



**CIVIL COURT  
FIRST HALL  
(CONSTITUTIONAL JURISDICTION)**

**THE HON. MR. JUSTICE  
ANNA FELICE**

Sitting of the 9 th July, 2013

Referenza Kostituzzjonali Number. 48/2012

**The Police (Inspector Norbert Ciappara)**

**vs**

**Gregory Robert Eyre**

The Court:

Having seen the reference submitted by the Court of Magistrates regarding a claim of violation of Art. 6 of the European Convention of Human Rights consequent to statements made by Gregory Robert Eyre to the Police and subsequently confirmed on oath before a Magistrate.

Having seen the reply entered by the Commissioner of Police and the Attorney General wherein they requested the Court to dismiss all of the applicants' allegations and claims.

Having seen the note of submissions entered as a reply thereto by respondents.

Having seen the second note of submissions entered by applicant and subsequent note of references submitted by the Commissioner of Police and the Attorney General.

Having seen all the acts of case.

Having considered that respondent's first plea is that of the inadmissibility of the reference on the basis of "res iudicata" since the merits of the present application are identical to the merits considered and decided by this Court in application No. 65/2011 "Gregory Robert Eyre vs L-Avukat Generali", decided on the 27th June 2012.

### Facts

Applicant is currently being accused of giving false evidence, making a false oath and becoming a relapser. The statements made by the accused to the Police on the 11th and 12th August 2003 and subsequently confirmed on oath are being utilised by the prosecution. The same statements formed part of the proceedings against him (3/2004) in the course of which current applicant pleaded guilty. His partial appeal filed subsequently did not concern the declaration of guilt. The same statements were subject of a constitutional application (65/2011) alleging breach of fundamental rights, which application was dismissed by this Court on the 27th June 2012.

### Considerations

Having considered that the applicant's present claims refer to the statements he made to the Police on the 11th and the 12 of August 2003. On the other hand, Constitutional Application Number 65/2011 in the name of "Gregory Robert Eyre vs L-Avukat Generali" was finally decided on the 27th June 2012 with a dismissal of applicant's claims therein.

Having considered that the applicability of the principle of *res iudicata* to Constitutional matters has been definitely established by these Courts in their Constitutional jurisdiction.

*“L-eccezzjoni tal-gudikat ghandha bhala sisien taghha, l-interess pubbliku, u hija mahsuba biex thares ic-certezza tal-jeddijiet li jkunu gew definiti f’sentenza u li tbieghed il-possibilita’ ta’ decizjonijiet li jmorru kontra xulxin”* (“Aquilina vs Rep. ta’ Malta”, 15th October 2010).

*“Ir-res iudicata huwa principju tad-dritt mill-aktar fundamentali li huwa applikat mhux biss fid-dritt Malti izda anke fil-kuntest tal-Konvenzjoni”* (“Matthew Lanzon vs Kummissarju tal-Pulizija”, decided by the Constitutional Court on the 25th of February 2003). See also “Anthony Aquilina vs Rep. ta’ Malta”, decided by Judge T. Mallia on the 15th of October 2010.

The Court Constitutional in the same judgment quoted Harris O’Boyle & Warbrick:

*“The right to a fair hearing also requires that, in accordance with the principle of res iudicata, the judgment by the final court that decides a case should be irreversible, in accordance with the principle of legal certainty.”*

The requisites for upholding a successful a successful plea of *res iudicata* are essentially three: 1) *eadem personae*, 2) *eadem res*, 3) *eadem causa petendi*, all three being obviously present in the present application, the only difference being that the same statements are now being considered in different proceedings instituted against applicant.

Surprisingly, both notes of submissions entered by applicant seem to bypass this respondent’s plea in its entirety.

Like applicant’s previous decided case, the present centres round statements to Police on the 11th and 12th

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August 2013 and the sworn statement on the 13th August 2003.

The Court acknowledges that the application in the Matthew Lanzon case above quoted centred round jurisprudence established after the first case had been decided whilst, on the other hand, the present application regards use of the same statement in different legal proceedings. However, this Court strongly considers that this does not in any way impinge on the relevance to this case of the pronouncements of the Constitutional Court in the Matthew Lanzon case.

The fact that the charges the applicant is now facing are different to the ones he was originally found guilty of is not, at the moment, of relevance, because the breach alleged is one and the same and refers to the same facts as the breach alleged in the first constitutional application.

In the circumstances therefore, this Court dismisses all allegations and claims made by Gregory Robert Eyre.

Costs are to be borne by Gregory Robert Eyre.

**< Final Judgement >**

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