzjoni numru 40 u cioe' a fol 383 fit-template tac-certifikat hemm imnizzel 'Certificate no. Valid for Inland Waters\* Coastal Waters\* u motorized/sailing\* pleasure craft..' fejn din il-Qorti qieghda tifhem li ghandu jigi imhassar fejn mhux applikabbli u ghalhekk ma jirrizultax li dan ic-certifikat jaghti jedd lil dak li jkun biex jivvjagga minn pajjiz ghall-iehor u cioe' internazzjonalment.

L-Ewwel Qorti izda naqset milli tqis l-element intenzjonali u dan fil-kuntest tal-fatt li c-certifikat ICP ghalkemm issa stabilit li bl-ebda mod ma jaghti dritt lil dak li jkun jivvjagga madwar id-dinja, izda kien jindika 'Dutch' hdejn 'flag' u ghalhekk din il-Qorti



tistaqsi setghax dan il-fatt zgwida lil kapitan u cioe' gieghel lil kapitan jemmen li dan il-vapur kien itajjar il-bandiera Olandiza. Mhuwix car kif fl-ICP tnizzel 'Dutch' hdejn 'flag'. Din il-Qorti taghmel referenza ghal Dok AS6 a fol 669 u cioe' korrisondenza permezz ta' ittri elettronici fejn Sascha Pietssch minn mission-lifeline baghtet lil *pavillon-hollandais* ittra elettronika datata t-tnax (12) ta' Settembru tas-sena elfejn u sbatax (2017) indirizzata lil certu 'Mrs. Bouvier' fejn fost affarijiet ohra qalet li '*The ship was sailing the dutch flag before, so it's just a change of the ownership and the name. Is it possible to register the ship without changing the MMSI Number?*' U '*Is it possible to get the dutch ICP first of all via email, so we can save the time of the shipping?*' Ghalhekk minn din l-ittra elektronika jirrizulta li kienet ufficjal ta' Mission Lifeline li f'korrisondenza dwar ir-registrazzjoni ta' dan il-bastiment indikat li '*The ship was sailing the dutch flag before*', ma jirrizulax izda kif waslet ghal din il-konkluzjoni u lanqas ma jirrizulta jekk kinitx abbazi ta' din id-dikjarazzjoni li fic-certifikat ICP tnizzel 'Dutch' ma gemb 'flag'. A fol 697 tirrizulta ittra elektronika datata t-tlettax (13) ta' Settembru tas-sena elfejn u sbatax (2017) fejn Valerie BOUVIER minn pavillon-hollandais kitbet li '*We send immediately the new registration request to the Dutch authorities for the new Dutch flag certificate to be issued within 5 working days. The MMSI will not change as it is attached to the boat. However, please send me a copy of th existing Dutch radio license*'. Filwaqt li a fol 696 f'ittra elektronika ohra mibghuta minn Valerie BOUVIER minn pavillon-hollandair fl-erbatax (14) ta' Settembru tas-sena elfejn u sbatax (2017) kitbet li '*...the Dutch authorities told me that the new Dutch flag certificate will be ready on Tuesday 19 September only...*' L-ICP filfatt inhareg fid-dsatax (19) ta' Settembru tas-sena elfejn u sbatax (2017).

Fil-fehma ta' din il-Qorti, dak li huwa krucjali huwa t-tibdil li sar fl-ICP certificate. Filfatt jirrizulta li fic-certifikat originali misjub a fol 31 fl-envelop immarkat bhala Dok MH10, kien hemm imnizzel '*AMSTERDAM*' hdejn '*Home port*' filwaqt li hdejn '*Flag*' hemm imnizzel '*Dutch*'. Kif gia inghad l-Awtoritajiet Olandizi mhumiex jaccettaw dan ic-certifikat bhala rikonoxximent li l-vapur kellu bandiera Olandiza u ghalhekk din il-Qorti ma tistax tqis dan ic-certifikat bhala validu *ai fini* ta' registrar ta' vapur ma' pajjiz

partikolari. Filfatt a fol 394 tirrizulta ittra fejn Luc Smulders jaghti spjegazzjoni tal-procedura ta' registrazzjoni ta' vapuri fl-Olanda fejn jaghmilha cara li International Certificate for Pleasure Craft (ICP) mhuwiex certifikat ta' registrazzjoni u li *'The "Lifeline" is not registered in the Dutch Shipping register, has not received a Certificate of Registry issued by the Human Environment and Transport Inspectorate of the Ministry of Infrastructure and Water Management as evidence of the registration and of the Dutch nationality of the vessel, and is therefore not entitled to fly the flag of the Netherlands.'* Biss pero' din il-Qorti tistaqsi jekk setghax il-kaptan legittimament u in *buone fede* ikun taht l-impressjoni zbaljata li l-vapur kellu bandiera Olandiza meta f'dan ic-certifikat kif gia inghad hdejn 'Flag' tnizzel 'Dutch'. Il-Prosekuzzjoni kellha mhux biss tiprova l-att u cioe' l-actus reus u cioe' li l-appellant dahal fl-ibhra Maltin b'bastiment mhux registrat ghas-sodifazzjoni tal-Awtorita' taht ligi ta' xi pajjiz iehor izda li l-appellant kellu l-*mens rea* u cioe' kien jaf b'dan il-fatt.

Din il-Qorti mal-ewwel taghmilha cara li ghandha dubju kemm il-Prosekuzzjoni rnexxielha tiprova dan it-tieni element, u cioe' l-element intenzjonali. Dan huwa kkonfermat mill-fatt li kien hemm tibdil sostanzjali f'dan ic-certifikat, liema tibdil din il-Qorti qiegħda tifhem li sehh wara li l-appellant dahal Malta. Dan it-tibdil illum il-gurnata ma jhalliex lok għal interpretazzjoni dwar fejn jista' jintuza bastiment b'dan ic-certifikat. Filfatt fil-kopja tac-certifikat ipprezentat mill-appellant a fol 566 giet mizjuda s-segweni kondizzjoni u cioe':

*'This document **can not be interpreted as giving Dutch Nationality** to the craft, **nor does it constitute the right** to fly the flag of the Kingdom of the Netherlands as defined by Article 91 of the United Nations Convention on the Law of the Sea (UNCLOS). Consequently the Kingdom of the Netherlands does not accept any of the responsibilities listed in article 94 of UNCLOS.'* (Emfazi u sottolinar mizjud minn din il-Qorti.)

L-artikoli 91 tal-United Nations Convention of the Law of the Sea (UNCLOS) jipprovdi:

*'1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.*

*2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.'*

Filwaqt li l-artikolu 94 ta' din il-Konvenzjoni jipprovdi:

*'1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.*

*2. In particular every State shall:*

*1. (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and*

*2. (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.*

*3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:*

*(a) the construction, equipment and seaworthiness of ships;*

*(b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;*

*(c) the use of signals, the maintenance of communications and the prevention of collisions.*

*4. Such measures shall include those necessary to ensure:*

*(a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and*

*navigational equipment and instruments as are appropriate for the safe navigation of the ship;*

*(b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;*

*(c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.*

*5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.*

*6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.*

*7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.'*

Ghalhekk biz-zieda ta' kundizzjoni cara f'dan ic-certifikat, gie kjarifikat li bl-ebda mod ma ghandu jigi interpretat li japplikaw l-artikoli 91 u 94 ta' din il-Konvenzjoni u ghalhekk b'tali certifikat bastiment ma jkunx qieghed jottjeni l-bandiera tal-Olanda. La

darba sar dan it-tibdil f'dan ic-certifikat, din il-Qorti tistaqsi jekk dan sehxx minhabba nuqqas ta' kjarezza fic-certifikat li kien fis-sehh meta dahal Malta l-vapur Mission Lifeline.

L-appellant prezenta ukoll dokumenti u cioe' pagna ta' website a fol 567 u immarkat bhala Dok CPR7 bit-titlu 'Naviguez sous Pavillon Hollandais' fejn gie imnizzel

*'updated 12.07.2018*

*Information importante :*

*WARNING: Since the end of June, the Dutch rules and the registration application have changed, we have to review all request on hold which made a significant delay.*

*Any pending request will be processed.*

*New applications will be subject to a pre-treatment study....'*

Ghalhekk jirrizulta li sar tibdil minn l-ahhar ta' Gunju tas-sena elfejn u tmintax (2018). In oltre' tnizzel ukoll:

*'updated 11.12.2018*

*Since July 2018, the ICP (International Craft Pleasure) is no longer recognized by European authorities as the title of navigation.*

*This document has become obsolete for navigating in territorial and international maritime waters.'* (Emfazi u sottolinar mizjud minn din il-Qorti).

Ikkunsidrat ulterjorament;

Illi sabiex setghet tissusisti l-ewwel (1) imputazzjoni, il-Prosekuzzjoni kellha tipprova kemm l-actus reus kif ukoll il-mens rea. Ghalkemm b'fatti u akkuzi kompletament differenti ghal dik taht ezami, din il-Qorti sejra taghmel referenza ghas-sentenza fl-

ismijiet 'The Police (Inspector Maurice Curmi) vs ACKARI FATHI SALEH'<sup>6</sup> fejn gie kkunsidrat li:

*'The general conditions of criminal responsibility are indicated with sufficient accuracy in the legal maxim "actus non facit reum nisi mens sit rea". This proves to show that an act cannot be guilty in itself, it must be accompanied by a guilty mind. In other words there are two conditions which have to be fulfilled before criminal responsibility can rightly be found, and we may distinguish these two conditions as a material condition (actus reus) and a formal condition (mens rea).*

*The material condition is the doing of an act by an individual which violates the rights of others. The formal condition is the mens rea, the guilty mind with which the act was committed. It is thus of vital importance that a look at the mental attitude of the doer is given before the law can justly punish. Because there are instances when the mind is innocent and the act is heneous and thus objectively wrongful. The material badness of an act depends on the actual nature circumstances and consequences of it, whilst its formal badness depends solely on the state of mind and the will of the doer.*

*The mens rea includes two mental attitudes of the doer towards the deed. A person is criminally responsible for those wrongful acts which he does wilfully, here there is the wrongful intention (dolus) and negligently culpable negligence (culpa).*

*Only when either of these two attitudes happen that the actus is accompanied by the mens rea, and thus the material and formal condition co exist. If there is no intention or culpable negligence, the doer would be exempted from criminal responsibility.*

*Intention, in general, is the purpose or design with which an act is done. It is the fare knowledge of the act coupled with the desire of it, such fare knowledge and desire being the cause of the act. An act is intentional if it exists in idea, before it exists in fact. **Holmes** says in his book*

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<sup>6</sup> Deciza mill-Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali fid-19 ta' Mejju, 2014 (Numru: 1/2014)

**Common Law** - page 53 that :

"intention resolves itself into two major issues - that of foresight and that of wish, desire."

Therefore an act is intentional when every part of it corresponds to the precedent idea of it which was present in the doer's mind and of which it is the outcome of realisation.

Generally this intention is the combined operation of the intellect and will. But in criminal law it is clear that the word 'intent' is used in a wider sense and in fact **Carrara** defines criminal intent *dolus* as the more or less perfect intention of doing an act which is known to be contrary to law. It is not necessary that the wrong doer knows that he was breaking the law, because of the principle *ignorantia iuris neminem excusat* but that the doer knew that he was doing a wrong, in other words that his act was injurious to a right of others protected by criminal law. As **Kenny** says in page 39 of his book **Criminal Law** -

"in all ordinary crimes the psychological element which is thus indispensable may be fairly accurately summed up as consisting simply in intending to do what you know to be illegal."

This element requires:

1. the power of violation, i.e. that the offender must be able to help doing what he does;
2. knowledge - that what the offender is doing is wrong;
3. foresight of such circumstance.

In fact, **Antolisei** in his book - **Manuale di diritto penale** - 1975 edition (fol 271) says that for a doer to be found guilty of a crime it is essential the existence of *dolo*.

a. la rappresentazione o cioè' la visione anticipata dell fatto che costituisce il reato (momento conoscitivo o intellettuale);

b. la risoluzione seguita da uno sforzo del volere diretto alla realizzazione del fatto rappresentato (momento volitivo).'

Fis-sentenza fl-ismijiet **'Il-Pulizija v. Kevin Sammut'**<sup>7</sup> ghalkemm ukoll b'fatti u akkuzi differenti minn dawk odjerni, gie kkunsidrat li:

*'Dwar l-ewwel zewg aggravi, din il-Qorti tikkonfessa li tinsab ftit perplessa bil-bran mehud mis-sentenza appellata u hawn aktar 'l fuq riprodott. Ghalkemm f'parti minn dan il-bran tintuza l-espressjoni "...biex jahbi l- element intenzjonali li kellu...", ir-ragunament li donnu qed jingieb 'l quddiem mill-ewwel qorti hu li galadarba l- appellant kien negligenti u traskurat – billi ma ezaminax sew id-dokument li kien ipprokuralu missieru – allura hemm l-element intenzjonali – fis-sens ta' l-element formali a differenza ta' l-element materjali – mehtieg ghar- reati ipotizzati fl-imputazzjonijiet kollha. Bid-dovut rigward lejn l-ewwel qorti, jidher li din ikkonfondiet il-kriterji tan- negligenza fil-kamp civili mal-mod kif id-dolo jista' jigi ppruvat fil-kamp penali. Ma hemmx dubbju li r-reati ipotizzati fl-ewwel tlett imputazzjonijiet huma reati doluzi, cioe` li jirrikjedu jew l-intenzjoni diretta jew l-intenzjoni pozittiva indiretta. Issa, ghalkemm din l-intenzjoni diretta jew intenzjoni pozittiva indiretta tista' tigi desunta mic- cirkostanzi kollha tal-kaz, inklux mill-mod kif dak li jkun igib ruhhu, ma jistax pero` jinghad li ghax xi hadd messu ragjonevolment kif jaf xi haga allura necessarjament isegwi li dak li jkun kien jaf dik ix-xihaga. Fi kliem iehor, il- kwistjoni tibqa' dejjem dik ta' x'kellu verament f'mohhu l- agent fil-mument li wettaq l-att materjali u mhux x'seta kellu f'mohhu li kieku kien bniedem ta' intelligenza ordinarja jew ta' sagacja ordinarja jew – biex wiehed juza l-espressjoni uzata mill-ewwel qorti – kieku kien bonus pater familias. Argument analogu (u fil-kuntest ta' reati differenti) gie elaborat minn din il-Qorti (kollegjalment komposta) fis-sentenza taghha tat-12 ta' Dicembru 2007 fil-kawza fl-ismijiet **Ir-Repubblika ta' Malta v. John Polidano et.** F'dik is-sentenza nghad hekk:*

***"Ghalkemm huwa veru li wiehed irid jiddesumi l- intenzjoni ta' dak li jkun kemm mill-att materjali kif ukoll mic-cirkostanzi antecedenti, konkomitanti u sussegwenti ghall-istess att materjali, l-intenzjoni dejjem tibqa' kwistjoni soggettiva – jigifieri x'kellu f'mohhu l-agent (l-akkuzat) fil-mument li ghamel l-att – u mhux semplicement***

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<sup>7</sup> Deciza mill-Qorti tal-Appell Kriminali fit-23 ta' Jannar, 2009 (Appell Kriminali Numru: 192/2008)



*kwistjoni oggettiva ta' x'missu anticipa jew x'kienet tanticipa l-persuna ta' intelligenza ordinarja. Jigifieri m'ghandhiex issir enfasi preponderanti fuq il-konsegwenzi li rrizultaw mill-att. Kif jispjega Gerald Gordon fil-ktieb tieghu The Criminal Law of Scotland<sup>8</sup> :*

*““Intention, then, is subjective, but is proved objectively. Or at least this is so in most cases. Since it is in the end subjective, the jury cannot be prevented from claiming intuitive knowledge of the accused’s state of mind, or from believing his account of his state of mind against all the objective evidence. Or at least they should not be so prevented, if they are, as they are always said to be, the judges of fact. The law should not at one and the same time lay down a subjective criterion, and then require the jury to determine whether the criterion has been satisfied by reference solely to an objective standard, the standard of the reasonable man. It has from time to time been said that a man is presumed to intend the natural consequences of his acts, but in the first place this is at most a presumption, and in the second place it applies only if “natural” is read as meaning “blatantly highly probable”: if this were not so, all crimes of intent would be reduced to crimes of negligence.”<sup>9</sup>*

*“U l-istess awtur, fil-kuntest tal-kuncett ta' “recklessness” (li fil-ligi Skocciza “is advertent and involves foresight of the risk”<sup>10</sup> u li ghalhekk hu tista' tghid identiku ghall-kuncett taghna ta' intenzjoni pozittiva indiretta) jghid hekk:*

*““When the reasonable man is used as a test of subjective recklessness the position is that if the reasonable man would have foreseen the risk, it will be accepted as a fact*

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<sup>8</sup> W. Green and Son Ltd (Edinburgh), 1978. (Din ir-referenza tinsab fit-tieni (2) nota ta' qiegh il-pagna fis-sentenza citata)

<sup>9</sup> Para. 7.28, pp. 232-233. (Din ir-referenza tinsab fit-tielet (3) nota ta' qiegh il-pagna fis-sentenza citata)

<sup>10</sup> Para. 7.45, p. 241; “...negligence is inadvertent and involves an absence of such foresight.” (Din ir-referenza tinsab fir-raba' (4) nota ta' qiegh il-pagna fis-sentenza citata)

*that the accused foresaw it, unless there is strong evidence to the contrary. But if the accused can show that in fact he did not foresee the risk, then it is illogical to characterise him as reckless on the ground that a reasonable man would have foreseen it. As Hall<sup>11</sup> says, 'In the determination of these questions, the introduction of the "reasonable man" is not a substitute for the defendant's awareness that his conduct increased the risk of harm any more than it is a substitute for the determination of intention, where that is material. It is a method used to determine those operative facts in the minds of normal persons'.*

*"Since evidence of the accused's state of mind must normally consist of objective facts from which the jury will draw an inference as to his state of mind, the more careless the accused's behaviour the more likely it is that he will be regarded as reckless, since the more likely it will be that he foresaw the risk involved. A man who kills another by punching him on the jaw may be believed when he says that he did not foresee the risk of death; but a man who kills another by striking him on the skull with a hatchet will be hard put to it to persuade a jury that he did not realise that what he was doing might be fatal. In Robertson and Donoghue Lord Justice-Clerk Cooper directed the jury that 'In judging whether...reckless indifference is present you would take into account the nature of the violence used, the condition of the victim when it was used, and the circumstances under which the assault was committed'. All these are objective factors affecting the degree of the carelessness of what the accused did, viewed as something likely to cause death. The jury proceed by way of syllogism to infer from these objective factors that the accused was subjectively reckless, and the major premise is that a reasonable man would have foreseen the risk. So they argue: all reasonable men would foresee the risk of death as a result of what the accused did; the accused is (ex hypothesi) a reasonable man; therefore the accused foresaw the risk."*<sup>12</sup>

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<sup>11</sup> Hall, J., *General Principles of Criminal Law* 2<sup>nd</sup> ed., Indianapolis, 1960, p. 120. (Din ir-referenza tinsab fil-hames (5) nota ta' qiegh il-pagna fis-sentenza citata)

<sup>12</sup> Gerald Gordon, *op. cit.* para. 7.53, pp. 245-246. (Din ir-referenza tinsab fis-sitt (6) nota ta' qiegh il-pagna

*Ara wkoll f'dan il-kuntest is-sentenza ta' din il-Qorti, ukoll kollegjalment komposta, tat-8 ta' Lulju 2004 fl-ismijiet **Ir- Repubblika ta' Malta v. Salvatore sive Salvo Gauci.***

*Fi kliem iehor, negligenti kemm kien negligenti l-appellant fl-ezami tad-dokument li pprokuraru missieru, il-kwistjoni tibqa' dejjem, ghall-anqas ghall-finijiet tar-reati ipotizzati fl-ewwel tlett imputazzjonijiet, jekk l-appellant kienx konsapevoli li d-dokument kien falz u, ghall-finijiet tat-tielet imputazzjoni, kienx konsapevoli li meta sottometta dak id- dokument lill-Awtorita` Marittima ta' Malta huwa kien allura qed jaghmel dikjarazzjoni falza. It-traskuragni jew negligenza (culpa), anke dik grassa, ma tistax tigi awtomatikament parifikata ma' l-intenzjoni diretta jew l- intenzjoni pozittiva indiretta (it-tnejn ammontanti ghal dolus), kif donnha ghamlet l-ewwel qorti fis-sentenza appellata.*

*Ezaminati l-atti, din il-Qorti, ghalkemm tasal biex taqbel ma' l-ewwel qorti li l-appellant wera traskuragni – probabbilment akkumpanjata minn element ta' timore riverenziale fil-konfront ta' missieru – fil-mod kif agixxa, ma tistax tikkondividi l-konkluzzjoni milhuqa minn dik il- qorti li l-element intenzjonali, cioe` formali, ghall-finijiet tar- reati ipotizzati fl-ewwel tlett imputazzjoni gie sodisfacentement pruvat, u ghalhekk ser tillibera lill- appellant mill-ewwel tlett imputazzjonijiet.'*

Illi gialadarba l-appellant kien fl-istadju ta' sottomissjonijiet bil-miktub quddiem l- Ewwel Qorti qajjem sottomissjonijiet relatati man-nuqqas ta' intenzjoni kriminuza, din il-Qorti kienet tistenna li l-Ewwel Qorti tikkunsidra dawn is-sottomissjonijiet, liema kunsiderazzjoni ma jirrizultax li saret mis-sentenza appellata.

Din il-Qorti wara li qieset il-provi u sottomissjonijiet maghmulha, tqis li l-Prosekuzzjoni ma rnexxieliex tipprova fuq bazi ta' minghajr dubju dettat mir-raguni l-element intenzjonali u cioe' li l-appellant kien jaf li l-vapur ma kienx registrat ma' Stat. Filfatt ghalkemm il-Prosekuzzjoni ppruvat li l-ICP ma huwiex validu *ai fini* ta' registrar tal-

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fis-sentenza citata)

vapur mal-Awtoritajiet tant li meta M. Loth u L. Smulder gew mistqosija permez ta'ittri rogatorji 'x' inhu li jintitola dghajsa biex ittajar bandiera Olandiza?' wiegbu a fol 413 'Trid tirregisraha fir-Registru Olandiz tal-Vapuri..', u filfatt gie ippruvat li l-vapur ma kienx registrat mar-registru Olandiz tal-Vapuri izda registrat bhala pleasure craft ma' yacht club. Biss pero' ma jistax jigi eskluż li l-hekk imsejjah ICP setgha zvija lill-appellant. Dan peress li c-certifikat kien jindika 'Dutch' ma gemb 'flag' li sussegwentement giet sostitwita b'*not applicable*' meta intbaghat ic-certifikat il-gdid fil-mori ta' dawn il-proceduri u in oltre iz-zieda ta' kondizzjoni f'dan ic-certifikat li ghamlitha cara li tali certifikat ma kien qieghed johloq l-ebda responsabbilta tal-Istat Olandiz vis-a-vis l-vapur, li ghalhekk jissinfika li dan ic-certifikat qabel tali emendi setgha ta' dik l-impressjoni u cioe' li l-vapur kien qieghed itajar il-bandiera Olandiza legittimament irrispettivament tal-fatt li kif gie ppruvat ICP ma jaghtix nazzjonalita' lil vapur.

Ghalhekk din il-Qorti tqis li ma giex sufficentement ippruvat li l-appellant kellu l-intenzjoni kriminuza u cioe' li kien jaf li l-vapur ma kienx irregistrat mar-Registru Olandiz tal-Vapuri u lanqas ma' Stat iehor u li ghalhekk ma setghax jinnaviga bih barra l-ibhra Olandizi. Din il-Qorti izda taghmilha cara li ma taqbilx mal-appellant fejn issottometta li qatt ma kellu l-intenzjoni li jinnaviga l-bastiment lejn Malta izda huwa naviga lejn Malta fuq struzzjonijiet tal-Awtoritajiet Maltin illi huwa obda. Din il-Qorti tinnota li ghalkemm l-appellant fis-sebgha u ghoxrin (27) ta' Gunju tas-sena elfejn u tmintax (2018) dahal Malta wara li gie awtorizzat biex jaghmel dan, dan il-vapur kien gia dahal Malta qabel<sup>13</sup> tant li telaq minn Malta fit-tlettax (13) ta' Gunju tas-sena elfejn u tmintax (2018)<sup>14</sup>. Filwaqt li l-appellant xehed li huwa ma kellux preferenza f'liema port jidhol izda kull ma ried kien port sikur, il-Kurunell Clinton O'Neill fix-xhieda moghtija fil-hamsa (5) ta' Lulju tas-sena elfejn u tmintax (2018) spjega li '*ahna ma konniex obligati li naghtu l- place of safety ta' dan il- vapur. Qbilna mat- Taljani wkoll li ghandu jghajtu lil flag*

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<sup>13</sup> Skont Dok DF1 a fol 40;

<sup>14</sup> Kif jirrizulta a fol 41 f'Dok DF1;

*state la dan naqas milli jobdi certu struzzjonijiet, jaqbad il- flag state Netherlands u jienu struzzjonijiet minn ghandhom, dan ma riex jiehu struzzjonijiet minn ghand hadd. Ghaddej il-hin u l- vapur tiela l- fuq, beda jimxi l- fuq bejna u bejn Lampedusa qisu fin-nofs ezatt kien. At one point il-kaptan tal- vapur ukoll xtaq li jibqa diehel Malta minhabba place of safety...'* Il-Kurunell Clinton O'Neill xehed ukoll li *'kellu bzonn at one time gurnata qabel jevakwa persuna li kienet qed issofri minn hernia, kien anqra bahar ukoll dakinhar li talabna, ghadda naqra hin ta' kordinazzjoni bejna u l- kaptan. Il- kaptan inghata ordni minn ghandna bhala centru biex jibqa fejn hu, webbes naqra rasu u pprova jidhol, kellna lanca kbira fil- qrib tieghu wkoll u waqfitu bil- voice bief nifthemu u waqaf f'erbgħa u ghoxrin (24) mil...'* Ghalhekk ghalkem forsi l-appellant ma kellux preferenza f'liema port jidhol, ma jistax jinghad li l-appellant ma kellux intenzjoni li jidhol Malta.

Ghalhekk ai fini ta' kjarezza, din il-Qorti tagħmilha cara li sejra tirrevoka fejn l-Ewwel Qorti sabitu hati tal-ewwel (1) imputazzjoni abbazi tal-fatt li l-Prosekuzzjoni ma rnexxieliex tipprova minghajr dubju dettat mir-raguni li l-appellant kien konoxxenti tal-fatt li l-bastiment ma kienx registrat mar-registru Olandiz u dan in vista tal-*misunderstanding* li c-certifikat imsejjah ICP setgħa holoq. L-imputazzjonijiet iridu jigu ppruvati fuq bazi ta' minghajr dubju dettar mir-raguni. Il-fatt li dan il-vapur ma kienx registrat fl-Olanda ai fini ta' vjaggar barra mill-Olanda mhuwiex bizzejjed, kellu jigi pruvat ukoll li l-Kaptan minkejja nuqqas ta' kjarezza fic-certifikat ICP, kien jaf li kien qiegħed jivvjaga minghajr registrazzjoni valida. Dan l-element intenzjonali ma giex sufficientement ippruvat mill-Prosekuzzjoni, ghalhekk l-Ewwel Qorti ma setgħetx issib htija tal-ewwel (1) imputazzjoni.

Din il-Qorti mhijiex sejra tikkunsidra t-tieni (2) imputazzjoni gialadarba l-Ewwel Qorti ma sabitx lill-appellant hati ta' din l-imputazzjoni.

Għal dawn il-motivi, din il-Qorti taqta' u tiddeciedi billi tilqa' limitament l-appell billi filwaqt li tikkonferma fejn l-Ewwel Qorti ma sabitx lill-appellant hati tat-tieni imputazzjoni, thassar u tirrevoka fejn l-Ewwel Qorti sabet lill-appellant hati tal-ewwel imputazzjoni kif ukoll fejn ikkundannat lill-appellant għal multa ta' ghaxart'elef ewro

(€10,000) u ghalhekk ma ssibx lill-appellant hati tal-ewwel imputazzjoni u tilliberah minn kull htija u piena.

(ft) Consuelo Scerri Herrera

Imhallef

VERA KOPJA

Franklin Calleja

Deputat Registratur