Fil-Qorti tal-Maġistrati (Malta)

Lil Maġistrat Inkwirenti tal-Ghassa Dr.

Rikors urġenti taʾ Dr Jason Azzopardi (ID 143871M):

Jesponi bil-qima u bil-gurament tieghu jikkonferma:

Dan hu rikors li qed isir abbażi tal-artiklu 546(4A) tal-Kodiċi Kriminali.

Elenku tal-fatti magħrufa mill-esponenti:

Qabel xejn:

https://theshiftnews.com/2024/12/19/minister-refuses-to-explain-e722000-payment-to-his-architect-friend/

1) Fid-19 ta' Dicembru 2024 harget din l-ahbar f'TheShiftNews li IKKONFERMAT informazzjoni kunfidenzjali li l-esponent waslitlu fl-ahhar gimghat:

> ***"Minister refuses to explain €722,000 payment to his architect friend***
>
> *The costs for the Nadur Road project doubled but the minister insists Godwin Agius's contracts must not be published*
>
> *Serious questions are being raised about how an architect closely associated with Gozo and Planning Minister Clint Camilleri was paid a sum of almost €722,000 for works related to the rebuilding of Triq l-Imġarr in Nadur, which cost double the planned budget.*
>
> *The controversial project cost taxpayers €10.5 million more than planned amid claims of impropriety and mismanagement.*

Investigations by The Shift show that Godwin Agius, a former work colleague of Minister Clint Camilleri, was engaged through a direct order a few weeks after Prime Minister Robert Abela made Minister Camilleri the Gozo Minister.

When Camilleri took the position, he stopped the contract initiated by former minister Justyne Caruana only to change the project's architect. His decision led to an immense increase in costs, leading to questions about what the minister stood to gain.

The Shift is informed that Minister Camilleri selected Agius to oversee the structural infrastructure and piling works, which took years to complete.

Despite being opened for traffic last year, the road remains uncertified. Transport Malta never entertained The Shift's request for the road's final safety audit report required by law.

Initially, the architect's contract, officially endorsed by John Borg, the Permanent Secretary of the Gozo Ministry, was for €380,000.

Expenditure increased to €722,000 in total payments to the architect, even though the contract for the road's building was based on a 'design and build', meaning that the contractor (Gozitan Road Construction Ltd) was responsible for the road's rebuilding.



Perit Godwin Agius celebrating the feast in Żebbuġ.

A report by the National Audit Office published last week looked into the expenditure on the Nadur Road project, which also questioned Agius's engagement and exorbitant payments.

"The performance guarantee in relation to the architect's contract was obtained on 4 December 2020, nearly four months later. An extension to the foregoing only covered until 4 September 2022, although works were still ongoing in 2023. The last invoice raised by the architect for €115,032 was dated 16 October 2023," the NAO found.

The Shift also reported alleged private works carried out by the same contractor during the road's rebuilding in several fields beside the road. The ministry denied using public funds for these private works.

The NAO tried to establish the facts but didn't manage due to a lack of documentation by the ministry.

"When NAO conducted a site visit in September 2023, works in the adjacent fields, including a reservoir, ramps and rubble walls, could be noted. However, considering that the BOQs (Bills of Quantity) did not include detailed explanations of where the works were actually carried out, and these were also unsupported by quantity surveyor detailed reports, the NAO could not assess whether the alleged expenses were directly financed from public funds."

When investigating, the NAO said the photos provided by the ministry were undated and did not provide details of the project phase.

"As a result, the project execution and the billed quantities could not be verified", the NAO said.



Some of the private works were carried out by the same contractor during the building of the road.

Minister hiding contracts and refusing answers

For years, the Gozo Minister has refused to be transparent and accountable on this Nadur road project.

Camilleri repeatedly refused to answer parliamentary questions on the architect responsible for the project.

Minister Camilleri is also resisting an order by the Data Protection Commissioner to supply a copy of all the engagement contracts and direct orders given to architect Godwin Agius.

The Shift won a Freedom of Information battle to obtain these contracts. Yet the minister refuses to abide by the order and has filed an appeal.

Following further questions raised by the NAO audit, The Shift asked Minister Camilleri to explain why Godwin Agius was engaged through direct order and to confirm that he had personally pushed for his selection.

Through his spokesman, he denied selecting Agius and said that "the expert was engaged through a negotiated procurement procedure, whereby competitive quotes were sought from qualified professionals."

According to public procurement rules, this amounts to a direct order.

Clint Camilleri was also asked to justify the payment to the architect and explain why the project was still not certified.

The minister's spokesman said, "all civil works carried out are certified and the main contracts on this project, were awarded before Minister Camilleri took office."

The NAO found that the road was still uncertified, and Minister Camilleri dished out two new contracts, increasing the cost of the road from €7.9 to €18.5 million.



Clint Camilleri and friends, including Godwin Agius (first left)

Who is Godwin Agius?

Architect Godwin Agius and Minister Clint Camilleri have a long history. The pair used to work at the same architectural office, Med Design, owned by former Labour Party Minister Charles Buhagiar.

Agius comes from a staunch Labour family and has been involved with the Labour Party for a long time. He also serves as a counting hall agent for the PL during the elections.

Since Labour was elected to power in 2013, Aguis has been showered with lucrative government jobs, ***including at Enemalta and Engineering Resources Ltd,*** *while continuing his private practice, which received several direct orders from the government.*

One of the latest is Minister Miriam Dalli's €150,000 contract through Enemalta for the so-called Pont tas-Shell project in her Birżebbuġa constituency.

Agius further consolidated his bond with the Gozo Minister since Camilleri was made responsible for the Planning portfolio too.

Apart from the Nadur Project direct order, he was also given other road projects in Gozo while employed full-time as a senior project manager at the Gozo Regional Development Authority (GRDA), a satellite organisation of the Gozo Ministry.

Agius doesn't reside in Gozo even though the GRDA's offices are in Victoria, Gozo.

Earlier this year, Clint Camilleri appointed his close friend to the Executive Committee of the Planning Authority, the board that dictates what happens at the government's permits regulator.

Agius also holds other important government positions, including chairman of Interconnect Malta, the government entity responsible for the €200 million project to lay a second interconnector with Sicily, and chairman of the construction industry licensing committee of the Building and Construction Authority."

2) Illi fil-**21 ta' Marzu 2020** il-Ministru Clint Camilleri kien habbar li x-xogholijiet fuq it-triq li minn Nadur tiehdok l-Imgarr, Ghawdex kienu ser jigu jiswew madwar **€8 miljuni:-**

https://timesofmalta.com/article/nadur-road-being-rebuilt-in-8m-project.779783

"Works to rebuild a road linking Nadur and Mġarr, Gozo have picked up the pace, Gozo Minister Clint Camilleri has said, one-and-a-half years after the road was closed to traffic.

***Camilleri said that rebuilding Triq l-Imġarr would cost €8 million** and said that the road would "finally be getting the attention it deserves, after being left in a poor state for many years despite high volumes of traffic".*

Apart from rebuilding the road surface from scratch, workers are also rebuilding retaining and rubble walls, passing key services under the road surface and installing road safety features in the hope of reducing traffic accidents.

Works to resurface Triq iż-Żewwieqa have also been completed, he said. That project cost €300,000.

3) Fit-8 ta' Dicembru 2021 deheret din l-ahbar f'**TheShiftNews:**

"€8 million Nadur roadworks project has no development permit, PA claims it doesn't need one

Minister Camilleri reportedly claimed in August that all permits were in place

The massive, ongoing €8 million infrastructural project in a sensitive geological area in the midst of the countryside to rebuild one of Gozo's major arterial roads – joining Nadur to Mgarr – is not covered by a Planning Authority permit, The Shift can reveal.

Investigations by this portal reveal that the Ministry for Gozo, which is responsible for the road works, didn't even apply for a permit, not even through a minor Development Notification Order (DNO).

As a result, the Planning Authority (PA) does not know the name of the architect responsible for the project which has been ongoing for the past three years.

The Shift asked the Planning Authority for the plans of the ongoing roadworks and to give details on when it issued the development permit necessary for the Gozo Ministry to commence works on Triq l-Imgarr, but several requests were ignored.

When the Planning Authority finally replied, following reminders, a spokesman admitted to The Shift that there is no permit for these works.

Justifying this 'strange' stance, the spokesman added that, according to the PA, a permit was not really required, quoting a new subsidiary legislation published in 2016 which exempts the Ministry from requiring a permit for such works.

Pressed to state who is the architect overseeing the works and to give the DNO notification number required for the commencement of works – a normal procedure required for even a small intervention in a private residence – the PA admitted that it does not have this information as the Ministry did not inform the authority about these works.

"*In relation to roadworks, Class 3 of the Development Notification Order (DNO) of 2016 (S.L. 552.08) exempts 'Government agencies, Local Councils and other entities appointed thereby' from the requirement to obtain development permission from the Planning Authority," the PA spokesman said.*

"The same Class does not require the entity to submit a notification to the Planning Authority," he explained.

"In this case, the works are being carried out by the Ministry for Gozo. Since no notification to the Planning Authority is required, there is no "applicant", and the Authority does not have information on who is the perit in charge," the spokesman continued.

Experts dumbfounded

News that the massive ongoing road works are not covered by a permit has stunned planning experts and architects consulted by The Shift.

While just a few weeks ago, the Gozo Minister, Clint Camilleri, claimed that the ongoing works are "a first for Gozo" for the techniques being used, including the need for piles dug 22 metres into the ground of a very sensitive area and for stilts built over arable farmland to elevate the road, experts say they can't understand how the PA can justify allowing this type of work without a permit.



Major works on the Nadur-to-Mgarr road project, taking place in a geologically sensitive area in the midst of the countryside

"This is not on, and something must be really wrong," a road architect said.

"Triq l-Imgarr is built on clay and any intervention required many studies for such a sensitive geological area. ERA should even have given its green light before any intervention started. If the PA really believes that this type of work does not require a permit, then we are living on a different planet," an expert said.

"*If they (the PA and ERA) have not even been notified one can only imagine how many onsite inspections they carried to verify that no damage was being done to the surroundings," a seasoned architect said.*

Minister says all permits were in place

Last August, just a few days before the annual Santa Maria weekend, Minister Camilleri went to visit the ongoing works, accompanied by 'friendly' media, to state that the roadworks, which began in September 2018, were almost ready.

The road is still unusable to today.



Jitlestew 80% tax-xogħlijiet fi Triq l-Imġarr, in-Nadur

Imtejla' Awwissu 6, 2021

Il-Ministru għal Għawdex Clint Camilleri qal li 80 fil-mija tal-proġett tal-bini mill-ġdid ta Triq l-Imġarr fin-Nadur huwa lest.

Waqt żjara fuq il-lant tax-xogħol huwa qal li din it-triq qed tingħata l-attenzjoni li jixraqilha u qed tinbena mill-ġdid wara li għal bosta snin tħalliet fi stat ħażin.

Bix-xogħol għaddej anke fl-eqqel tas-sajf, Triq l-Imġarr bdiet tieħu s-sura b'partijiet minnha kienu jeħtiegu l-bini ta' structural reinforced friction piles fil-fond ta' 22 metru u l-kolonni strutturali ta' fuq, travi u struttura tat-triq rinfurzata.

L-użu ta' din it-tip ta' struttura għall-kostruzzjoni tat-toroq huwa totalment ġdid għal Għawdex.

Il-Ministru Camilleri spjega li dan il-proġett jinkludi wkoll sistemi miżjuda ta' sigurtà fit-triq biex jonqos ir-riskju tal-aċċidenti, il-bini mill-ġdid tar-retaining walls u ħitan tas-sejjieħ u faċilitajiet oħrajn sabiex is-servizzi neċessarji jgħaddu minn taħt it-triq.

Triq l-Imġarr kienet inġħalqet minħabba l-ħsarat strutturali kbar li kien hemm u kienet inadekwata u ta' periklu għal min juża. Saret analiżi estensiva u testijiet taħt l-art li rriżultaw f'indikazzjoni ċara tal-karatteristiċi fiżiċi u strutturali ta' kull strata.

Qabel setgħet tibda tinbena t-triq, inħarġu l-permessi kollha, saru u tlestew il-pjanti, tlestew it-testijiet ġeoloġiċi u saru [illegible]

Il-Ministru Clint Camilleri fakkar li sadanittant tranġaw u tlestew ukoll li Triq iż-

TVM report saying all permits for the roadworks had been issued, when in fact no applications had been filed

According to state broadcaster PBS, which reported the visit with prominence, Minister Camilleri – an architect by profession – said that prior to the commencement of works all the necessary permits were issued by the Planning Authority.

This, however, appears to be untrue – as confirmed by the Planning Authority.

Meanwhile, The Shift can also reveal that the architect responsible for the works, commissioned directly by the Minister through a direct order, is Perit Andrew Ellul – husband of the former controversial Chair of the PA commission responsible for ODZ permits, Elizabeth Ellul. The couple have a summer residence just a short walk from the ongoing works, in Nadur.

Contacted by The Shift, Architect Ellul confirmed that he was responsible for the roadworks. However, when asked to state whether the ongoing works are covered by a planning permit, Mr Ellul got agitated and hung up.

"*Sorry I don't know who you are, and I don't speak to the media," Perit Ellul said.*



Architect Andrew Ellul was commissioned to oversee the Nadur-Mgarr roadworks project directly by the Gozo Minister. The PA does not know who the architect responsible for the massive project is.

Works on the re-building of the main road leading to Nadur started in 2018 when Justyne Caruana was responsible for the Gozo Ministry.

She had allocated the works to Perit Adrian Mifsud – a geological expert – due to the sensitivity of the area where the works were to take place.

However, shortly after Camilleri replaced Caruana – who was forced to resign following the outing of her husband's close relationship with businessman Yorgen Fenech – the new Gozo minister halted the works and took architect Mifsud off the project.

Instead, he appointed Perit Ellul through another direct order.

4) Fil-**11 ta' April 2023** deheret din l-ahbar f'**TheShiftNews**:

https://theshiftnews.com/2023/04/11/as-gozo-road-cost-soars-by-e5-6-million-questions-raised-about-illegal-private-developments-around-project/

Fiha intqal hekk:

"**Gozo road project costs soar by millions as nearby private work questioned**

> *The private developments, without a permit, were handled by the same company given the government tender.*
>
> *A considerable amount of development in and around private fields lining a newly reconstructed multi-million-euro road leading to Nadur in Gozo has been carried out without permits.*
>
> *The Shift can confirm that while the government-funded project on Triq l-Imġarr was taking place, work in private fields was concurrently being carried out using the road builder's heavy plant machinery.*
>
> *The work in question included long stretches of new rubble walls, wide ramps, concreted rural passageways, agricultural stores, water reservoirs, and work on soil levels.*
>
> *Although the road project's costs have soared from the budgeted €8 million to almost €14 million, and with more bills in the pipeline, the Gozo Ministry categorically denies any private work was carried out using public funds earmarked for the road reconstruction.*
>
> *But many in Gozo have seen the same road contractor carry the piecemeal work without permits on private land. Aerial photos of the project published by the Gozo Ministry also show the concurrent work.*



More private work taking place while the road was being reconstructed (circled in black).

But when asked whether the ministry was involved in the illegal works in any way, a spokesperson vehemently denied the ministry had given any authorisation or payment for them.

But the problem is that it is difficult to determine who authorised or paid for the work on the sections of private land because, since they did not have a permit, no development applications were filed at the Planning Authority.

The ministry is also not explaining how the project costs, awarded by tender to Road Construction Ltd for €8 million, have already reached €13.6 million, with more outstanding bills.

"*The ministry confirms in the most certain and unequivocal of terms (sic) that it has not carried out works on behalf of any private owners or individuals," the spokesperson insisted.*

Most of the fields in question are owned by Gozitan part-time farmers.

"*Additionally," the spokesperson said, "the ministry has not paid and nor does it intend to pay for any work as may have been carried out in the private rooms highlighted by The Shift.*

"*Works on these rooms, if any, were clearly carried out by private individuals to the exclusion of the ministry."*

During the road's four-year construction, contracted to Road Construction Limited, the only machinery on site and the surrounding private land belonged to the company carrying out the road work.



The additional private works are circled in black.

A series of coincidences

The reconstruction of the main road leading to Nadur had been on the cards for years, and work started in 2018 through a ministry tender awarded to Road Construction Limited.

The company has regularly received direct orders worth millions of euros from both Labour and Nationalist administrations.

Road Construction Limited was awarded a tender (CT2182/2019) for the reconstruction and resurfacing of Triq l-Imġarr for just under €8 million.

The public is hereby notified that during the session held on Thursday, 05 September 2019, the General Contracts Committee made the recommendations indicated below. The Director General (Contracts) has agreed with their recommendations.

Advert No.	Subject	Decision		Recommended Tenderer	Price Excluding VAT	Deposit
		Award	Fresh Call / Cancellation		€	€
CT2182/2019	Reconstruction of Triq Imgarr (Nadur) and Triq Sant'Antnin (Ghajnsielem), Gozo – Including Structural, Infrastructural and Piling Works	Yes	-	TID 116673 – Road Construction Co. Ltd	7,992,359.01	50,000.00

Tenderers are informed that any objection to the decisions listed above must reach the Public Contracts Review Board by not later than Monday, 16 September 2019, or ten days from the date of notification to the respective bidder. Objections must be accompanied by a deposit to the amount indicated against each respective advert, otherwise will not be considered. Tenderers are to note that this information does not imply any obligation on the part of Government to actually implement any of the decisions indicated.

Jacqueline Gili (signed)
f/ Director General (Contracts)

Marisa Gauci (signed)
Secretary
General Contracts Committee

06 September 2019
Date

The original tender and price.

While work had begun in the time of former Gozo Minister Justyne Caruana, her successor Clint Camilleri immediately changed the project's architect to Andrew Ellul, the husband of former Planning Authority permits boss Elizabeth Ellul.

The project has taken more than four years and is still ongoing. Gozo Minister Clint Camilleri recently told parliament that costs so far have amounted to €13.6 million without explaining how the project's budget was overrun by €5.6 million.

5) Illi fis-**16 ta' April 2023** deheret din l-ahbar **fTheShiftNews:-**

https://theshiftnews.com/2023/04/16/documents-confirm-illegal-private-work-done-with-nadur-public-road-project/

"*Documents confirm illegal private work done with Nadur public road project*

Several documents submitted to the Planning Authority asking for the sanctioning of illegal private work carried out as part of the multi-million-euro Nadur road project contradict the Gozo Ministry's denials that no work was carried out on private property with public funds.

Gozo Minister Clint Camilleri is not explaining how the reconstruction of the Nadur arterial road, originally budgeted at €8 million, has already cost taxpayers €13.6 million with more bills still in the pipeline.

But The Shift has uncovered illegal work carried out in private agricultural land abutting the reconstructed road. The work was carried out concurrently with the Nadur road project and with the same heavy plant machinery belonging to Road Construction Ltd, the company that was awarded the roadwork tender.

When confronted with pictures of the illegal private work carried out simultaneously with the public road project, the Gozo Ministry denied any involvement and association and insisted that public funds were not used for the private work.



Figure 3: Photos submitted by architect indicating the reservoir and that (according to the architect) excavation works were carried out as part of the road widening

An ERA document and photographs of the work carried out on private land. Source: ERA.

With the National Audit Office (NAO) now expected to begin an independent investigation into what actually happened, The Shift is revealing more documents that put paid to the ministry's denials.

The new evidence

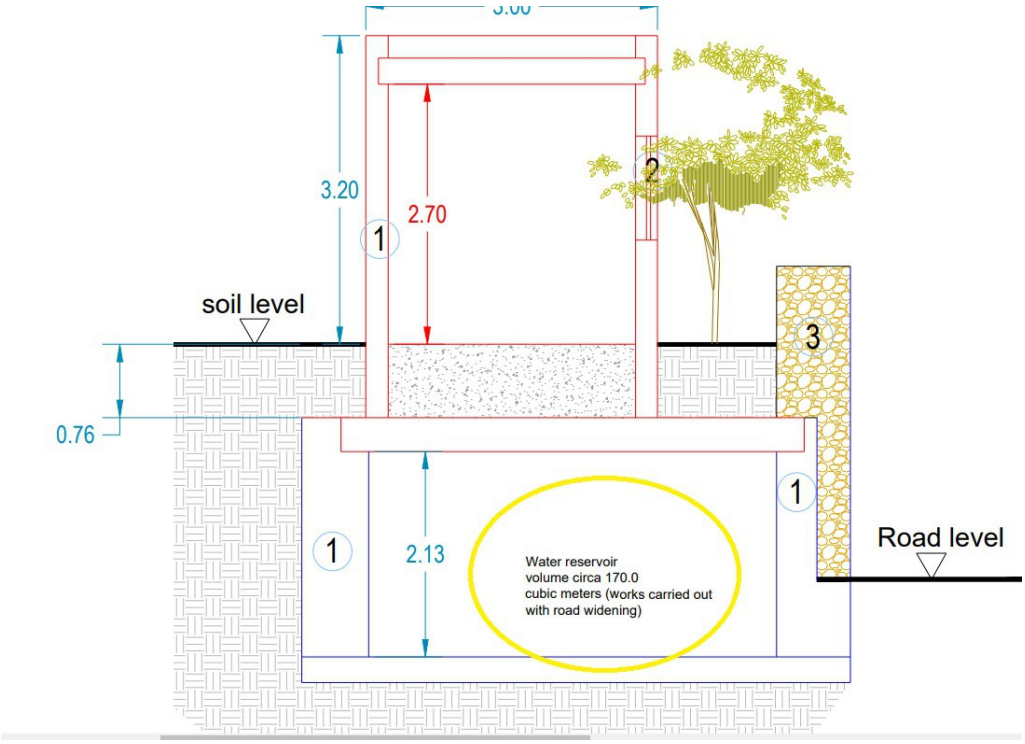
While The Shift has already shown the construction of illegally-built long stretches of new rubble walls, concrete ramps and rural passageways, agricultural stores, new soil levels and water reservoirs in private fields along the new road's perimeter – all done without the required permits – a recent development application shows that private work has indeed been done as part of the public road project.

Application PA124/23, submitted by Peter Paul Tabone, the owner of fields in which illegal work was carried out, is now asking the Planning Authority to sanction the illegalities, which included a large water reservoir built as part of the public road project.



The reservoir that was excavated on private land next to the road project.

In his application, the owner's architect, Shawn Micallef, declares in his submitted plans that the reservoir and the related excavation work "were carried out with road widening".



A private party's architect confirms the work was done with the road widening project.

Pictures of the illegal work now submitted to the Planning Authority show a considerable amount of work being done in the private fields during the road widening project and with the same stone and material.

Further pictures submitted by the architect and studied by Environment and Resources Authority also confirm that the work was carried out illegally.

A large concrete ramp accompanied by high newly-built rubble walls crossing the private fields is also suspected to have been built with public funds.



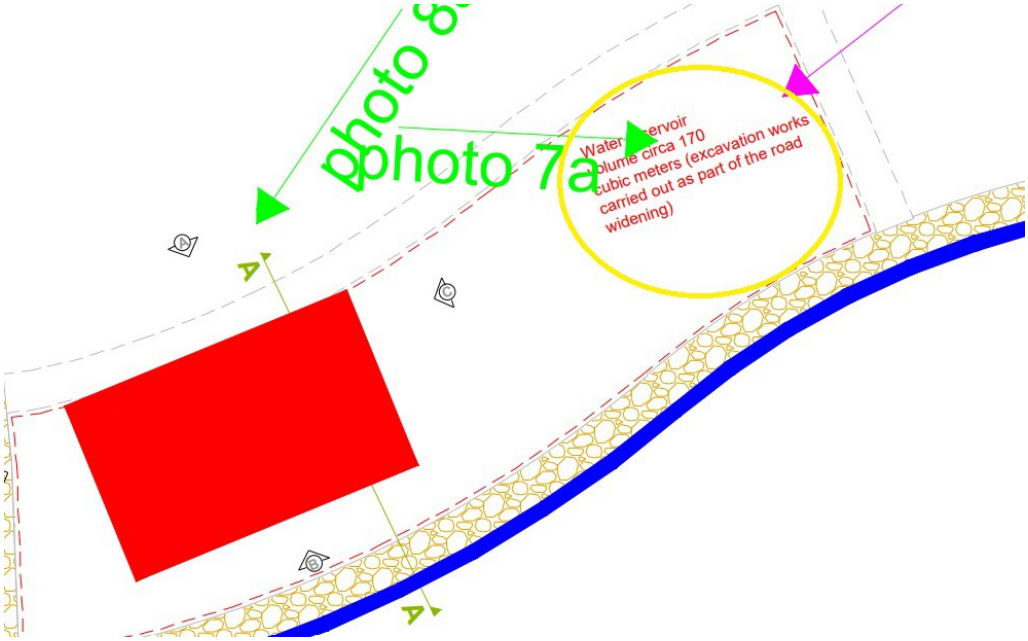
Figure 4: Clearance of agricultural land to carry out a concreted ramp. No permits were traced or being referred from architect

A section of the ERA document showing the wide ramp built illegally in a private field. Source: ERA

While objecting to the sanctioning of the illegalities, ERA noted that, "The submitted plans and photos indicate that excavation works for the proposed underground reservoir have (already) been carried out. However, ERA cannot trace any approved permit/s related to these interventions."

"*In addition, ERA notes that a wide and long concreted ramp has also been carried out. No permits were traced for this intervention, which has resulted in site engineering and land clearance, and permanently alter the landscape character of this rural area. From an environmental perspective, such intervention is excessive and has formalised the area."*

With the ministry so far completely distancing itself from the situation and with its stance being contradicted by the new PA application, no one appears to be taking responsibility.



An architect's designs stating the work was carried out as part of the public road project.

Work on the reconstruction of the Nadur road, Triq l-Imġarr, was started in 2018 by the then-Gozo Minister Justyne Caruana and an €8 million tender was awarded to Road Construction Ltd.

As soon as Clint Camilleri took over the Gozo Ministry, he changed the project's architect and appointed Andrew Ellul, the husband of former Planning Authority ODZ permits boss Elizabeth Ellul, through a direct order

The project, which is already €5.6 million over budget, is still not fully completed and there is still some finishing work pending."

6) Fit-**12 ta' Dicembru 2024** deheret din l-ahbar f'**TheShiftNews**:

https://theshiftnews.com/2024/12/12/clint-camilleris-nadur-road-project-e10-5-million-over-budget/

Fiha intqal hekk:

> "***Clint Camilleri's Nadur Road project €10.5 million over budget***
>
> *'No procedures followed, millions in direct orders, inadequate planning' - National Audit Office*
>
> *A road project in Gozo, which had to be completed in two years for €8 million, took five years to complete and cost taxpayers €18.5 million —a staggering €10.5 million over budget.*
>
> *An audit carried out by the National Audit Office (NAO) of Nadur's Triq l-Imġarr project confirmed that the project was an exercise in maladministration, with inadequate plans, confusion in contract terms, a deluge of direct orders and variations, and a waste of money in unnecessary studies.*
>
> *The audit was carried out following a call by independent candidate Arnold Cassola after several investigative reports by The Shift on how Clint Camilleri's Gozo Ministry was messing up the project.*
>
> *Through its investigative reports, The Shift reported how, following plans and the commencement of works in 2019 on the main road from Għajnsielem to Nadur, Minister Clint Camilleri halted the project as soon as he took over the Gozo Ministry in 2020.*



A reservoir that was excavated on private land next to the road project.

Inexplicably, Camilleri immediately changed the project's architect. Massive spending and cost overruns started being reported.

The Shift had also found that work was being done by the same contractor on private fields adjacent to the new road, pointing towards the use of public funds for private works. The Gozo Minister had denied these claims.

However, in its audit, the NAO found inadequate administration and poor record-keeping and had difficulty understanding what money was spent on what. It concluded that a massive €10.5 million was overspent, and the road cost more than twice its original costs.

The NAO also underlined the lack of cooperation by Gozo Ministry officials, led by Permanent Secretary John Borg, in furnishing the audit with the necessary documents on time.

The Nadur Road scandal

In 2018, following a storm, Triq l-Mġarr needed emergency work. Then-Gozo Minister Justyne Caruana started the process with studies that found the road had to be rebuilt.

In 2019, Road Construction Ltd was issued a tender for €8 million for the whole project. The company has been dominating the road works sector in Gozo for decades.

The public is hereby notified that during the session held on Thursday, 05 September 2019, the General Contracts Committee made the recommendations indicated below. The Director General (Contracts) has agreed with their recommendations.

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		Award	Fresh Call / Cancellation		€	€
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Tenderers are informed that any objection to the decisions listed above must reach the Public Contracts Review Board by not later than Monday, 16 September 2019, or ten days from the date of notification to the respective bidder. Objections must be accompanied by a deposit to the amount indicated against each respective advert, otherwise will not be considered. Tenderers are to note that this information does not imply any obligation on the part of Government to actually implement any of the decisions indicated.

Jacqueline Gili (signed)
f/ Director General (Contracts)

Marisa Gauci (signed)
Secretary
General Contracts Committee

06 September 2019
Date

The road's planned cost was €8 million.

At the beginning of 2020, Prime Minister Robert Abela appointed Clint Camilleri Gozo Minister after he sacked Justyne Caruana.

The new minister immediately appointed a new architect to manage the project on his behalf, and new designs were made.

Since the new designs varied significantly from the original tender, the Gozo Ministry paid the same contractor an additional €4.8 million in claimed variations over the tender's value.

As this was not enough, in October 2020, Minister Camilleri's Ministry issued a new direct order, allowing the same contractor to be paid an additional €5.7 million for the same project. No prior authorisations were sought from the Finance Ministry.

<u>This pushed the project's costs from €8 million to €18.5 million.</u>

The NAO said that it "has concerns on the reason of the abandonment of the plans suggested by the original architect (under Justyne Caruana) and why the Ministry (Clint Camilleri) opted for the suggestions by the contractor's consultant, which resulted in higher costs since no documentation was provided to justify the change in plan."

The NAO also found that no signed agreements covered construction works on the road project and that there was no insurance on works for long periods of time.

Also, work registers were not kept, so the NAO found it difficult to establish how the project evolved as none of the certified BOQs (Bills of Quantities), usually certified by the ministry's architect, were supported by photographs as evidence of the progress of works.

"*This limited NAO in visualising the development of the project for audit purposes.*"

7) Illi f'**<u>pagna 226 tar-Rapport tal-Ufficju tal-Awditur Generali intitolat "Road Construction and Improvements (Capital Expenditure)"</u>** **<u>mill-Annual Audit Report ghassena 2023</u>** li gie ippubblikat **gimghatejn ilu,** insibu hekk:

(Qed jigi riprodott pratikament ir-rapport imsemmi kollu tal-NAO fuq dan il-progett biss)

"Background

In 2023, the then Ministry for Gozo1 (MGOZ) was allocated €8 million for Road Construction and Improvements, under Capital Vote XIII, Line Item 7240. This budget was utilised on various road construction projects around Gozo.

For the scope of this audit, the National Audit Office (NAO) focused on the project covering an arterial road which starts from ***Triq l-Imgarr in Nadur,*** *continues at Triq Borġ Għarib and ends at Triq Sant'Antnin, both roads in Għajnsielem. The respective costs were financed from funds*

allocated to the line item in question during 2023, as well as in previous years.

The initial budget for emergency works at Triq l-Imgarr was €1.8 million. When MGOZ became aware, through the architect engaged by the Ministry, that a second contract was necessary since the first contract did not cater for the actual requirements of these roads, which were in a more precarious condition than expected, the foregoing budget was subsequently augmented by a further €14 million from the same line item. However, according to information provided by MGOZ on 7 December 2023, up till that date, the total road construction cost reached €17 million. A further €1.5 million were incurred for other ancillary costs. Tables 1 and 2 refer.

In 2018, due to severe damages sustained at Triq l-Imgarr (Nadur), emergency works were required for safety purposes. MGOZ obtained approval from the Department of Contracts to enter into a negotiated procedure for the urgent reconstruction of this road. The contract was awarded to a road construction company for a total value of €652,207. According to the Ministry, after works on this contract commenced, it transpired that the road in question was in a more precarious state than envisaged. Thus, the foregoing contract was terminated and, following another call for tenders for the necessary works up to Triq Sant'Antnin (Għajnsielem), another contract was entered into with the same contractor for a total cost of €9.3 million. On the latter contract, several variations were made and since the limit of the allowable modifications was going to be exceeded, a third contract was signed with the same contractor for another €6.7 million to cover the remaining works.

…….

Since new studies were carried out and the project was redesigned, significant delays were registered in the completion of Triq l-Imgarr and Triq Sant'Antnin. In fact, in 2023, the project was still being finalised, and NAO was not provided with the exact completion date. According to MGOZ, as at October 2024, the provisional acceptance certificate was not yet issued.

Audit Scope and Methodology

The main scope of the audit was to verify whether public funds were used prudently and in a judicious manner. Procurement procedures adopted in relation to the project were reviewed to ensure compliance with the Public Procurement Regulations, as well as other applicable circulars. NAO also established the level of existing internal controls over the expenditure incurred, including the adequacy of certification prior to effecting the respective payments.

An introductory meeting was held with the Permanent Secretary, Director General (Strategy and Support Division) and Assistant Director (Sectoral Procurement – Department of Contracts), followed by a site visit, to obtain a better understanding of the project under review. After a preliminary examination of the related contracts and supporting documentation obtained from the Department of Contracts and MGOZ, further explanations were sought during a second meeting.

A breakdown of total costs, incurred as from the inception of the project up to time of audit, was obtained on 7 December 2023 and analysed. Subsequently, a sample was selected based on financial materiality, nature of costs incurred, as well as applicable risks relating to the three main contracts entered into with the same road construction company. A total of five Bills of Quantities (BoQs) were checked. The remaining costs that were verified included the highest-value invoices for professional services, road accessories, traffic control services and expropriation costs. The sample amounted to €7.2 million and represented 38% of the total project costs.

Limitation on Scope of Audit

NAO experienced significant delays in the submission of information for audit purposes. Although the engagement letter was sent on 11 August 2023, Management was only available for an introductory meeting six weeks later; thus, the audit could not commence as scheduled. Moreover, the files pertaining to the construction contracts which were requested on 24 October 2023, were only provided in mid-February 2024. The review of documentation revealed a dispersed filing system, as the files did not include all the necessary documentation supporting the BoQs. Such documentation was provided at a later stage upon request.

Moreover, during the audit, several reports in the media alleged that works were also performed in the adjacent private fields at the expense of public funds. When NAO conducted a site visit in September 2023, works in the adjacent fields, including a reservoir, ramps and rubble walls could be noted. However, considering that the BoQs did not include detailed explanations of where the works were actually carried out, and these were also unsupported by quantity surveyor detailed reports5, NAO could not assess whether the alleged expenses were directly financed from public funds. Thus, the audit procedures performed in this area were deemed inconclusive.

Key Issues

Inadequate Planning and Disregarded Terrain Studies potentially leading to Substantial Increase in Costs

Following road excavations which were carried out as part of the first contract (signed in August 2018), an agreement was reached between both par-

ties to terminate this contract, since a significant amount of damage in drainage works and a weak terrain were discovered. By 26 February 2019, the Ministry had already paid €112,661 for the related excavation works, notwithstanding that it was not yet presented with a professional architect assessment report on the road terrain.

Subsequently, in February 2019, a geotechnical engineer was contracted by the Ministry, for a period of two months, to provide a detailed design, addressing the stratigraphy, geomorphology and hydrology of Triq l-Imgarr, as well as assessing the current behaviour of the slope, for the cost of €94,400. In a press conference held in April 2019, with the then Minister for Gozo in attendance, the foregoing architect stated that the results indicated that the road design must align with the natural features of the surrounding landscape. A ground investigative report for the preliminary designs was presented in August 2019 at a cost of €18,8806. However, the services of the foregoing architect were not utilised further.

Meanwhile, a call for tenders was published in May 2019 and the respective contract was awarded to the same contractor in October 2019 for €7.9 million (VAT excl.). The foregoing contractor engaged a company to undertake separate geotechnical ground investigations at Triq l-Imgarr. A report dated January 2020 concluded that excavation and piling works were expected to be of moderate difficulty, and routine mechanical excavation and piling means were to be used along the entire project. Another exercise7 was commissioned by the Ministry to the same company which was engaged by the contractor. The same terms of reference were given, but the sample was increased from 4 boreholes to 31. This exercise provided the same conclusion on 10 October 2020.

The variations to the main contracts with the road construction company, amounting to around €5 million (VAT excl.), are listed in Table 3.

As the established limit for modifications to the second contract was going to be exceeded, on 17 October 2020, a request was sent to the Department of Contracts to enter into another negotiated procedure claiming that, apart from the first three variations9 totalling €4.8 million (VAT excl.), other additional works were necessary to reach the scope of the said contract. Approval was granted by the General Contracts Committee on 18 November 2020 and the third contract, for the value of €5.7 million (VAT excl.), was awarded to same contractor in April 2021.

Recommendations

MGOZ is to ensure good governance, accountability and transparency in the management of public funds, aiming to achieve objectives on time and within budget. When appointing technical consultants, the Ministry must ensure that any differences arising from the views of contractors' experts are resolved promptly, and a clear course of action is determined. Under no

circumstances should a project proceed without such discussions, which outcome is to be duly documented. In this instance, it seems that the initial recommendations made by the Ministry's consultant were entirely disregarded.

Additionally, where possible, the Ministry may consider engaging in-house architects with the required technical skills to review ongoing capital projects. This will help to reduce the expenditure incurred on architectural services.

Management Comments

Management appreciates the feedback regarding the administration of public funds and project oversight. The Ministry remains committed to upholding the highest standards of good governance, accountability and transparency throughout the implementation of all its projects.

The foregoing architect was not utilised further because of a strategic decision aligned with the project's evolving needs and that, by adopting a design and build approach, the contractor assumes full responsibility for both the design and construction phases, as well as avoiding potential delays.

Management also appreciates NAO's recommendation regarding the engagement of in-house architects to enhance oversight and reduce dependency on external architectural services. This suggestion aligns with the broader goal of optimising project management and resource utilisation. However, it is important to recognise that each project often requires specialised expertise that may not always be feasible for the Ministry to maintain in-house. For instance, infrastructure projects may require geotechnical engineers, hydrologists, or specialised structural engineers. Given the diverse nature of these requirements, it is not practical or cost-effective for the Ministry to retain such a wide range of specialised expertise on a permanent basis.

Conflicting Clauses in the Same Contract possibly leading to Additional Costs

As per clause 28.1 of both the first and second agreements, the contractor was obliged to carry out the necessary soil studies and geological surveys. The second contract specifically stated that any expenses related to such terrain studies were to be borne by the contractor. Moreover, as per clause 18 of the same agreement, the contractor was deemed to have examined the site.

Clause 52 also stated that the parties agreed that there were to be no further claims for additional payments if the encountered foundation material type, thickness and condition during the execution of works were different from the assumptions that the contractor made at tendering stage. It was

concurred that the contractor was renouncing any right to claim any costs incurred to redesign the project.

On the other hand, clauses 35.8, 35.9 and 35.13 of the same contract stated that if the contractor encountered any unforeseen circumstances, such as unknown bearing capacity of the road base, unknown underground flow of runoff water, archaeological findings, additional utilities, or changes to planned services and utilities, the company was entitled to claim for variations.

As indicated in Table 3 earlier on, variations with a total value of over €5 million (VAT excl.) arising from the second contract, as well as another €5.7 million (VAT excl.) (referred to in the third contract), were borne by the Ministry for the engagement of experts by the contractor to provide geological consultancy, as well as to redesign and build the entire project. A further €0.7 million was paid to another architect to oversee the structural infrastructure and piling works. The Ministry claimed that the circumstances encountered during the excavation process, when weak underlying foundations were identified, were unforeseen, and these necessitated the redesigning of the project. It was also stated that the project was to be executed on a design-and-build basis, to ensure the contractor's adherence to the respective maintenance obligations and defect liability commitments specified in the contract.

However, NAO has concerns on the reason for the abandonment of the plans suggested by the original architect and why the Ministry opted for the suggestions made by the contractor's consultant, which resulted in higher costs, since no documentation was provided to justify the change in plan.[1]

Recommendations

Clear contractual clauses are pertinent to avoid any potential claims through modifications to contract. In such absence, Management may not be able to enforce the related provisions to ascertain that public funds are being utilised judiciously. Changes to plans are to be justified and duly documented.

Management Comments

The Ministry agrees that clarity and precision in contract terms are crucial for the effective management of public funds and for mitigating potential claims arising from contract modifications. Management appreciates

1 Emfasi tal-esponent

NAO's recommendation regarding the need for clear contractual clauses and the proper documentation of changes.
Management will take this feedback into consideration as it continuously reviews and refines processes through better vetting procedures. The Ministry is committed to implement best practices and will work towards enhancing the contract documentation procedures.

Inadequate Contract Management

The review of the three main contracts signed with the same road construction company revealed the following shortcomings:

a. Construction works not covered by a signed agreement – Works carried out between 10 July 2020 and end February 2021, as well as from beginning of 2022 to 2023, were not covered by a signed addendum, extending the validity of the original agreement12. Furthermore, notwithstanding that the commencement notice date was 2 March 2020 and Addendum 3 provided for an extension of six months, this was only signed on 29 March 2021.

b. Inadequate insurance coverage – The period between 27 August 2018 and 23 January 2019 was not covered by an insurance policy. Furthermore, the sum insured in the policies covering other periods did not comply with the applicable contract clauses13.

c. Issues regarding work registers – In November 2023, NAO requested a copy of the work register pertaining to the three contracts in question; however, these were only forwarded on 9 February 2024. These work registers were neither signed by MGOZ nor the contractor, as required in terms of clause 37.1 of the contract. Furthermore, information was not being compiled on a daily basis14. Although MGOZ stated that work was suspended as from 1 November 2021, daily work sheets were made available as from the aforementioned date onwards. On the other hand, although works resumed on 30 May 2022, no work registers were available from then onwards. Clause 37.3 also stated that the contractor was to be liable to a penalty of €500 for every missing daily work register. However, no such penalties were imposed.

d. Lack of photographic evidence – None of the certified BoQs were supported by photographs to evidence the progress of works. This limited NAO in visualising the development of the project for audit purposes.

Recommendations

The Ministry is to ensure that works are covered by an agreement and progress adequately recorded. The insurance policies are also to align with the provisions of the respective contract to mitigate exposure to unnecessary risks and provide adequate financial coverage in case of an emergency or accidents. For control purposes, Management also needs to ascertain

that the daily work register is duly compiled and signed by both parties to ensure accountability. Otherwise, any penalties stipulated in the agreement are to be imposed as they serve as a deterrent for the contractor to fulfil his obligations.

(Several approvals were granted by the General Contracts Committee to extend the contract period as from January 2022 to June 2023. However, a formal agreement was not in place. Only 'Site Instructions' documents were found in file, reporting that works stopped on 1 November 2021, resumed on 30 May 2022 and were brought to a halt again on 8 July 2022. It was also indicated that, between 31 October and 4 November 2022, asphalting had to be completed.

According to the contract, the insurance cover had to be €4 million per occurrence (incidence). The contractor was obliged to take out parallel indemnity to cover any damages to third parties, up to a value of €1 million. However, the joint contracts works insurance policies only covered €240,000 on property and the limit of indemnity on public liability was only €500,000. Furthermore, the limit of indemnity of the public liability policy insuring the contractor only covered €1.41 million between 2019 and 2021, and €3.41 million in 2022 and 2023.

For example, work registers were missing for the period 12 October – 5 December 2018, as well as between 30 May and 7 July 2022.

In order to follow a fair and effective system for tendering, and reducing the risk of ambiguity, omissions or misunderstandings, templates for BoQs are to include detailed information for the tenderer to submit an accurate estimate. Also, in similar projects, photographic evidence is to be maintained in file, supporting the progress registered and the veracity of items charged. Such evidence might also be necessary if any legal action is eventually required.

Management Comments

Due to the voluminous nature of the photographs that accompany BoQs, it is not customary practice to include photographs with BoQs in the files. The Ministry maintained comprehensive photographic records of the project's progress in separate files. Management acknowledges that providing a sample of these photographs could have aided NAO in visualising the project's development.

Control Issues

Lack of Traceability of Project Costs

The costs incurred on the project under review were recorded in an account pertaining to Line Item 7240, which also included the expenditure incurred on other road construction projects around Gozo during the same period. Moreover, the main contractor was awarded other roadworks projects during the same timeframe and such outlay was recorded in the same account. This hindered NAO from ascertaining the accuracy and completeness of the list of expenditure incurred on the reconstruction of Triq l-Imgarr (Nadur) and Triq Sant'Antnin (Għajnsielem).

Recommendations

NAO recommends that in large-scale capital projects, a specific line item is opened so that the budgeted amounts in the Financial Estimates, as well as the accounting of actual costs incurred, are recorded accordingly for better traceability and audit trail.

Management Comments

Management agrees that classifying these expenditures separately in a specific line item would indeed improve the traceability of expenditure and enhance the audit trail. Going forward, the Ministry will implement this recommendation to ensure that budgeted amounts and actual costs are distinctly classified in the Corporate Financial Management Solution for all large-scale capital projects.

Contract for Architectural Services signed retrospectively and Inadequate Performance Guarantee

A contract with an architect, to serve as a road foundations technical overseeing expert, for a total of €379,637 (VAT excl.), was signed on 11 August 2020, one month after the commencement of service. An addendum to this agreement was also signed retrospectively15.

Moreover, the performance guarantee in relation to the aforementioned contract was obtained on 4 December 2020, nearly four months later. An extension to the foregoing only covered until 4 September 2022, although works were still ongoing in 2023. The last invoice raised by the architect for the amount of €115,032 was dated 16 October 2023.

Recommendations

To ensure that both parties agree on their respective rights and obligations before the actual work starts, contracts are to be signed not later than their effective date. Moreover, performance guarantees are to be submitted in a timely manner and cover the entire duration of service delivery, as this is intended to serve as a protective measure, ensuring that Government's interests are duly safeguarded.

Management Comments

Management agrees that contracts should be signed no later than their effective date to ensure that both parties are clearly aware of their respective rights and obligations before any work begins. This practice will promote clarity, reduce misunderstandings, and ensure that all parties are on the same page from the outset.

Furthermore, Management concurs that performance guarantees should be submitted promptly and cover the entire duration of service delivery. This measure is essential for safeguarding Government's interests and provides a protective layer, ensuring that contractors fulfil their obligations throughout the project's lifecycle.

Compliance Issue

Capital Project not formally approved by the Ministry responsible for Finance

A project proposal document, feasibility studies and a project definition report were not drawn up and presented for the approval of the Ministry responsible for Finance, prior to the commencement of works, as required in terms of MFIN Circular No. 6/2007 – 'Capital Projects Proposals'. Moreover, NAO was not provided with the preliminary Finance approval covering the overall project costs. The only authorisation made available was that pertaining to the negotiated procedure, covering only part of the works at Triq l-Img
arr (Nadur).

Recommendation

Management is urged to comply with the provisions laid down in pertinent circulars to ascertain that such large-scale projects have the approval of the relevant authority and the green light is given.

Management Comments

Management appreciates the importance of adhering to the above mentioned circular and will ensure that future projects include the preparation and submission of all requisite documentation for approval from the Ministry responsible for Finance."

8) Fis-**26 ta' Dicembru 2023** deheret din l-ahbar f'**TheShiftNews:**

https://theshiftnews.com/2023/12/26/gozo-ministrys-permanent-secretary-habitually-abusing-procurement-rules/

“Is-Seg.Perm tal-Ministeru għal Għawdex instab li kiser “abitwalment” ir-regoli tal-akkwist

Is-Segretarju Permanenti tal-Ministeru għal Għawdex John Borg, li ilu fil-kariga mill-2014 u rnexxielu jibqa’ f’postu taħt tliet ministri Laburisti konsekuttivi, ġie identifikat bħala l-moħħ ewlieni wara l-abbuż rampanti attwali fil-Ministeru għal Għawdex, b’mod partikolari fl-użu tal-fondi pubbliċi. F’rapport kundannanti ieħor mill-Uffiċċju tal-Awditur Ġenerali (l-NAO) dwar l-infiq tal-ministeru fl-2022, Borg jissemma bi prominenza li akkomoda direct orders b’mod ripetittiv lill-istess fornituri tas-servizzi jew persuni.

Dan l-abbuż ta’ Borg hu eżattament bil-kontra tal-inkarigu tiegħu bħala segretarju permanenti, li suppost ikun kontinwament qed jgħasses biex jiżgura li kollox jimxi skont r-regoli.

Ir-rapport tal-NAO jikkonferma bosta rappurtaġġi ta’ The Shift dwar abbuż rampanti fil-Ministeru għal Għawdex immexxi minn Clint Camilleri. Meta stħarreġ sempliċiment kampjun ta’ wħud mill-mijiet ta’ direct orders approvati minn Borg matul 2022, l-NAO sab li bosta servizzi ta’ valur sostanzjali kienu “abitwalment qed jinqasmu f’bosta kuntratti li ma jaqbżux il-limitu ta’ €10,000 stabbilit fir-regolamenti dwar l-akkwist pubbliku.” Skont l-Awditur Ġenerali, “Dan il-mod kif isir l-akkwist pubbliku, li jimmerita sejħiet pubbliċi għall-offerti, kien qed jiġi approvat mis-segretarju permanenti rispettiv (John Borg).”



Is-segretarju permenanti fil-Ministeru għal Għawdex, John Borg.

Skont il-liġi, il-kuntratti kollha li jaqbżu l-€10,000 iridu jingħataw wara li tinħareġ sejħa pubblika. ***Madankollu, bl-approvazzjonijiet ta' Borg, il-Ministeru għal Għawdex qasam il-kuntratti f'biċċiet ripetuti ta' kuntratti b'direct order ta' €10,000 kull wieħed ħalli l-forniturі 'magħżula' jkunu jistgħu jiġu akkomodati mingħajr kompetizzjoni****.*

L-Awditur Ġenerali nnota li dan il-metodu illegali u abbużiv kien qed jintuża mill-Ministeru għal Għawdex b'mod estensiv, b'mod partikolari għas-sigurtà, it-tindif, l-immaniġġjar tal-proġetti u s-servizzi tar-riċerka.

"Bejn id-9 ta' Diċembru 2021 u t-28 ta' Novembru 2022, il-Ministeru għal Għawdex ħareġ 37 direct order lil kumpanija partikolari biex tipprovdi servizzi tas-sigurtà, b'valur totali ta' €209,082 (VAT eskluża)," sab l-NAO. "Bosta ftehimiet, li kull wieħed ikopri perjodu ta' ftit ġimgħat, ġew iffirmati b'mod separat biex jaqdu nħawi differenti (ta' Għawdex) fir-responsabbiltà tal-ministeru," jiddikjara r-rapport. Bejn Jannar 2020 u t-tmiem l-2022 saru ħmistax-il ftehim konsekuttiv b'direct order, li kull wieħed ikopri disa' ġimgħat, ma' persuna partikolari biex tipprovdi servizzi ta' mmaniġġjar tal-proġetti.

Anki r-riċerka ġiet ikkummissjonata b'sistema abbużiva. "Bejn Ġunju 2020 u Jannar 2023, il-ministeru ħallas b'kollox €68,000 għal servizzi ta' statistika u konsulenza b'rabta ma' kompiti differenti. Dawn ġew akkwistati b'kuntratti ta' xahrejn il-wieħed permezz ta' diversi direct orders lill-istess forniturі tas-servizz."



L-NAO sab ukoll bosta każijiet oħra ta' abbuż li lkoll jippuntaw direttament lejn l-uffiċċju tas-segretarju permanenti, fosthom l-approvazzjoni ta' varjazzjonijiet (ħlasijiet addizzjonali), u dawn apparti l-ħlasijiet għall-kuntratti u l-modifiki determinati minn qabel fil-kuntratti*. "Qabel l-iffirmar ta' kuntratt partikolari għall-forniment ta' servizzi tas-sigurtà fil-parkeġġ tal-Iskola Sekondarja tal-Kulleġġ Għawdxi nhar il-11 ta' Diċembru 2020, is-segretarju permanenti fis-7 ta' Diċembru 2020 kien diġà ħareġ l-approvazzjoni tiegħu biex issir bidla fil-kuntratt li tiswa €10,297, jiġifieri 50% tal-valur tal-kuntratt."*

Minkejja d-diversi drabi li s-segretarju permanenti nstab li aġixxa kontra l-missjoni tiegħu stess, l-ebda azzjoni ma ttieħdet mill-prim ministeru responsabbli għan-nomina tiegħu.”

9) Fit-**3 ta’ Dicembru 2022** deheret din l-ahbar f’**TheShiftNews:**

https://theshiftnews.com/2022/12/03/gozo-ministry-hasnt-published-two-years-of-direct-orders/

*“**Gozo Ministry hasn’t published two years of direct orders***

Gozo Ministry Permanent Secretary John Borg is refusing to explain why the ministry is ignoring the law by having not published any direct order information over the past two years.

While the Gozo Ministry under Clint Camilleri has become renowned for using direct orders to curry favour with constituents and friendly businesses, the ministry has only published lists of direct orders for the year 2020.

Asked for an explanation, the permanent secretary, currently in the news for potential employee discrimination, is refusing to explain.

Asked by Opposition MP Chris Said to table a list of all the direct orders the Gozo Ministry has awarded over the last two years, the minister avoided a reply by stating the information will be made public “in some other session”.

According to strict public procurement rules, direct orders of over €10,000 are only to be awarded in exceptional circumstances and the acquisition of goods and services of over that value must be done through a competitive tender.

The rules also specify that every six months every ministry and public authority has to publish a list of all direct orders that exceed €5,000 in the Government Gazette.

But in the case of the Gozo Ministry, the latest list published dates back to the last semester of 2020, with no information having been made public for 2021 and 2022.

Gozo Ministry sources told The Shift that the exercise, when published, will clearly show how the Gozo Ministry "is operating like a village bazaar issuing direct orders left, right and centre and trying to keep everyone happy."

Gozo now has three ministers in the favours for votes competition. In the last election, incumbent Gozo Minster Clint Camilleri obtained the most votes out of his rivals, over 6,000. However, his bid to remove veteran Anton Refalo was unsuccessful and even though he was ousted from the Gozo Ministry, he still managed to get over 5,000 votes.

Most of the Gozitans have either been employed directly or indirectly by the government or its entities. Many were also abusively given 'phantom jobs' where they rarely make it to their official place of work, while they work elsewhere in the construction or services industries."

10) Fl-**20 ta' Dicembru 2022** deheret din l-ahbar f'**TheShiftNews:**

https://theshiftnews.com/2022/12/20/gozo-ministry-issued-263-direct-orders-worth-e4-6-million-in-2021/

*"**Gozo Ministry issued 263 direct orders worth €4.6 million in 2021***

90% of all purchases made by the Gozo Ministry in 2021 were done by direct order in contravention of public procurement rules

Nine of every 10 purchases of goods and services made by the Gozo Ministry in 2021 were made through direct orders, completely departing from standard public procurement rules.

An analysis of the long list of direct orders published by the Gozo Ministry in the Government Gazette long after the six-month window stipulated by law reveals the ministry, led by Minister Clint Camilleri and permanent secretary Joe Borg, issued 263 direct orders in just 12 months with a total value exceeding €4.6 million.

The seemingly endless list shows that, in many cases, the Gozo Ministry skirted the legal obligation for official authorisation from the Finance Ministry. Instead, it split up contracts for single providers into segments of under €10,000, which do not require authorisation.

In one case, cleaning company General Cleaners Ltd was given a repeat €9,000 direct order every month for cleaning services at the Innovation Hub – in the process, amassing a total bill of almost €110,000 that was split into 12 different direct orders.

The same method was repeated in other procurement exercises, mainly when it came to the security services contracts used by the ministry to employ constituents in exchange for votes.

Security First Services Ltd, a Nadur-based company set up in 2013 and co-owned by businessman George Said, known as 'Id-Diaz', was also given repeat direct orders.

These included a €133,000 agreement split into four different direct orders to provide security at a Covid-19 vaccination centre in Victoria, and another €80,000 agreement realised through 11 different direct orders to provide security for the Cittadella.

Victoria's Leone Band Club was given five direct orders over a 12-month span to rent its premises as a Covid-19 vaccination centre for some €40,000.

The non-profit Gozitan Emergency Response Rescue Corps (ERRC) was meanwhile given another seven direct orders worth just under €70,000 – just enough to remain below the €10,000 threshold.

The abusive procurement system was used for practically all the Gozo Ministry's needs, including the provision of sponsorships for friends, potential influencers and individuals producing rose-tinted public relations for the government and, in particular, for Minister Camilleri.

The Gozo Ministry also deemed it necessary to award Sigma – the organisers of online gaming networking events – two direct orders of €10,000 each to publicise the ministry in its publications.

CVC Marketing, a company known for producing publicly-funded PBS programmes, was also given numerous direct orders. These included €30,000 for a sports television programme, €8,000 to insert subtitles into its own television programmes and another €10,000 for an advertising campaign on the same programme co-sponsored by the ministry.

Associated News, another Malta-based public relations agency, was given a €22,000 direct order to advertise Gozo in its Air Malta in-flight magazine, while television presenter Claire Agius was paid €6,500 to plug Gozo into her televised travel show.

The Gozo Regional Development Authority – a new entity supposedly independent from the government but financed by the Gozo Ministry – has also used direct orders to hire its consultants. These include former General Workers' Union official and Foundation for Tomorrow's School's Chairman Cory Greenland and Labour's pollster Vincent Marmara through his private enterprise Sagalytics.

The company of BOV Chairman Gordon Cordina, E-Cubed Islands, was also given a number of direct orders, including one for €19,000 for general consultancy services for the new authority.

Even the rental of premises, which was not listed in the information published, was done through direct order.

The Wild Birds Regulation Unit also entered into a leasing agreement worth €18,500 with Cast Renting Ltd, a company co-owned by designer Carlo Stivala and Joseph Calleja.

Grena Investment Ltd, controlled by financial advisor Michael Grech, who is also an Air Malta board member, was meanwhile awarded a €25,500 one-year lease agreement by Gozo Channel."

Qabel ma jkompli, l-esponent qieghed umilment jigbed l-attenzjoni tal-Magistrat Inkwirenti ghall-**Kap.601 tal-Ligijiet ta' Malta, u senjatament l-artikli 2 u 47 tieghu:**

> *"2.* ***accounting officer" means a person holding or acting in the office of a Permanent Secretary****, Head of a government department or a Financial Controller and includes every person who is charged with the duty of collecting, receiving or accounting for, or who in fact collects, receives or accounts for, any public moneys, or who is charged with the duty of disbursing, or who does in fact disburse, any public moneys, and every person who is charged with the receipt, custody or disposal of, or the accounting for, public stores, or who in fact receives, holds or disposes of public stores";*
>
> *"47. (1) Save as otherwise specifically provided for by any other law, the Permanent Secretary shall, upon acquiring or having any knowledge of an infringement, inform forthwith the persons as mentioned in article 45, and shall carry out the necessary investigation and draw up a report indicating:*
>
> *a. the infringement;*
>
> *(b) the financial loss or deficiency, if any, and its extent, to the Government or to any multinational or international entity or fund of or in which Malta, under any agreement, forms or takes part;*
>
> *(c) responsibility for such loss or deficiency; and*
>
> *(d) any sum or amount whereby any person or persons has or have unduly gained or benefited consequent to that infringement.*
>
> *(2) The Permanent Secretary shall notify the person who was informed of the infringement under sub-article (1), of the report.*
>
> *(3) Where responsibility for such loss or deficiency as may be established under sub-article (1) is ascribed to two (2) or more persons, they shall become liable jointly and severally".*

Tenut kont il-fatti hawn fuq esposti u maghrufa u ikkonstati b'mod empiriku mill-NAO u mill-media indipendenti, u tenut kont l-**art.141 tal-Kodici Kriminali**, huwa car u ovvju li fuq bazi *prima facie* **l-Permament Secretary tal-Ministru ta' Ghawdex, id-denunzjat John Borg** kiser l-obbligi tieghu taht l-**artiklu 141 tal-Kodici Kriminali** wkoll FLIMKIEN ma' ksur da parti tieghu tal-obbligi tieghu taht il-**Kap.601 tal-Ligijiet ta' Malta u dawk naxxenti mill-Avviz Legali 601.3 (Public Procurement Regulations);**

Tenut kont il-fatti hawn fuq u maghrufa u ikkonstati b'mod empiriku mill-NAO u mill-media indipendenti, huwa car u ovvju li fuq bazi *prima facie* d-denunzjati l-Permament Sec-

retary tal-Ministru ta' Ghawdex John Borg, Clint Camilleri Ministru ta' Ghawdex, Godwin Agius (bhala ufficjali jew impjegati pubblici) jidher fuq bazi *prima facie* li kisru l-obbligi taghhom taht l-**artiklu 127 u 141 tal-Kodici Kriminali** wkoll:-

> **art.127***: "kull uffiċjal jew impjegat pubbliku illi, għal xi vantaġġ privat tiegħu jew għall benefiċċju ta' xi persuna jew entità oħra, jagħmel użu ħażin minn flejjes tal-Gvern jew tal privat, karti ta' kreditu jew dokumenti, titoli, atti jew ħwejjeġ mobbli, illi jkunu ġew fdati lilu minħabba l-kariga jew impieg tiegħu, jew jisraqhom, jeħel, meta jinsab ħati, il-piena ta' priġunerija minn sentejn sa sitt snin, u l-interdizzjoni ġenerali perpetwa."*

> **art.141**: *"kull uffiċjal jew impjegat pubbliku li jsir ħati ta' reat ieħor li huwa kellu jissorvelja biex ma jsirx jew li minħabba l-kariga tiegħu huwa kellu d-dmir li jimpedixxi, jeħel, meta jinsab ħati, il-piena stabbilita għal dak ir-reat, miżjuda bi grad*".

Ghalhekk:-

Id-denunzjant identifika u qed jiddentifika bil-gurament tieghu lil:

1. **Ministru On. Clint Camilleri**, (ID 115088M), residenti: 19, Diana, Triq Cicciano, Nadur, Ghawdex, jew Ministeru ta' Ghawdex, Pjazza San Frangisk, Rabat, GHAWDEX;

2. **John Borg, il-Permanent Secretary tal-Ministru ta' Ghawdex,** Ministeru ta' Ghawdex, Pjazza San Frangisk, Rabat, GHAWDEX;

3. **Perit Andrew Ellul**, ta' 42 Triq il-Kungress Ewkaristiku (Mobile 79 499 442)

4. **Perit Godwin Agius**, 37, Triq San Pawl tal-Pitkali, Dingli (residenza); ((**Ufficji**: 60, Zebbug Street, Zebbug, Malta JEW Hercules House, St. Mark Street, Valletta JEW Engineering Resources Ltd, Sliema Road, Kappara, San Gwann, SGN 4419))

BAŻI GĦAL *IN GENERE* u ARTIKLI RELEVANTI

Il-fatti hawn fuq esposti jagħtu lok, żgur fuq bażi ħafna iktar minn dik sempliċi ta' *prima facie* li huwa l-livell ta' prova rikjest għal fini tal-art.546(4A) tal-Kodici Kriminali biex issir il-prova tal-"*in genere*" fil-konfront tal-persuni denunzjati kollha sabiex jiġi ippreservat is-suġġett materjali tar-reati u jiġu ippreservati l-provi kollha MILL-IKTAR FIS.

Ghax huwa BISS bl-elevar tas-servers tal-ufficji tal-Ministeru ta' Ghawdex, dawk tal-*customer care* tal-Ministeru ta' Ghawdex, tal-mobile phones u komunikazzjoni elettronika tal-/bejn il-persuni imsemmijin hawn fuq (inkluz cloud accounts u komunikazzjoni fuq Signal u WhatsApp) u terzi persuni, inkluz kuntratturi, li jista' jigi ippreservat is-suggett materjali tad-delitti imsemmija.

Huwa ghalhekk li wara li d-denunzjant ilu xhur shah, wahdu, jigbor l-informazzjoni deskritta hawnhekk, u minn diversi nies li uhud minnhom kelmuh taht is-sigriet professjonali, u dan sabiex ikun f'pozizzjoni li jipprezenta tali rikors taht gurament, issa jinsab f'pozizzjoni li jersaq quddiem is-Sur Magistrat tal-Ghassa u jitlob bil-qima IZDA BL-URGENZA li tinfetah Inkjesta Magisterjali.

<u>On. Clint Camilleri, John Borg, Perit Godwin Agius u Perit Andew Ellul</u>

Permezz ta' dan ir-rikors, ir-rikorrenti huwa infurmat li **Clint Camilleri, John Borg u Perit Godwin Agius**[2] **(it-tlieta li huma ufficjali pubblici) u l-Perit Andrew Ellul** wettqu s-segwenti delitti u li certament is-suggett materjali tad-delitti hawn imniżżlin **<u>għadu jeżisti</u>** u **<u>jeħtieġ li jkun ippreservat b'mod urġenti</u>**, anke billi jiġu elevati s-servers, mobile phones, computers, filmati tas-CCTV u cloud accounts ta' dawn l-individwi.

Id-delitti li r-rikorrent bil-ġurament tiegħu jista' jikkonferma li hemm bazi *prima facie* li twettqu minn dawn iz-zewg persuni huma:

Artikli 48A (ghad-denunzjati kollha) u 115 tal-Kap.9 (ghad-denunzjati kollha),

Artiklu 118 tal-Kap.9 ghall-On Clint Camilleri wahdu;

Artikli 124, 125, 126, 127 tal-Kap.9 (ghad-denunzjati Camilleri, Borg u Agius bhala ufficjali jew impjegati pubblici),

2 Impjegat ufficjalment ma' Engineering Resources Ltd (C 65835) li kija 100% shareholding tal-Gvern ta' Malta. Hija s-socjeta li maghha gew trasferiti l-ex haddiema tal-Enemalta.

Artikli 293 u 294 (u dawn kif aggravati bl-artiklu 141 tal-Kap.9 ghad-denunzjati Camilleri, Borg u Agius bhala ufficjali jew impjegati pubblici) tal-Kodiċi Kriminali,

kif ukoll id-delitt ta' hasil ta' flus ghad-denunzjati kollha (kif definit fl-artikli 2 u 3 tal-Kap.373 tal-Liġijiet ta' Malta),

u dawn l-artikli kollha bl-applikazzjoni tal-artikoli 18 u 42 tal-Kodiċi Kriminali

Mhux għax huwa obbligat *ex lege* li jagħmel dan, ir-rikorrenti qiegħed jissenjala uħud mill-artikli tal-Kodiċi Kriminali li raġjonevolment jikkombaċċjaw mal-fatti hawn esposti u kif Inkjesta Maġisterjali tista' raġjonevolment issib li dawn ġew miksura mid-denunzjati kollha fuq bazi *prima facie*:

Ir-rikorrenti jemmen li l-fatti hawn fuq esposti jindikaw suspett raġjonevoli ibbażat fuq fatti u ċirkostanzi raġjonevoli li ġew miksura s-segwenti artikli tal-Kodiċi Kriminali u ligijiet ohra:

Qabel xejn, punt preliminari stante li gew imwettqa diversi atti fi zminijiet differenti u li kisru l-istess disposizioni tal-ligi b'rizoluzzjoni wahda:-

L-**Artiklu 18** Kodiċi Kriminali:

> *"Meta d-diversi atti magħmulin mill-ħati, ukoll jekk fi żminijiet differenti, ikunu jiksru l-istess dispożizzjoni tal-liġi jew dispożizzjonijiet relatati tal-liġi, u jkunu ġew magħmula b'riżoluzzjoni waħda, dawn l-atti jitqiesu bħala reat wieħed, imsejjaħ reat kontinwat, iżda l-piena tista' tiżdied minn grad sa żewġ gradi*"

Ir-rikorrenti jemmen umilment li d-diversi fatti u atti indikati hawn fuq juru suspett raġjonevoli li kien hemm riżoluzzjoni waħda fil-ksur mid-denunzjati tal-istess disposizzjoni tal-liġi jew dispożizzjoni relatata tal-liġi, partikolarment dawk relatati mat-tixħim, l-assoċjazzjoni kriminali, *trading in influence*, il-falz ideoloġiku, approprjazzjioni indebita, truffa u storn.

Artiklu 42 tal-Kodici Kriminali:

"*Persuna titqies kompliċi f'delitt jekk hija -*

(a) tkun tat ordni lil ħaddieħor biex jagħmel id-delitt; jew

(b) tkun ġiegħlet li d-delitt isir b'mezz ta' rigali, wegħdiet, theddid, maniġġi, jew egħmil qarrieqi, inkella b'abbuż ta' awtorità jew setgħa, inkella li tkun tat istruzzjonijiet biex isir id-delitt; jew

(ċ) tkun tat armi, għodod jew mezzi oħra li jkunu ġew użati fl-egħmil tad-delitt, meta kienet taf li kellhom hekk jiġu użati; jew

(d) għad li ma tkunx waħda mill-persuni msemmija fil-paragrafi (a), (b) u (ċ), b'xi mod li jkun, xjentement, tkun għenet jew assistiet lill-awtur jew lill-awturi tad-delitt fl-atti li bihom id-delitt ikun ġie ippreparat jew ikkunsmat; jew

(e) tkun xewxet lil ħaddieħor inkella saħħet il-volontà tiegħu sabiex jagħmel id-delitt, jew wegħdet li wara l- fatt tassistih, tieqaf miegħu jew tikkompensah"

Ir-rikorrent huwa infurmat li l-fatti u atti indikati hawn fuq juru suspett raġjonevoli ta' kompliċità kriminali, partikolarment billi d-denunzjati xjentement għenu jew assistew lil terzi biex l-erarju pubbliku jitlef miljuni ta' euro (certament 'l fuq minn €9 miljun) kif ser jigi spjegat f'dan ir-rikors umli.

L-artiklu 48A tal-Kodiċi Kriminali:

"(1) Kull min f'Malta jassoċja ruħu ma'xi persuna jew persuni f'Malta jew barra minn Malta bil-għan li jagħmel delitt f'Malta li għalih hemm il-piena ta' priġunerija, ikun ħati tar- reat ta' assoċjazzjoni biex jagħmel dak ir-reat.

(2) L-assoċjazzjoni msemmija fis-subartikolu (1) tibda teżisti mill-waqt li fih xi sura ta' azzjoni tkun li tkun tiġi ppjanata jew miftiehma bejn dawk il-persuni.

(3) Kull min jinsab ħati ta' assoċjazzjoni taħt dan l-artikolu jista' jeħel il-piena għal delitt ikkunsmat li jkun l-għan tal- assoċjazzjoni, mnaqqsa b'żewġ gradi jew tlieta.

(4) Għall-għanijiet tas-subartikolu (3), sabiex tiġi stabbilita l-piena għar-reat sħiħ li jkun l-għan tal-assoċjazzjoni, għandhom jitqiesu ċ-ċirkostanzi kollha li jaggravaw dak ir-reat

Ir-rikorrenti jemmen li hu iktar minn raġjonevoli s-suspett li **Clint Camilleri, Andrew Ellul, Godwin Agius u John Borg** (u dan iktar u iktar kif ghandu jigi ippruvat b'mod forensiku fl-Inkjesta jekk dan ir-rikors ikun milqugh), assocjaw ruhhom **bejnithom** u ma' persuni biex iwettqu delitt (inkluz frodi, appropjazzjoni indebita, storn, dikjarazzjonijiet foloz u tixhim) f'Malta.

Dan wettquh b'diversi atti bl-istess riżoluzzjoni kriminali u bi ksur tal-istess dispożizzjonijiet talliġi għal diversi drabi, zgur wara l-2021, u wettqu dawn l-atti bħala kompliċi fit-termini tal-artiklu 42 tal-Kodiċi Kriminali u bħala parteċipanti f'assoċjazzjoni kriminali ai termini tal-artiklu 48A tal-Kodiċi Kriminali.

Per eżempju, fis-sentenza **Il-Pulizija vs Fabio Julian (16.12.2014)** per Maġistrat Dr Hayman, konfermata fl-appell, jingħad hekk:

> *"Mela kjarament u bla dubbju, jirrizulta car illi l-Ligi trid illi din l-assoccjazzjoni tibda tissusisti l-mument illi "xi sura ta' azzjoni" tigi miftehma jew pjanata. Fittest Ingliz, dan jaqra "from the moment in which any mode of action whatsoever is planned or agreed upon between such persons".*
>
> *Mela certament il-pjan necessarju hawn jista', anke biex ikun sodisfatt dan ir-reat, ikun wiehed anke miftuh u mhux wiehed illi jinhtieg illi jkun pjanat sa lanqas dettall bir-reqqa, basta jkun hemm il-hsieb komuni bejn zewg partijiet, u izjed illi jaqblu u jibdew u jhejju certu pjanijiet biex jigu miftehma anke l-modalitajiet ta' azzjoni biex jigi kommess ir-reat. Necessarju l-qbil bejniethom ghal skop u ghan komuni. Ir-reat precedentement ezaminat jitlob fih innifsu izjed komplessita' ta' struttura ta' ghaqda u kif jispjega sew l-Antolisei ghandu mpatt aktar prolongot u kompless fuq is-socjeta', u minhabba ghaqda b'ghan ta' reita', jissoxxita' aktar alarm u ansjeta' pubblika.*
>
> *Dr Brincat fil-fatt issugerixxa li hawn gie addebitat reat alternattiv. Dan ghalkemm jista' jkun il-kaz, pero mhux necessarjament hu hekk. L-assoccjazzjoni taht l-Artikolu 48A tista' treggi bhala reat minghajr ma jkun hemm dik l- "assocciazone per delinquere", mahsub taht l-Artikolu 83A tal-Kapitolu 9 tal-Ligijiet ta' Malta.*
>
> *Il-"conspiracy", assoccjazzjoni tezisti anke minghajr il- komplessita' ta' struttura u pjanijiet ta' ghaqda jew organizzazzjoni.*
>
> *Fis-sentenza tal-Qorti tal-Appell Kriminali (Superjuri) fil- kawza fl-ismijiet "Ir-Repubblika ta' Malta vs Godfrey Ellul", Nru 10/2000, datata 17 ta' Marzu, 2005, il-Qorti ghamlet referenza ghal Archbold Criminaln Pleading, Evidence and Practice 2003, dwar dan ir-reat in ezami, biex jigi miftiehem ahjar dan ir-reat:*
>
> *"The essence of conspiracy is the agreement. When two or more agree to carry their criminal scheme into effect, the very plot is the criminal act itself: Mulcahy v. R. (1868) L.R. 3 H.L. 306 at 317; R. v. Warburton (1870) L.R. 1 C.C.R. 274; R. v. Tibbits and Windust [1902] 1 K.B. 77 at 89; R. v. Meyrick and Ribuffi, 21 Cr.App.R. 94, CCA. Nothing need be done in pursuit of the agreement: O'Connell v. R. (1844) 5 St.Tr.(N.S.) 1."*

"The agreement may be proved in the usual way or by proving circumstances from which the jury may presume it: R. v. Parsons (1763) 1 W.Bl. 392; R. v. Murphy (1837) 8 C. & P. 297. Proof of the existence of a conspiracy is generally a "matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them": R. v. Brisac (1803) 4 East 164 at 171, cited with approval in Mulcahy v. R. (1868) L.R. 3 H.L. 306 at 317."

Fil-kawza fl-ismijiet "Ir-Repubblika ta' Malta vs Stephen John Caddick and Philip Walker; Omissis", datata 6 ta' Marzu, 2003, il-Qorti qalet hekk dwar id-definizzjoni u l- elementi ta' dan ir-reat:

"As pointed out by appellants, the First Court correctly stated that the three elements that had to be proved for the crime of conspiracy to result, were the agreement between two or more persons, the intention to deal in drugs and the agreed plan of action; and, as also correctly stated by the First Court, "it is irrelevant whether that agreement was ever put into practice". But the First Court then continued:

"Obviously if there is evidence which shows that the agreement was put into practice, if there is evidence which shows that there was dealing in drugs in Malta, then that is a circumstance which shows that there has been this conspiracy. That this is a circumstance which proves that the conspiracy had existed. But if for argument's sake, there is no evidence that the agreement was put into actual practice, then you will still have the crime of conspiracy complete. So do not think that it is an essential element of the crime to have to prove up to the level of moral conviction that there was the actual dealing of drugs in Malta".

.....

Under our law the substantive crime of conspiracy to deal in a dangerous drug exists and is completed "from the moment in which any mode of action whatsoever is planned or agreed upon between" two or more persons (section 22(1A) Chapter 101). Mere intention is not enough. It is necessary that the persons taking part in the conspiracy should have devised and agreed upon the means, whatever they are, for acting, and it is not required that they or any of them should have gone on to commit any further acts towards carrying out the common design. If instead of the mere agreement to deal and agreement as to the mode of action there is a commencement of the execution of the crime intended, or such crime has been accomplished, the person or persons concerned may be charged both with conspiracy and the attempted or consummated offence of dealing, with the conspirators becoming (for the purpose of the attempted or consummated offence) co-principals or accomplices. Even so, however, evidence of dealing is not necessarily going to show that there was (previously) a conspiracy, and this for a very simple reason, namely that two or more persons may contemporaneously decide to deal in drugs without there being between them any previous agreement."

Mela hawn l-evidenza migjuba trid tkun dwar ftehim, fil-kaz taghna in ezami mhux dwar droga, imma frodi tal-Casino, u eventwali reciklagg fil-fatt biex dan ir-reat jissusisti ma hemmx ghalfejn jirrizulta tali frodi per se'. Ir-reat huwa kkunsmat appena jsir dan il-ftehim li sehh b'ghan komuni, ftehim dwar 'il kif ghandu jigi milhuq l-ghan innifsu.

Ghandu wkoll dan il-ftehim ikun akkumpanjat ma' element iehor biex dan ir-reat ta' assoccjazzjoni jkun kostitwit.

Hawn il-Qorti taghmel referenza ghal dak illi qalet il-Qorti tal-Appell Kriminali Superjuri fil-kawza fl-ismijiet "Ir- Repubblika ta' Malta vs Edgar Pena" datata 5 ta' Dicembru, 2012, fejn il-Qorti qalet illi mhux biss jinhtieg ikun hemm "meeting of the minds", izda l-meeting minds irid kun mhux biss ghall-ispacc ta' droga izda wkoll dwar il-mezzi, ossia modalitajiet, li ser jintuzaw sabiex isir dak l-ispacc.

Jghin mhux ftit il-fatt, dan bhala prova anke cirkostanzjali ta' tali ftehim, li fil-fatt dan il-ftehim tqieghed fis-sehh anke b'success!

Art.115 tal-Kodici Kriminali

(1) Kull uffiċ

jal jew impjegat pubbliku li, in konnessjoni mal-kariga jew impieg tiegħu, jitlob, jirċ

ievi jew jaċ

ċ

etta għalih jew għal ħaddieħor xi rigal jew wegħda jew offerta ta' xi rigal fi flus jew f'utli ieħor, jew ta' xi vantag

ġ ieħor, li għalihom huwa ma jkollux jedd, jeħel ….

Artiklu 118 tal-Kap.9 (fil-konfront tal-On Camilleri biss):-

"118. (1) Kull membru tal-Kamra tad-Deputati li jitlob, jirċievi jew jaċċetta, għalih jew għal xi persuna oħra, xi rigal, jew wegħda jew offerta ta' xi rigal, fi flus jew f'utli ieħor, jew ta' xi vantaġġ ieħor, mogħti jew magħmula bil-għan li jiġi influwenzat fl-imġieba tiegħu bħala membru tal-Kamra, jeħel, meta jinsab ħati, il-piena ta'priġunerija minn sena sa tmien snin"

Ir-rikorrenti jemmen umilment li l-fatti hawn fuq elenkati (minbarra ohrajn li zgur jistghu jigu misjiba u ippreservati fil-kors ta' Inkjesta Magisterjali) ragjonevolment juru s-suspett ragjonevoli li l-persuni suspettati/denunzjati, ircievew jew accettaw ghalihom jew ghal haddiehor xi rigal jew weghda hew offerta ta' xi rigal fi flus jew f'utli iehor, jew ta' xi vantagg iehor li ghalihom huma ma kellhomx jedd.

Hawn qed nitkelmu fuq it-"tberbiq" deliberat, insensat, kontinwu, mifrux, ripetut ta' miljuni kbar ta' euro minn fondi pubblici li ma setax isir minghajr il-barka u l-gharfien u l-approvazzjoni tal-persuni suspettati. U zgur ma sarx ghall-ebda *quid pro quo*.

(L-esponent gie infurmat personalment taht is-sigriet professjonali tieghu li saret weghda, jekk mhux ukoll sar hlas effettivament, ta' somma (*bribe*) ta' iktar minn €700,000 fil-mori ta' dawn ix-xogholijiet pubblici, taht id-dehra kimerika ta' konsulenza, sabiex is-somma minfuqa mill-Gvern f'dan il-progett splodiet b'iktar minn €9,000,000 iktar milli kien suppost, mahsub u ippjanat sakemm ha *over* il-Ministru Camilleri flok il-predecessura tieghu).

Dan l-ghemil tal-Ministru, s-Segretarju Permanenti tieghu, l-Perit Godwin Agius u l-Perit Ellul inkarigat b'*direct order* mill-Ministru Camilleri appena inghata d-dekasteru tieghu, ma setax kien semplicement traskuragni jew inkompetenza grassa fil-gestjoni ta' fondi u assi pubblici izda jaghti lok ghal suspett serju ta' reati ta' korruzzjoni u riciklagg ta' flus.

Illi issa ghal dak li ghandu x'jaqsam mal-insenjament tal-Qrati taghna dwar id-delitt ta' korruzzjoni/tixhim, anke jekk MHUX rikjest mill-liġi, l-esponenti ser jinsenjalaw ftit ġurisprudenza fuq dan id-delitt sempliċement bħala gwida u għall-aħjar informazzjoni tal-Maġistrat Inkwirenti.

Illi fis-sentenza fl-ismijiet **Il-Pulizija vs Saveria sive Saverin Sinagra** (Deċiza 30.06.2010 per Onor. Magistrat Dr. Edwina Grima), il-Qorti tal-Magistrati għamlet eżami funditus dwar ir-reat ravviżat bl-artikolu 115 tal-Kodiċi Kriminali:

> "*Illi minn ezami tal-artikolu 115 tal-Kodiċi Kriminali li jikkontempla r-reat ta' korruzzjoni jirriżulta illi l-elementi bażiċi li jridu jiġu ippruvati huma essenzjalment erba'u cioe`:*
>
> *1. in-natura uffiċjali jew pubblika tal-impieg tal-persuna ikkonċernata.*[3]
>
> *2. li dik il-persuna irċeviet jew aċċettat flus, jew xi rigal, jew wegħda jew offerta u dawn ma ikunux dovuti skond il-ligi.*[4]

3 Vide ukoll Il-Pulizija vs Joseph Buhagiar (Appell, Deċiża 19 ta' Lulju, 1982).

4 Vide ukoll Il-Pulizija vs Lawrence sive Lorry Cuschieri et (Appell, Deċiża 25 ta' Lulju, 1986).

3. li dana jkun in konnessjoni mal-istess kariga jew impieg. 4. li l-iskop ikun illi l-persuna tagħmel jew ma tagħmilx id-dmir tiegħu/tagħha.[5]

Illi b'rabta ma' din id-disposizzjoni tal-liġi, l-Avukat Ġenerali iċċita wkoll l-artikolu 120, fejn titqies bħala kompliċi il-persuna li tikkorrompi l-uffiċjal pubbliku.

Illi għalhekk l-ewwel element essenzjali għall-kummissjoni ta' dan ir-reat huwa n-natura uffiċjali jew pubblika tal-impieg tal-persuna li qed tiġi korrotta. Illi l-Professur Mamo fin-noti tiegħu dwar id-dritt penali igħid: "The character of public officer or person employed under the Government is the first essential of this crime. The wording is very wide and embraces all officers or employees under the Government. ... It includes all public officers or employees whether their duties are judicial, ministerial or executive or mixed."

Illi l-artikolu 92 imbagħad jiddisponi testwalment illi:

"Taħt il-frażi ġenerali 'uffiċjal pubbliku' jidħlu mhux biss l-awtoritajiet kostitwiti, ċivili u militari, iżda wkoll dawk il-persuni kollha li huma maħtura skond il-liġi sabiex jamministraw xi parti tas-setgħa eżekuttiva tal-Gvern, jew biex jeżegwixxu xi dmir ieħor pubbliku impost mil-liġi, sew gudizzjarju kemm amministrattiv kif ukoll tax-xorta l-waħda u l-oħra."

Illi apparti għall-konferma mogħtija mix-xhud Mireille Mifsud, l-artikolu 28(5) ta' l-Att dwar l-Enemalta, Kapitolu 272 tal-Liġijiet ta' Malta,60 li kien fis-sehh fiz-zmien tar-reati addebitati lill-imputat, kien

Dwar it-tieni element, il-persuna li tikkwalifika bhala uffiċjal jew impjegat pubbliku, trid tkun irċeviet jew aċċettat flus, jew xi rigal, jew wegħda jew offerta u li dawn ma jkunux dovuti skond il-liġi. Illi mill-provi akkwiżiti ġie ampjament pruvat, li Pantallaresco kien jaċċetta ħlasijiet li kienu jiġu mgħoddija lilu mill-imputat, liema flejjes ċertament ma kienux dovuti lilu skond il-liġi, għaliex dak li kien jagħmel ma kienx fl-ambitu tal-impjieg tiegħu jew bħala parti mid-doveri tiegħu.

Dan jorbot mat-tielet element essenzjali għall-kummissjoni ta' dan ir-reat u cioe` illi l-wegħda tal-flus trid tkun marbuta mal-kariga jew impieg ta' l-uffiċjal in kwistjoni. Ġie soddisfaċentement pruvat li Pantalleresco ġie magħzul mill-imputat minħabba l-impjieg tiegħu, dik ta' installer ta' meters fl-Enemalta, b'access liberu ghal meters li kienu jkunu diġa reġistrati fuqu.61 Kienet is-sengħa ta' Pantalleresco li l-imputat identifikaha bħala għodda utili sabiex jinnegozja minn fuqha u jisfruttaha! L-imputat, il-korrutur, kien konsepevoli tal-kariga u impjieg ta' Pantalleresco, il-korrott, tant li anke mal-konsumatur John Tanti kien iffissa appuntament sabiex issir it-tbagħbis f'jum meta Pantallaresco kien ikun fuq ir-rotta li tinkludi dik l-lokalita`.62

5 Vide ukoll Il-Pulizija v. Alfred Demicoli (Appell, Deċiża 2 ta' Mejju 1985).

L-aħħar rekwiżit imbagħad, li ġie wkoll ampjament ppruvat, kien li l- uffiċjal in kwistjoni, Pantallaresco, ġie imħallas biex jonqos milli jagħmel dak li kien fid-dmir illi jagħmel. Minflok ħares l-interessi tal-kumpanija, l-id li kienet qed tipprovdi l-għijxien kwotidjan tiegħu u ta' familtu, ra kif għamel biex il-kumpanija tiġi derubata u mċaħħda minn dak dovut legalment lilha!

Fis-sentenza ċitata dik il-Qorti kompliet hekk:

.....Illi l-artikolu 120 iqis lill-persuna li tikkorrompi uffiċjal pubbliku bħala kompliċi fir-reat previst f'dan il-każ fl-artikolu 115. Illi l-liġi tagħti definizzjoni ta' min jitqies li huwa komplici fl-artikolu 42 fejn hemmhekk jiġu ikkontemplati hames sitwazzjonijiet fejn persuna tirrendi ruħha kompliċi.

Illi mill-qari ta' dina d-disposizzjoni tal-liġi jidher ċar illi f'kull ċirkostanza ikkontemplata irid ikun hemm 'l hekk imsejjaħ common design bejn l-awtur u il-kompliċi. Ma hux neċessarju, kif tikkontendi id-difiża illi l-kompliċi ikun għamel xi forma ta' qliegħ huwa innifsu u cioe' ikun kiseb xi vantaġġ finanzjarju ...

Illi kif ġie deċiż f'kawza fl-ismijiet ***Il-Pulizija vs Mario Camilleri*** *et. deċiża fit-30 ta' Lulju 2009, mill-Qorti ta'l-Appelli Kriminali:*

"Il-korruzzjoni li dwarha qegħdin nitkellmu hi, skond id-duttrina prevalenti, karatterizzata minn ftehim volontarju bejn l-uffiċjal (jew impjegat) pubbliku u l-persuna li tikkorrompi (li, kif ingħad, hija kkunsidrata fil-liġi tagħna bħala kompliċi) permezz ta' liema ftehim jitwieled veru u proprju pactum sceleris."

Il-Professur ***Mamo*** *ighid: "The briber or corruptor is only an accomplice in as much as he instigates or strengthens the resolution of the public officer or employee by giving or offering rewards or promises." (sottolinjar tal-Qorti).*

Il-Professur Mamo ikompli: Sections 114[6] *and 118*[7] *deal with the crimes of bribery and corruption of public officers. ...*

As it is only a public officer or employee who can sell away an act of public office, so it is only he that can be considered as the principal offender in the crime of corruption. The briber or corrupter is only an accomplice in as much as he instigates or strengthens the resolution of the public officer or employee by giving or offering rewards or promises. And as the crime is completed by the mere acceptance, on the part of the public servant, of the reward or offer, so also it must be considered in respect of the corrupter.

Our Code at Sec.118 expressly applies to the corrupter the rules of complicity. If the crime of corruption is, therefore, completed by the unholy compact of the public servant and the private person, the latter is liable to punishment whether the corruption has as its object the performance by the

6 Illum l-artiklu 115 tal-Kodiċi Kriminali.

7 Illum l-artiklu 120 tal-Kodici Kriminali.

public officer of his duty or his failure in such duty. And the punishment of the corrupter varies with that of the public servant. The consequences arising out of the personal circumstances of the public servant in the principal offender are, in their entirety, imputable to the accomplice: for this circumstance is an essential ingredient of the principal crime and an indispensable condition for its commission.

Illi mill-provi migjuba ma hemmx dubbju illi fil-kaz in diżamina kien hemm pactum jew ftehim bejn Martin Cilia La Corte u Paul Pantalleresco, issuġġett passiv ta' dan il-korruzzjoni.

*F'sentenza oħra, **Il-Pulizija vs Alfred Attard**, wara li l-Qorti għamlet l-konsiderazzjonijiet tagħha dwar il-grad ta' prova li trid tilħaq il-prosekuzzjoni, konsiderazzjonijiet li jsibu applikazzjoni anke fil-kaz prezenti, iddecidiet:*[8]

Qabel ma din il-Qorti ser tiddiskuti l-fatti specie tal-kawża odjerna, tħoss li għandha tfakkar lill-Prosekuzzjoni, li l-grad ta' prova li għandha tilħaq hu dak li ma jħalli ebda ombra dettat mir-raġuni u mhux xi grad ta' prova li ma jħalli ebda ombra ta' dubbju. Id-dubbji ombra, ma jistgħux jitqiesu bħala dubbji dettati mir-raġuni. Fi kliem ieħor dak li ġudikant irid jasal għalih huwa li, wara li jqis ċ-ċirkostanzi u l-provi kollha u b'applikazzjoni tal-buon sens tiegħu ikun moralment konvint minn dak l-fatt li trid tipprova l-Prosekuzzjoni.

... Dwar t-tieni akkuża, u cioe dik ta' korruzzjoni ta' uffiċjal kif kontemplat fl-artikolu 115 tal-Kap 9 tal-Liħijiet ta' Malta, il-Qorti tagħmel referenza għal sentenza mogħtija mill-Qorti tal-Appell Kriminali nhar t-tlettax ta' Marzu 1997 fl-ismijiet Il-Pulizija v Omissis Carmelo sive Charles Attard fejn intqal li bħala premessi fondamentali għas-sussistenza ta' dan r-reat, l-artikolu 115 tal-Kap 9 tal-Liġijiet ta' Malta, tippreċiza li:

"Jkun hemm r-reat ta' korruzzjoni meta kwalunkwe uffiċjal jew impjegat pubbliku jirċievi jew jaċċetta għalih jew għal ħaddiehor, xi rigal jew wegħda, jew xi offerta ta' xi rigal fi flus jew f'utili ieħor, jew ta' xi vantaġġ ieħor li għalihom huwa ma jkollux jedd u jippreċiza in oltre, li tali abbuż irid ikun sar in konnessjoni mal-kariga jew impjieg tiegħu ..."

*Dik l-istess Qorti tal-Appell Kriminali fis-sentenza mogħtija nhar l-hdax ta' Diċembru 1956 fl-ismijiet Il-**Pulizija v Geraldo Sacco**, sostniet li:*

"Biex tkun tista tigi sostnuta l-korruzzjoni, hemm bżonn qabel xejn li jiġi stabbilit ness bejn l-aċċettazzjoni ta' flus jew utili ieħor u l-eżercizzju talkariga jew impjieg pubbliku."

8 Qorti tal-Magistrati (Malta) Bħala Qorti ta' Ġuikatura Kriminali, Deċiża 28.02.2005 per Onor. Maġistrat Dr. Consuelo Scerri Herrera.

Artiklu 124 tal-Kodici Kriminali

B'riferenza ghall-**artiklu 124** tal-Kodici Kriminali:

> "*Kull uffiċ*
>
> *jal jew impjegat pubbliku illi, bid-dieher jew bil-moħbi jew bil- mezz ta' persuna oħra, jieħu interess privat f'ag*
>
> *g*
>
> *udikazzjoni, appalt, jew amministrazzjoni, sewwa jekk ikollu għal kollox jew f'parti t-trig*
>
> *ija jew is- sorveljanza tagħhom, kif ukoll jekk kellu din it-trig*
>
> *ija jew sorveljanza fiż*
>
> *- z*
>
> *mien li l-ag*

g

udikazzjoni, l-appalt, jew l-amministrazzjoni nbdew, jeħel, meta jinsab ħati, il-piena ta' prig

unerija minn xahar sa sitt xhur, u l- interdizzjoni perpetwa tal-kariga jew impieg tiegħu pubbliku"

Dwar dan ir-reat taht l-**artiklu 124** tal-Kodici Kriminali, il-Prof. Mamo jghid[9] :

"*But in order that such private interest may be set up against the public officer or servant, it is essential that* ***he should have, wholly or in part, the direction or supervision of the adjudication, contract or administration in which the private interest is taken or that he should have had such direction or supervision at the time the adjudication or administration was commenced.*** *It is because of this function of direction or supervision that the act becomes immoral and constitutes a breach of trust and an abuse.* ***It is immaterial whether the public officer or servant was himself solely or jointly with others responsible for such direction or supervision***."

Wahda mill-ftit sentenzi tal-Qrati taghna li dahlet *funditus* fir-rekwiziti tar-reat taht l-artiklu 124 tal-Kodici Kriminali kienet: il-**Pulizija vs Philip Azzopardi et**, deciza mill-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali per Mag. Edwina Grima fit-**28 ta' Ottubru 2009** (kawza Numru 504/2008):

"Illi l-imputati huma akkuzati bir-reat ikkontemplat fl-artikolu 124 tal-Kapitolu 9 tal-Ligijiet ta' Malta, li jiddisponi testwalment:

"**Kull ufficjal jew impjegat pubbliku illi bid-deher jew bil-mohbi jew bil-mezz ta'** ***persuna ohra, jiehu interess privat f'aggudikazzjoni, appalt, jew amministrazzjoni, sewwa jekk ikollu ghal kollox jew f'parti t-trigija jew is- sorveljanza taghhom, kif ukoll jekk kellu din it-trigija jew sorveljanza fiz-zmien li l-aggudikazzjoni, l-appalt jew l- amministrazzjoni nbdew, jehel meta jisab hati il- piena ta' prigunerija minn xahar sa sitt xhur u l- interdizzjoni perpetwa tal-kariga jew impieg tieghu pubbliku***."

Illi l-intenzjoni tal-legislatur, meta fassal dina id-disposizzjoni tal-ligi kien wiehed u cioe' illi ikun hemm sanzjonijiet penali ghal impjegat pubbliku li jabbuza mill- kariga li jokkupa u dana ghall-interess privat tieghu.

Illi qabel xejn ghandu jinghad illi dina id-disposizzjoni tal-ligi flimkien ma' l-artikoli l-ohra li jaqghu taht l-istess titolu gew trasportati kwazi kelma b'kelma fil-ligi taghna milli Kodici Franciz u cioe' il-"Code Napoleon" ta'l-

9 Notes on Criminal Law, Revised Edition 1954 – 1955, pagna 96

1810 u minn 'l hekk imsejjah Codice Penali Per il Regno delle Due Sicilie ta' l-1819.

Jidher illi din id-disposizzjoni tal-ligi baqghet prattikament l-istess u ma inbiddlet kwazi xejn mat-trapass taz-zmien.

Fil-fatt jekk wiehed jaqra dina id-disposizzjoni tal-ligi fil-Kodici Kriminali originali taghna, l-artikolu 115 kien jaqra hekk: "ogni ufficiale od impiegato pubblico, che, o apertamente o con atti simulati o con interposizione di persona, prendesse un interesse privato nelle aggiudicazioni, appalti o nelle amministrazioni, sia che egli ne avesse in tutto o in parte la direzione o la vigilanza, sia che l'avesse avuta nel tempo in cui tali aggiudicazioni, appalti od amministrazioni fossero cominciate, sara' punito colla prigionia da uno a sei mesi, e colla interdizione perpetua del suo officio od impiego pubblico."

Illi fil-kummenti maghmula mil-gurista Santo ***Roberti*** *ghal Codice Penale delle Due Sicilie, huwa jispjega bl-aktar mod car x'kienet l-intenzjoni tal-legislatur meta giet ippromulgata dina d-disposizzjoni tal-ligi:*

"*La situazione speciale dei pubblici impiegati di qualunque grado o qualita esige che'essi tante volte si astengano dal far cio' che forse sarebbe permesso ad altre persone."*

Ikompli ighid illi l-ufficjal pubbliku li ikun qed jokkupa il-kariga tieghu minhabba il-fiducja moghtija lilu mil-Gvern u ghalhekk anke mis-socjeta, irid izomm ruhu 'il boghod minn kwalsiasi tip ta' azzjoni li tista' twassal ghal xi suspett jew biza li huwa ikun ikkometta xi tip ta' frodi bi hsara ghall-istess socjeta.

Sahanistra fid-Dritt Ruman insibu illi r-Rumani tant kienu severi illi kien ipprojbit ghal ufficjal pubbliku illi jiehu sehem fi kwalunkwe tip ta' negozju, f'xi spekulazzjoni jew li jippartecipa fil-kummerc.

Illi l-**Giuseppi Falzon** fin-noti tieghu '***Annotazioni alle Leggi Criminali per l-Isola di Malta e sue Dipendenze"*** (1872) jispjega b'mod dettaljat x'inhuma l-elementi kostituttivi ta' dana ir-reat meta ighid"

"*Gli elementi di questo reato sorgono chiaramente dai termini coi quali sono concepiti i detti articoli. Per questo reato egli e' necessario che si dichiari dal giuri':*

1. che l'accusato sia ufficiale od impiegato pubblico;

2. che abbia preso un interesse privato nelle aggiudicazioni, negli appalti o nelle amministrazioni, od in un affare in cui egli fosse incaricato di dare ordini, di fare liquidazioni, di disporre o di fare alcun pagamento;

3. che lo ufficiale od impiegato abbia od abbia avuto la direzione o la vigilanza, nel tempo in cui le aggiudicazioni, gli appalti o le amministrazioni fossero cominciate e;

4. che gli atti commessi avuto luogo fraudolentemente.

1. L-ufficjal pubbliku.

Illi il-persuna akkuzata fil-kummissjoni ta' dana ir-reat, necessarjament irid ikun ufficjal jew impjegat pubbliku. Jekk hu nieqes dana l-element, allura ma hemmx dana ir- reat – reat li jikkonsisti fl-abbuz tal-funzjonijiet pubblici.

Il-Luigi **Maino** fil-kummenti tieghu ghal din id-disposizzjoni tal-ligi (li fil-Codice Zanardelli tal-1889 u sussegwentement fil-Codice Rocco ta'l-1930 kienet simili ghall-artikolu 124 tal-ligi taghna) fil-fatt ighid illi dina id- disposizzjoni tal-ligi "*prevede e punisce i pubblici ufficiali colpevoli di quei traffici indecorosi dove il loro interesse privato viene in conflitto con* l'interesse pubblico. ... A costituire il delitto in esame e' necessario che l'agente sia pubblico ufficiale ed eserciti il proprio ufficio presso la pubblica amministrazione interessata nell'atto nel quale egli prenda un *interesse privato, qualunque sia l'entita' di questo*."[10] Il-Manzini fil- kummenti tieghu ghal Codice Rocco ta'l-1930 ighid: "Soggetto attivo del delitto puo' essere esclusivamente il pubblico ufficiale. ..."

2. L-interess privat

Illi l-ligi taghna tispecifika illi l-ufficjal pubbliku irid ikun ha xi interess privat kemm bid-dieher, kif ukoll bil-mohbi, jew permezz ta' persuna ohra f'aggudikjazzjoni, appalt jew amministrazzjoni.

Illi minn imkien fil-ligi taghna ma insibu definizzjoni ta' x'jikkostitwixxi dana l-interess privat.

Il-**Falzon** ighid: "*Codesta ingerenza d'interesse privato, per dar luogo al reato, e' indifferente in quale modo abbia avuto luogo. E' vietato il prendere questo interesse sia apertamente sia per atti simulati, sia per interposizione di persona. Sotto la denominazone di atti simulati non s'intendono i soli atti scritti; la parola atti in questo articolo significa tutto cio' che si e' fatto, detto o convenuto.*"

Illi l-**Manzini** jiddeskrivi dana l-element ta' l-interess privat bhala "l- *elemento materiale del delitto*" Huwa isostni : "*prende interesse privato nei detti atti il pubblico ufficiale, che in relazione ad essi compie un fatto d'in-*

10 Commento al Codice Penale Italiano (Terza Edizione- Parte Prima 1913)

gerenza qualsiasi per un illecito fine privato qualunque, a vantaggio proprio o altrui. Prendere interesse privato non equivale a ricavare utilita' privata, ma semplicemente ad interessarsi dell'atto o nell'atto, nel momento della sua proposizione, deliberazione, ratificazione, modificazione, revoca, annullamento, esecuzione, ecc, in vista d'una illecita finalita' privata qualunque." Ikompli "*Non e' necessaria la sussistenza di un nesso particolare fra l'atto della pubblica amministrazione e l'ingerenza illecita. Ne' occorre che il fine privato, che il pubblico ufficiale consegue o cerca di raggungiere, sia assolutamente in conflitto con l'interesse pubblico; basta soltanto che sia incompatibile funzionalmente; ....*"

Ghalhekk sabiex ir-reat ikun wiehed ikkunsmat "*basta che il pubblico ufficiale si interessi per un fine privato di un affare o in un affare del suo ufficio. ... Il delitto si consuma col primo atto di quell'interessamento, e non si richiede ne' la produzione di un danno economico per la pubblica amministrazione, ne il conseguimento d'un lucro o d'altro vantanggio da parte del colpevole o di altri; e' sufficiente il pericolo funzionale derivante dalla violazione del dovere d'ufficio*." Lanqas ghalhekk ma huwa importanti l-qliegh ahhari li ikun ser jaghmel jew ikun ghamel l-ufficjal pubbliku sabiex jissussisti dana ir-reat.

Il-Professur **Mamo** fin-noti tieghu ighid "If the public officer or servant has taken a private interest the value or amount of such interest is immaterial for the subsistence of the crime."

Dana ghaliex kif tajjeb jispjega il-**Manzini**: "*per l'imputabilita' dell'esaminato delitto e' necessario il dolo, cioe' la volonta libera e cosciente e l'intenzione di compiere il fatto d'interessamento privato in relazione a un atto della pubblica amministrazione presso la quale il pubblico ufficiale esercita il proprio ufficio. ... Il fine e il motivo particolare del colpevole sono indifferenti: siano essi di lucro, di ambizione, di amicizia, ecc' siano ignobili o no, riguardino la persona del colpevole o un terzo ecc.''*

Dana ghaliex ir-reat jimmaterjalizza ruhu hekk kif l-ufficjal pubbliku jiehu dana l-interess privat f'xi att li jaqa' fil-manzjonijiet tieghu u dana ghal kawlunkwe fini illecita.

Illi ghalhekk l-ufficjal pubbliku illi jippartecipa jew jiehu sehem f'negozji jew xi skambju iehor li huwa inkompattibbli mal-kariga minnu okkupata isir hati tal- kummissjoni ta' dana ir-reat. Dana minnu innifsu jimplika illi l-ghan ahhari ta' l-ufficjal pubbliku huwa wiehed illecitu anke jekk dina l- azzjoni tieghu mhux necessarjament iggib xi forma ta' hsara materjali ghall-amministrazjoni pubblika. Kif ighid tajjeb il-**Carrara**: " *nello stesso abuso di ufficio che non si estrinseca in un'azione gia di per se criminosa, tutta la oggettivita giuridica del reato si incontra nella violazione dello speciale dovere che all'ufficiale imponeva l'ufficio, e cosi' in un rapporto esclusivamente personale fra l'impiegato e la societa*'."

3. **L-interess privat f'aggudikazjoni, appalt jew amministrazzjoni**.

Illi l-ligi taghna kif imfassla fuq il-Codice delle Due Sicilie u il-Code Napoleon, tippreciza illi l-interess privat irid ikun sehh f'xi att ta' aggudikazzjoni, appalt jew amministrazzjoni. Illi il-ligi penali Taljana kemm fil-Codice Zanardelli kif ukoll sussegwentement fil Codice Rocco ma baqghetx tispecifika l-att li fih l-ufficjal pubbliku ikun ha dana l-interess privat fejn id-dispost tal-ligi gie jaqra:

'*Il pubblico ufficiale, che, direttamente o per interposta persona, o con atti simulati, prende un interesse privato in qualsiasi atto della pubblica amministrazione presso la quale esercita il proprio ufficio, e' punito con la*

reclusione ..."[11] Il-ligi taghna madanakollu hija wahda aktar ristrettiva, izda ma tispecifikax x'inhuma dawn l-atti ta' aggudikazzjoni, appalt jew amministrazzjoni. Illi l- gurisprudenza taljana interpretat dawna l-atti bis- segwenti ezempji li forsi jistghu iwasslu sabiex wiehed jifhem fejn ried jasal il-legislatur meta giet promulgata dina id- disposizzjoni tal-ligi bosta snin ilu:

"*Commette il reato qui preveduto l'usciere che per interposta persona concorre all'asta dei mobile pignorati procedendo alla vendita di parecchi di essi in conferma e per un prezzo molto inferiore alla stima, Cass.14 gennaio 1891.*

"*L'esattore che per interposta persona licita od aviene aggiudicatore di beni da lui fatti porre all'asta, per imposte non sodisfatte ... Cass.10.*

"*Neanche I semplici consiglieri comunali possono prendere un interesse privato qualunque nelle aggiudicazioni e negli appalti, o in altro atto qulaunque della pubblica amministrazione – Cass. 12 febbraio 1890*."[12]

Ukoll il-**Falzon** jispjega fin-noti tieghu: " *Consiste il terzo elemento del reato nella circostanza di fatto che l'ufficiale abbia preso un interesse private in un'aggiudicazione, in un appalto od in una amministrazione della direzione di che egli fosse stato incaricato e su cui avesse dovuto esercitare vigilianza; ed in questa funzione di vigilanza e di direzione il*

reato attinge la sua immoralita' ed il tradimento ed abuso di confidenza."

11 Illi ghandu jinghad illi dina id-disposizzjoni tal-ligi giet mhassra mill-Kodici Taljan permezz ta' Legge 26 aprile 1990 n.86. Illum ghalhekk dina id-dispoiszzjoni tal-ligi ma ghadhiex tezisti fil-kodici penali Taljan.

12 Zerboglio – Trattato di diritto penale Vol.III Dei delitti contro la pubblica amministrazione e l'amministrazione della Giustizia.

4. L-***animus*** **frawdolenti**

Illi fl-ahharnett huwa necessarju sabiex jissussisti dana ir- reat illi l- intenzjoni ta'l-ufficjal pubbliku ikun wiehed frawdolenti. Il-Falzon ighid: "*Quantunque quest'ultimo elemento non sia indicato nel testo della legge in termini espresso, pure e' certo che mancando questa intenzione criminosa, senza la quale un reato di commissione non potrebbe esistere, codesta legge non e' applicabile. Egli e' chiaro che dal fatto istesso proibito si presume l'animo fraudolente; ma questa e' una presunzione, la quale deve cedere alla verita, e l'ufficiale puo' benissimo provare la propria buona fede e la purezza della sua intenzione*." Dina l-ahhar element kostituttiv ta' dana ir- reat hija intrinsikament marbuta mat-tieni element u cioe' ma' l- element ta'l-interess privat kif definit iktar 'il fuq – interess privat li irid ikollu fini illecita. "

Sija l-artiklu 124 u 125 tal-Kodici Kriminali huma ibbazati, essenzjalment fuq l-artiklu 176 tal-Codice Penale delle Due Sicilie, li dwaru il Luigi **Maino** (Dei delitti contro la pubblica amminsitrazione) jghid hekk, b'zieda ma' dak hawn fuq ikkwotat:

"*L'art 176 prevede e punisce i pubblici ufficiali colpevoli di quei traffici indecorosi dove il loro interesse privato viene in conflitto con l'interesse pubblico e nei quali e' prevedibile che essi trascinati dalla bramosia di illeciti lucri, sacrifichino l'istituo le cui condizioni economiche avrebbero il dovere di avvantaggiare.*[13]*....E' tutta una questione di fatto, da risolversi dal giudice, secondo le circostanze dei singoli casi.....*

Il delitto e' perfetto fin dal primo momento in cui il pubblico ufficiale ha preso un interesse privato negli atti della pubblica amministrazione. Non si richiede eziandio che la pubblica amministrazione abbia effettivamente risentito un danno....La Commissione della Camera dei Deputati sul progetto Zanardelli del 1887 osservo' intorno al reato in esame che l'ingerenza del pubblico ufficiale e' sempre perniciosa alle pubbliche amministrazioni e sempre indecorosa pel pubblico ufficiale, anche quando lo stimolo del privato interesse non l'avesse spinto a recar danni determinati e valutabili all'amministrazione cui l'affare appartiene....Il danno effettivo non e' essenziale al reato in questione."

Fis-sentenza tal-**Qorti tal-Appell Kriminali tat-13 ta' Novembru 2013 fl-ismijiet ta' Pulizija vs Philip Azzopardi et (per Imhallef Michael Malli):**

13 *Vide*, Relazione Ministeriale sul programma 1887, n.XCII (dak li wassal ghal Codice Zanardelli)

"Illi l-awtur sopra citat **Vincenzo Manzini**, kif anke ikkwotat mill-Qorti fis-sentenza appellata jghid Ii "*Prendere interesse privato non equivale a ricavare utilita' privata, ma semplicemenle ad interessarsi dell 'atto o nell 'alto*".

Illi din il-konsiderazzjoni ta' l-esponent hija in sintonija wkoll mat-test talmibki Professur Anthony Mamo ikkowotat mill-Qorti fis-sentenza appellata fejn jinghad illi:-

"*If the public officer or servant has taken a private interest the value or amount of such interest is immaterial for the subsistence of the crime."*

……..

Ta' min jaghmel riferenza ghas-segwenti bran mill- kapolavur ta' ***Vincenzo Manzini*** *f'dan ir-rigward fejn si tratta mill-element ta' interess privat:*

"*Ne occorre che il fine privato, che il pubblico ufficiale consegue o cerca di raggiungiere, sia assolutamente in conflitto con l 'interesse pubblico; basta soltanto che sia incompatibile funzionalmente: anche l 'illegittima, quantunque non dannosa, cointeressenza del pubblico ufficiale con la pubblica ammministrazione concreta il delitto inezame. (emfasi ta' I-awtur)*

Anzi, questo si presenta pur quando l 'interessamento a fine privato del pubblico ufficiale possa riguardarsi, sotto l 'aspetto economico o finanziario, come vantaggioso anche per la cosa pubblica.. (emfasi ta' l-esponent)."

Mill-premess jirrizulta cjar Ii l-interess pubbliku ma jikkoincidix necessarament ma' l-interess tal-Gvern jew ma' l-vantagg ekonomiku jew finanzjarju liIl-Gvern."

L-artiklu 125 tal-Kap.9:-

"Kull uffic

jal jew impjegat pubbliku illi jieħu interess privat f'affari li dwarha jkun inkarigat jagħti ordnijiet, jagħmel likwidazzjonijiet, arrang

amenti jew ħlasijiet ta' kull xorta li jkunu, jeħel, meta jinsab ħati, il- pieni msemmijin fl-aħħar artikolu qabel dan"

Ir-rikorrenti jemmen umilment li fuq bazi *prima facie* jezisti s-suspett ragjonevoli ibbazat ragjonevolment fuq fatti u cirkostanzi li ma jistghux ikunu michuda li **On. Clint Camilleri u John Borg u Godwin Agius**, bhala ufficjali pubblici hadu interess privat f'affari li dwarha kienu inkarigati jaghtu ordnijiet, jaghmlu arrangamenti jew hlasijiet.

A skans ta' ripetizzjoni, dak li inghad fir-rigward tal-artiklu 124 tal-Kap.9, japplika ghall-artiklu 125 ukoll.

<u>Dawn iz-zewg artikoli japplikaw meta ufficjal pubbliku ikun qed jaqdi l-interessi privati ta' persuna ohra ghas-skapitu tal-interess pubbliku</u>.

U ma hemmx il-htiega li tigi ipprovata n-natura tar-relazzjoni ta bejniethom

L-artiklu 126 tal-Kodici Kriminali:

126. Kemm-il darba, fil-każijiet imsemmija fl-aħħar żewġ artikoli qabel dan, tkun ukoll saret ħsara b'qerq lill-amministrazzjoni illi magħha l-affari jkollha x'taqsam, il-piena tkun ta' priġunerija minn tmintax-il xahar sa tliet snin, bl-interdizzjoni stabbilita f'dawk l-artikoli"

L-esponent jemmen li fuq bazi *prima facie*, l-agir tat-tliet persuni denunzjati li huma ufficjali pubblici (ilkoll barra Ellul) sar b'qerq lill-amministrazzjoni pubblika, u dan kif iccertifika b'mod forensiku l-Awditur Generali.

Spiza pubblika mill-erarju pubbliku li mis-suppost €8 miljuni sparat ghal iktar minn €18.5-il MILJUN, u dan mhux bi zball genwin, mhux minhabba xi *act of God,* mhux minhabba xi haga straordinarja li sehhet, imma bi hsieb u bi pjan (tant kemm hu hekk li l-NAO ikkritika

l-assenza totali ta' certu dokumenti krucajli li kien jistenna li jkunu prezenti stante l-entita tal-ispiza) miz-zewg persuni denunzjati ufficjali pubblici, tinkwada ruhha fuq bazi *prima facie* taht l-artiklu 126, abbinat mal-artiklu 141 tal-Kap.9.

It-tliet persuni denunzjati (Camilleri, Agius u Borg) huma l-ufficjali pubblici per eccellenza li kellhom kontroll tal-affari, taw direzzjonijiet dwarha, kellhom oversight il-hin kollu tagh-ha, kellhom l-ilgiem tal-erarju pubbliku f'idejhom il-hin kollu. Izda minflok harsu l-interessi tal-amministrazzjoni pubblika, huma minflok hadu hsieb l-interessi tal-privat.

Huwa Magistrat Inkwirenti biss li fl-Inkjesta Magisterjali jkollu s-setgha li jahtar esperti u ghandu l-poter li jeleva devices ecc li jkunu jistghu jitfghu dawl fuq tali hela disgustanti ta' fondi pubblici u ta' dak li jidher li hu ghemil imnebbah mill-korruzzjoni.

L-artiklu 127 tal-Kodici Kriminali (embezzlement)

> *127. (1) Kull uffiċjal jew impjegat pubbliku illi, għal xi vantaġġ privat tiegħu jew għall-benefiċċju ta' xi persuna jew entità oħra, jagħmel użu ħażin minn flejjes tal-Gvern jew tal-privat, karti ta' kreditu jew dokumenti, titoli, atti jew ħwejjeġ mobbli, illi jkunu ġew fdati lilu minħabba l-kariga jew impieg tiegħu, jew jis-raqhom, jeħel, meta jinsab ħati, il-piena ta' priġunerija minn sentejn sa sitt snin, u l-interdizzjoni ġenerali perpetwa"*

Fis-sentenza tal-Qorti tal-Magistrati (Malta) fl-ismijiet **Il-Pulizija vs Carmel Saliba**[14]:

> "*Illi fir-rigward tar-reat ikkontemplat fl-Artikolu 127, il-Qorti ser tapplika l-istess argumentazzjoni.*
>
> *Hawnhekk id-dolo mehtieg ukoll isarraf fil-fatt illi l-ufficjal pubbliku jap-proprja ruhu jew jisraq flus jew oggetti ohra mobbli sabiex jaghmel profitt u dana b'abbuz tal-fiducja lilu moghtija fil-kariga li jokkupa.*
>
> *Kif jghid il-Professur Mamo: "Strictly speaking the more appropriate word to denote this element of the crime under reference is the first i.e. "misap-ply" in as much as the public officer already has the detention or general*

14 Qorti ta' Gudikatura Kriminali (Ghawdex), Onor. Magistrat Dr Edwina Grima; 31.05.2012

possession of the thing: he only betrays the trust resposed in him by diverting it from its destination, by using it unlawully or his private advantage; in brief by deriving therefrom an unlawful gain."

Huwa jikkwota dak li jghid l- Imhallef Harding: "Embezzlment is a crimen interversionis – that is it is completed when the lawful "causa possidendi" is fraudulently substituted by the unlawlul 'causa dominii'. As soon as the sum or thing is misapplied, there is fraudulent conversion."

Kif ritenut fis-sentenza fis-sentenza **Il-Pulizija vs. Alexander Zammit et**[15].:

"*Wiehed mill-elementi tar-reat ta' storn [Art. 127 - Kodici Kriminali] huwa li l-oggetti in kwistjoni jkunu gew fdati lill-individwu minhabba il-kariga jew impieg tieghu."*

Fis-sentenza tal-Qorti tal-Magistrati per Mag Dr J Demicoli tal-11 ta' Settembru 2017 fl-ismijiet **Il-Pulizija vs Jason Masini**, jinghad hekk fuq dan id-delitt:

"Illi jibqa' biex jigi kkunsidrat jekk giex pruvat ir-reat hekk imsejjah 'peculato' jew embezzlement.

L-element essenzjali ghal dan ir-reat hu li l-awtur irid ikun uffiċjal jew impjegat pubbliku.

*Issir riferenza ghal kaz **Il-Pulizija vs Carmel Saliba** deciz nhar il-31 ta' Mejju, 2012,20, fejn il-Qorti rriteniet:*

"Illi fir-rigward tar-reat ikkontemplat fl-artikolu 127, il-Qorti ser tapplika l-istess argumentazzjoni.

Hawnhekk id-dolo mehtieg ukoll isarraf fil-fatt illi l-ufficjal pubbliku jappropria ruhu jew jisraq flus jew oggetti ohra mobbli sabiex jaghmel profitt u dana b'abbuz tal-fiducja lilu moghtija fil-kariga li jokkupa. Kif ighid il-Professur Mamo: "Strictly speaking the more appropriate word to denote this element of the crime under reference is the first i.e. "misapply" inasmuch as the public officer already has the detention or general possession of the thing: he only betrays the trust resposed in him by diverting it from its destination, by using it unlawully or his private advantage; in brief by deriving therefrom an unlawful gain." Huwa jikkwota dak li ighid l-Imhallef Harding: "Embezzlment is a crimen interversionis – that is it is completed when the lawful "causa possidendi" is fraudulently substituted by the unlawlul 'causa dominii'. As soon as the sum or thing is misapplied, there is fraudulent conversion."

*Kif ritenut fis-sentenza **Il-Pulizija vs. Alexander Zammit** et.:21 "Wiehed mill-elementi tar-reat ta` storn [Art. 127 - Kodici Kriminali] huwa li l-oggetti in kwistjoni jkunu gew fdati lill-individwu minhabba il-kariga jew impieg*

15 Deciza 13.03.1998, App. Krim

tieghu. Kjarament, jew ikun hemm dan l-affidament ta` l-oggetti, jew inkella jkun hemm ittehid taghhom "invito domino" li hu element tas-serq. Wiehed minn dawn l-elementi ovvjament jeskludi lill-iehor relativament ghall-istess fatt."

Fis-sentenza ***Il-Maesta tar-Re vs Guzeppi Fenech et****, il-Qorti Kriminali*

"Illi gie deciz min din l-Qorti, kompsota minn tlett Imhallfin, fil-kawza "Rex vs Brincat"deciza fis-6 ta' April, 1943, illi d-delitt ta' storn kontemplat fl-artikolu 125 tal-Kap.12……huwa specjali ghall-ufficjal jew impjegat publiku; u persuna li ma jkollhiex dik il-kwalita` anke jekk tghin lill-uffijal publiku, ma tistax tigi akkuzata ta' komplicita` taht dik id-disposizzjoni, ghaliex ikun qieghed jonqos element essenzjali ghal dik id-disposizzjoni, u cjoe il-kwalita` ta' ufficjal jew impejgat publiku li jkollu taht idejh il-haga stornata in forza ta' dak l-ufficju tieghu…..

*Illi fil-kaz "**Rex vs Victor Fava**" deciz ukoll minn din l-qorti kollegjalment komposta fis-6 ta' Lulju 1943, gie mantenut l-istess principju. U gie spjegat li f'kaz ta' reati simil, il-kwalita` ta' ufficjal pubbliku (u kwindi l-fatt li l-haga tkun fdata lilu minhabb lkarika tieghu) ma ghandhiex bhala bazi l-facilitazzjoni ta' l-ezekuzzjoni tar-reat, imma l-vjolazzjoni ta' dover specjali inkombenti lill-ufficjal pubbliku (li jkollu l-haga fdata lilu) u ghalhekk bhala cirkustanza esklusivament personali ma hijiex kommunikabli. Illi l-principju ta' non-kommunikabilita`, minhabba li si tratta mhux ta' kwistjoni ta' facilitazzjoni, imma ta' vjolazzjoni ta' dover specjali, propunjat f'dawn is-sentenzi huwa accettat mill-Pessina….. Masucci (Dig. It. voce "Partecipazine", n.155).*

Dan l-awtur tal-ahhar precizament jghid illi d-delitt f'kaz simili, jidderiva "dalla violazione di uno special dovere incombente ad una determinate persona; neppureneppure puo essere estesa agli altri condeliquenti perche` non sarebbe giusto che risentisce i danni della violazione di un dovere speciale anche chi a questo dovere non era sottoposto". U ghandu jigi nutat li persuna tigi sottoposta ghal dak id-dover mhux biss ghax tkun ufficjal publiku imma ghax il-haga tkun giet fdata lilha minhabba lkarika; u ghalhekk mhux bizzejjed li tkun ufficjal publiku biss, minghajr ma jkun hemm l-affidament tal-haga. Ikompli jghid gustament il-Masucci illi "se l'aggravante forse anche a lui communicabile, si avrebbe questa inammissibile conseguenza che si risponderebbe come complice di un'aggravante nella quale non si sarebbe potato concorrere, se il colpevole, invece di limitarsi alla parte di complice, avesse scelto quella di esecutore del reato". U precizamnet dan huwa l-aqwa argument. Infatti diversament, kieku ma tigix segwita din it-teorija, jista jkun hemm dan l-assurd; ……..

Il-kwalita` ta' ufficjal pubbliku serviet ta' facilitazzjoni ghar-reat, imma b'dan kollu ma tistax tikkomunika ruhha lill-komplici, ghaliex ic-cirkustanza ta' ufficjal publiku, akkopjata ghall-affidament tal-haga stornata minhabba l-kariga, hija mhux aggravanti, imma element tar-reat specjali; u l-komplici, li, ankorke` hu ufficjal publiku, ma kellux pero` l-haga fdata lilu, ma setax jikkometti dak it-titolu ta' reat ghalkemm seta' ikkometta titolu ta' reat iehor. Fl-ewwel kaz hemm it-titolu ta' serq (reat komuni) pju` l-aggravanti, kommunikabbli ghax serviet ta' aggravanti; fit-tieni kaz hemm titolu specjali ta' reat, biss dik ic-cirkustanza (ufficjal publiku pju l-affidament tal-haga minhabba l-

karika) ma hijiex aggravanti, imma element kostituttiv tar-reat stess, u dak li fih ma tirrikorrix dik ic-cirkustanza ma jistax jikkometti, mhux l-aggravanti, imma ma jistax jikkometti t-titolu stess ta' dak ir-reat specjali. ...

Illi minn ezami tal-att tal-kawza...jirrizulta li f'dan il-kaz il-haga allegata stornata kienet taht idejn akkuzat wiehed biss, in forza tal-ufficju tieghu, cjoe` ta' Guzeppi Fenech. Iz-zewg ko-akkuzati l-ohra huma, jew kienu, ukoll impjegati pubblici, sija pure fl-istess dipartiment, imma l-haga stornata ma kienitx fdata lilhom in forza tal-impjieg taghhom...."

Ghall-esponenti, l-insenjament tal-Qrati u awturi fuq id-delitt ta' storn jinkwadraw ruhhom perfettament ghall-fatti minnu esposti u li l-fatti mikxufa mill-NAO u mill-media indipendenti juru *text-book case* ta' *embezzlement* imwettaq mill-persuni denunzjati On.Camilleri, Agius u Borg.

U li allura juri li hemm bazi hafna iktar minn *prima facie* li tiskatta Inkjesta Magisterjali li hija biss tkun tista' tippreserva l-provi, inkluz (izda mhux biss) id-devices elettronici, emails, ecc tal-persuni denunzjati.

L-artiklu 294 tal-Kodici Kriminali (maghdud mal-art.141 tal-Kap.9 ghal On. Camilleri, Agius u Borg)

KIF UKOLL id-delitt ta' hasil ta' flus taht il-Kap.373 tal-Ligijiet ta' Malta ghal Clint Camilleri, Godwin Agius, Andrew Ellul u John Borg:-

"293. Kull min jappropria ruħu, billi jdawwar bi profitt għalih jew għal persuna oħra, minn ħaġa ta' ħaddieħor li tkun ġiet fdatajew ikkunsinnata lilu taħt titolu illi jġib miegħu l-obbligu tar-raddtal-ħaġa jew li jsir użu minnha speċifikat, jeħel, meta jinsab ħati, il-piena ta' priġunerija minn tliet xhur sa tmintax-il xahar

*294. Madankollu, meta d-delitt imsemmi fl-aħħar artikolu qabel dan jiġi magħmul fuq ħaġa fdata jew ikkunsinnata lill-ħati **minħabba l-professjoni, industrja, kummerċ, amministrazzjoni, kariga jew servizz tiegħu,** jew minħabba depożitu neċessarju, l-azzjoni kriminali titmexxa ex officio,u l-piena tkun ta' priġunerija minn seba' xhur sa sentejn"*

Ir-rikorrent jemmen umilment li jezisti s-suspett ragjonevoli ibbazat ragjonevolment fuq fatti u cirkostanzi li ma jistghux ikunu michuda li l-persuni denunzjati, kellhom f'idejhom fdati (minhabba

l-kariga taghhom) flejjes pubblici inizi biex isir uzu ghaqli u mhux biex jinhlew u jitberbqu halli jgawdi minnhom b'mod indebitu il-privat, kontra l-interess pubbliku.

Ovvjament mal-art.294 irid jigi abbinat l-addebitu tal-141 tal-Kodici Kriminali ghat-tliet persuni denunzjati Camilleri, Agius u Borg li huma ufficjali jew impjegati pubblici.

Fis-sentenza **Il-Pulizija vs Patrick Spiteri (per Magistrat Dr V Axiaq tal-10.11.2020)**:

> *"Sabiex jiġi pprovat ir-reat ta' approprjazzjoni indebita aggravata ikkontemplata fl-Artikoli 293 u 294 tal-Kap. 9 tal-Liġijiet ta' Malta jeħtieġ li l-Prosekuzzjoni tipprova li:*
>
> *1. L-imputat irċieva flus jew xi ħaġa oħra mobbli mingħand xi ħadd. Ilpussess tal-ħaġa jrid ikun ġie trasferit lill-imputat voluntarjament millproprjetarju jew detentur tal-ħaġa. It-trasferiment tal-pussess ma jridx wkoll ikun jimporta t-trasferiment tad-dominju cioe tal-proprjeta' ghaliex f'dan il-kaz ma jiffugurax l-element tal-azzjoni indebita.*
>
> *2. Minħabba l-professjoni ossia' kariga jew servizz tiegħu,*
>
> *3. Taħt titolu illi jġib miegħu l-obbligu tar-radd tal-ħaġa jew li jsir użu minnha speċifikat,*
>
> *4. L-imputat għamel tiegħu l-ħaġa cioe` approprja ruħu minnha, jew bieħħa, jew iddistruġġiha jew altrimenti għamel użu divers minnha a proprio commodo o vantaggio;*
>
> *5. L-imputat kellu l-intenzjoni li japproprja ruhu mill-ħaġa meta huwa kien jaf li kienet ta' ħaddieħor."*

Fis-sentenza fl-ismijiet **Il-Pulizija v. John Gauci (14/02/1997**, Imħallef Victor J. Caruana Colombo) il-Qorti tal-Appell Kriminali (Inferjuri) qalet:

> "*Minn ezami ta' l-artikolu 293 tal-Kodici Kriminali jidher car li wiehed mill-elementi essenzjali ta'l-approprjazzjoni indebita huwa kostitwit mill-frazi: "... taht titolu illi jgib mieghu l-obbligu ... li jsir uzu minnha specifikat ...". Specifikat minn min? Ovvjament minn min ikun ikkonsenja l-haga lill-agent u minn hadd izjed. Hija l-persuna li tikkonsenja l-haga u hadd hliefha li jkollha jedd timponi l-obbligu ossia tispecifika lillagent dwar kif ikollu jaghmel uzu mill-oggett ikkonsenjatlilu minnha. Jekk ilkonsenjatur jaghti flus lill-agent biex dan bihom jixtrilu dar, l-agent jikkommetti r-reat ta' approprjazzjoni indebita jekk minflok jaghtihom karita'. Jekk il-konsejatur jaghti flus lill-agent biex dan jixtrihom armi bi skop ta' serq, l-agent ikun approprja ruhu mill-flus indebitament jekk jaghtihom karita', apparti l-kwistjoni tal-moralita'. Jekk jixtrihom armi, allura l-agent ikun ghamel uzu mill-flus kif specifikat. F'kull kaz, flindagini dwar il-htija jew le ta' approprjazzjoni indebita, ghandha ssir prova ta' l-uzu tal-haga speci-*

fikata mill-konsenjatur u prova ta' jekk l-agent ikunx ghamel mill-haga dak l-uzu jew uzu divers."

L-awtur Taljan **Francesco Antolisei** jgħid fir-rigward ta' dan ir-reat illi:

"*A nostro modo di vedere — conformemente all'opinione che prevale nella nostra dottrina ed a affermata anche nella Relazione del Ministro al Progetto — il delitto di appropriazione indebita costituisce una violazione del diritto di proprieta. La vera essenza del reato, infatti, consiste nell'abuso del possessore, il quale dispone della cosa come se ne fosse proprietario (uti dominus). Egli assume, si arroga poteri che spettano al proprietario e, esercitandoli, ne danneggia il patrimonio*"

Finalment l-esponent jirrileva li l-fatt biss u wahdu li gie rapurtat estensivament (*vide* l-ahbar hawn fuq tas-**16.4.23 f'TheShiftNews**), l-esponent ikkonfermah personalment ukoll mis-sorsi tieghu, li sar xoghol fuq proprjetajiet privati f'Ghawdex biswit it-triq imsemmija u dan fuq struzzjonijiet, approvazzjoni jew gharfien tal-persuni denunzjati, **bl-uzu ta' fondi pubblici,** kontra l-ligi, jimmerita li tiskatta l-*in genere*.

Dawn il-fatti jinkwadraw ruhhom fit-delitti taht l-artikli 124, 125, 126, 127, 293, 294 certament.

ĦASIL ta' FLUS

Kap. 373 tal-Liġijiet ta' Malta (money laundering), specjalment l-artikli 2 u 3 tal-Kap.373.

Illi l-imgieba ta' **Clint Camilleri, Godwin Agius, John Borg** u **Andrew Ellul** kif spjegata hawn fuq tinkwadra ruħha fuq bazi *prima facie* fid-definizzjoni ta' money laundering, **sija bħala kompliċi u sija bħala parteċipi f'assoċjazzjoni kriminali (art. 48A tal-Kap.9) għall-istess skop**.

Fl-artiklu 2 tal-Kap.373, insibu din id-definizzjoni, stante li tali definizzjoni tkopri d-delitti/fatti imwettqa fuq bazi *prima facie* miz-zewg denunzjati kif huwa spejgat u elenkat f'dan ir-rikors:

"*Money laundering*" tfisser:

(i) il-konversjoni jew trasferiment ta' proprjetà meta wieħed ikun jaf jew jissuspetta li dik il- proprjetà tkun direttament jew indirettament inkisbet minn, jew mir-rikavat ta', attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali, għall-iskop ta' jew skopijiet ta' ħabi jew wiri ħaġa b'oħra tal-

oriġini tal-proprjetà jew ta' għoti ta'għajnuna lil xi persuna jew persuni involuti jew konċernati f'attività kriminali;

(ii) il-ħabi jew wiri ħaġa b'oħra tal-veri xorta, provenjenza, lok, dispożizzjoni, moviment ta' jeddijiet rigward, fi jew fuq proprjetà, meta wieħed ikun jaf jew jissuspetta li dik il-proprjetà tkun inkisbet direttament jew indirettament minn attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali;

(iii) l-akkwist, pussess jew użu ta' proprjetà meta wieħed ikun jaf jew jissuspetta li l-istess proprjetà tkun inkisbet jew oriġinat direttament jew indirettament minn attività kriminali jewminn att jew atti ta' parteċipazzjoni f'attività kriminali;

(iv) ir-ritenzjoni mingħajr skuża raġonevoli ta' proprjetà meta wieħed ikun jaf jew jissuspetta li l-istess proprjetà tkun inkisbet jew oriġinat direttament jew indirettament minn attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali;

(v) it-tentattiv ta' xi ħwejjeġ jew attivitajiet definiti fis-subparagrafi (i), (ii), (iii) u (iv) ta' hawn fuq, u dan fit-tifsir tal-artikolu 41 tal-Kodiċi Kriminali;

(vi) l-aġir bħala kompliċi fit-tifsir tal-artikolu 42 tal-Kodiċi Kriminali rigward xi waħda mill-ħwejjeġ jew attivitajiet definiti fis-subparagrafi (i), (ii), (iii), (iv) u (v) ta' hawn fuq"

L-esponenti ser jissenjala l-insenjament fil-qosor ta' dak li l-Qrati tagħna qalu meta ġew biex jiġġudikaw kawżi kriminali fejn kien hemm akkuża ta' ħasil ta' flus.

Dan ser jingħad b'riferenza għat-talba tal-esponenti biex il-Maġistrat Inkwirenti jiskatta Inkjesta Maġisterjali dwar is-suspett raġjonevoli li **Clint Camilleri, Godwin Agius, Andrew Ellul u John Borg** ikkomettew id-delitt ta' tentattiv[16] ta' ħasil ta' flus jew ħasil ta' flus fil-forma konsumata, jew **kienu kompliċi fl-istess**.

Fis-sentenza **Il-Pulizija vs Fabio Zulian** deċiża mill-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali fis-16.12.2014, konfermata fi stadju ta' appell in parte fejn jirrigwarda ħtija fuq kompliċità f'ħasil ta' flus, ġie stabbilit hekk:

"Illi ghandu jigi ben precizat illi dan l-Att gie emendat varji drabi. Senjalament ghalina, cioe' ghall-kaz in dezamina, huma relevanti dawk l-emendi li l-Artikolu suriferit ghadda minnhom fis-sena 2007 (ara Att XXXI.2007) fejn dan l- Artikolu 2 zdiedlu bhala element ta' xjenza mhux biss il-fatt illi persuna kienet "taf" li proprjeta' kienet derivanti minn rikavat ta' attivita' kriminali, imma anke li kellu s-"suspett" ta' hekk. Ghalhekk, ir-reat li ghalih irid jirrispondi Zulian huwa dak kif rifless fl-akkuza addebitata u cioe' li hu kien jaf bil-provenjenza ta' dan ir-rikavat, nieqes l-element ta' suspett.

16 Id-delitt ta' tentattiv ta' hasil ta' flus igorr l-istess piena daqs dak ikkunsmat skond il-Kap.373

Dwar il-mod kif il-Prosekuzzjoni ghandha tipprova r-reati sottostanti, (underlying offence), l-Artikolu 2(2)(a) kien jaqra hekk (qabel l-emendi):

"Persuna tista' tinstab hatja tad-delitt ta' money laundering taht dan l-Att, anke fin-nuqqas ta' sentenza tal-Qorti li tistablixxi htija fir-rigward tal-attivita' kriminali sottostanti, liema attivita' kriminali tista' tigi stabbilita minn prova cirkostanzjali jew prova ohra, minghajr il-htiega li l- Prosekuzzjoni tipprova li kien hemm sentenza ta' kundanna ghall-attivita' kriminali sottostanti."

Car ghalhekk, u ma hemm l-ebda dubbju li l-Prosekuzzjoni hija ferm facilitata, (anke qabel l-emendi tas-sena 2010), bl- obbligu taghha li tipprova l-attivita' kriminuza sottostanti, anke allura minn provi cirkostanzjali.

Ovvjament din l-onu ta' prova tibqa' tinkombi fuq il- Prosekuzzjoni u jrid ikun hu li jwassal din il-prova tal-grad li trid il-Ligi.

*Ghalhekk insibu li fil-kawza fl-ismijiet "**Ir-Repubblika ta' Malta vs John Vella**", deciza nhar id-9 ta' Novembru, 2007, il-Qorti qalet hekk dwar dan:*

"L-Avukat Generali jista' akkuza persuna bir-reat ta' money laundering minghajr ma jkollu sentenza ta' kundanna ta' dak li jkun qed jigi allegat li huwa l-attivita' kriminali sottostanti. Certament pero, ikun x'ikun il-kaz, jekk l-Avukat Generali jiddeciedi li jakkuza lil xi hadd b'money laundering, irid jindika n-ness bejn l-attivita' kriminali sottostanti partikolari li jkun qed jallega. Mhux kull akkwist, mhux kull konverzjoni ta' trasferiment ta' proprjeta', mhux kull habi jew wiri ta' proprjeta' necessarjament jammonta ghal money laundering. Din hi Ligi straordinarja li tintroduci kuncett radikali fis- sistema nostrana u li tirrikjedi applikazzjoni bl-akbar skurplu u attenzjoni, biex ma tigix reza fi strument ta' ingustizzja, iktar reminixxenti taz-zminijiet tal-inkluzjoni minn dawk l-era moderna tad-drittijiet tal-bniedem."

Mela bla dubbju din il-Qorti stabbiliet illi kien hemm dawk ir- reati sottostanti mill-gukaturi tal-Casino di Venezia; sabet htija fil-konfront ta' Zulian tal-assoccjazzjoni per delinquere, l-assoccjazzjoni - conspiracy, truffa u falsifikazzjoni.

……..

"Issa l-Ligi trid, biex jigi ppruvat ir-reat ta' reciklagg, illi dan Fabio Zulian kien jaf, fit-test Ingliz "knowing such property", kienet derivanti direttament jew indirettament minn rikavat ta' attivita` kriminali. Mhux biss jehtieg illi dan ir- rikavat ikollu dik il-provenjenza, imma li conoscendo dan l-agent, jahbi din in- natura tieghu billi jikkonvertieh fi flus jew rikavat li jidher lecitu, jahbi l- provenjenza tieghu ta' dan ir-rikavat u jibdillu n-natura ta' llecita` billi jikkonvertieh ghal dak illi issa jkollu sembjanza lecita. Jinhtieg illi l-agent ikun jaf "knowing" illi dawn il-flejjes jew proprjeta`, ikollhom provenjenza ta' attivita` kriminali."

Ghalhekk insibu fl-Archbold: Criminal Pleading, Evidence and Practice 2012, paga 2475, illi dan ir-reat hu hekk definit: "The explanatory notes to the PAA (Proceeds of Crime Act 2002) define money laundering as "the process by which the proceeds of crime are converted into assets which appear to have legitimate

origins, so that they can be retained permanently or recycled into further criminal enterprises."

Fis-sentenza tal-Qorti tal-Maġistrati (Malta) bhala Qorti ta' Ġudikatura Kriminali per Maġistrat Dr Donatella Frendo Dimech nhar **l-14 ta' Gunju 2017** fl-ismijiet **Il-Pulizija vs Brian Buttigieg et**, insibu hekk:

"Illi dwar l-ewwel imputazzjoni addebitata lill-imputati issir riferenza għad-deċizjoni fl-ismijiet The Police vs Omissis and Vladimir Omar Fernandez Delgado. F'din id-deċiżjoni l-Qorti għamlet analiżi funditus dwar ir-rekwiżiti legali tar-reat ta' riċiklaġġ, jew kif inhu aħjar magħruf dak ta' money laundering previst bl-artikolu 3 tal-Kapitolu 373 tal-Liġijiet ta' Malta fejn l-attivita` tal-akkuzat trid tiffigura f'waħda jew iżjed miċ-ċirkostanzi deskritti fil-paragrafi (i) sa (vi) tal-artikolu 2 tal-istess Kapitolu:

"Our Money Laundering Act, though a copious piece of legislation, does not give us a concise definition of the crime under issue. It does pronounce a number of instances which would constitute this crime, its attempt or complicity.

Reference is made to Archbold 2012 where one finds that this offence is described and defined as:

"The explanatory notes to the PCA (Proceeds of Crime Act 2002) define money laundering as "the process by which the proceeds of crime are converted into assets which appear to have legitimate origins, so that they can be retained permanently or recycled into further criminal enterprises." (Archbold: Criminal Pleading, Evidence and Practice, 2012, page 2475).

The Law Society Anti-Money Laundering Practice Notes October 2013 (Supporting Solicitors) defines this crime as follows: "Money laundering is generally defined as the process by which the proceeds of crime, and the true ownership of those proceeds, are changed so that the proceeds appear to come from a legitimate source. Under POCA the definition is broader and more subtle. Money laundering can arise from small profits and savings from relatively minor crimes, such as regulatory breaches, minor tax evasions or benefit fraud. A deliberate attempt to obscure the ownership of illegitimate funds is not necessary."

Adds: "There are three acknowledged phases to money laundering placement, layering and integration. However, the broader definition of money laundering offences in POCA includes even passive possession of criminal property as money laundering." (page 9)

In examining this offence, our Courts have also established that the three elements – placement, layering and integration, are not per se sine qua non elements necessary for the crime to exist, establishing that these stages were but a general description of the crime in question, for better understanding of the lay person sitting in a Trial by Jury. The Criminal Court reiterated further that thus the Prosecution need not, according to Law, prove the intention in each and every one of these stages.

*This short summary reflects the main points raised by the Court of Appeal in the judgment "**Police (Insp Angelo Gafa') vs Carlos Frias Mateo**", dated **19th January, 2012,** wherein the Court is here cited to have said this:*

"Kif ben tajjeb qalet l-Ewwel Qorti diversi awturi jaqsmu l-proċess tal-ħasil ta' flus fit-tliet stadji imsejħa "placement", "layering" u "integration".

Dawn l-istadji ġew imfissra b'mod konċiż mill-Qorti tal-Maġistrati.

Pero` mill-bidunett ta' min jippreciża, li dawn l-istadji huma biss deskrizzjoni ġenerali tal-proċess tal-ħasil tal-flus.

Hija skola ta' tagħlim li nħolqot sabiex ġurija tkun f'pożizzjoni aktar feliċi sabiex tifhem l-intriċċi u l-kumplikazzjonijiet li jinvolvu dawn it-tip ta' reati. Għalhekk il-qasma tal-proċess tal-ħasil ta' flus f'dawn it-tliet stadji hija waħda ġenerali u blebda mod dogmatika.

Fil-fatt awturi oħrajn jikkritikaw din il-klassifikazzjoni minħabba li tissimplifika wisq is-sitwazzjoni u f'ħafna każijiet ma hiex riflessjoni veritjiera ta' dak li realment ikun qed jiġri. Għalhekk dawn l-istadji għandhom jittieħdu biss bħala punto di partenza u bħala deskrizzjoni ġenerali tal-proċess tal-"money laundering" b'mod flessibbli tant li ma hux rikjest li l-prosekuzzjoni trid tipprova l-intenzjoni f'kull wieħed u waħda minn dawn l-istadji. Dan qiegħed jingħad fid-dawl tad-definizzjoni ta' "money laundering" li nsibu fit-tieni artikolu tal-Kap. 373 kif ukoll ir-reati kkontemplati fl-artikolu 327, 328 u 329 tal-Att tal-Parlament Ingliz "Proceeds of Crime Act 2002" fejn analiżi tagħhom ma tirrikjedix li l-prosekuzzjoni tipprova li l-imputat kellu l-intenzjoni li jikkommetti "placement", "layering" u "intergration" bil-proprjeta`."

*Furthermore, as justly pointed out by Defence Counsel in the note of submissions, our Courts have advised caution in dealing and assessing this case, as well explained in another judgment handed down by the Criminal Court in the case "**Republic of Malta vs John Vella**" decided on the 9th November, 2007:* "L-Avukat Generali jista' jakkuża persuna bir-reat ta' money laundering mingħajr ma jkollu sentenza ta' kundanna ta' dak li jkun qed jiġi allegat li huwa l-attivita' kriminali sottostanti. Ċertament pero, ikun x'ikun il-każ, jekk l-Avukat Ġenerali jiddeċiedi li jakkuża lil xi ħadd b'money laudering irid jindika n-ness bejn l-attivita' kriminali sottostanti partikolari li jkun qed jallega. Mhux kull akkwist, mhux kull konverżjoni ta' trasferiment ta' proprjeta', mhux kull ħabi jew wiri ta' proprjeta' neċessarjament jammonta għal money laundering.

Further considers, that as said our Law does not give a comprehensive definition of this crime, opting instead to delineate various instances which would constitute the crime of Money Laundering or its attempt or complicity. Section 2(1)(i) of the said Chapter defines the crime of money laundering as being constituted in any one or more of the instances as reflected in the charge sheet.

Whilst the actus reus of this crime should present no problems to comprehend, it is immediately obvious that the mental formal elements involved range from the actual knowledge that the proceeds laundered had a criminal provenance, to even the suspicion thereof. The Law as amended uses the words "knowing" or "suspecting". [(Section 2(1)(i)]. The element of knowledge should present no difficulties to proof in a Court of Law, knowledge is what it is. It clearly means that one has a

good understanding, knowhow, command, and comprehension of a situation. The term suspicion on the other hand can present and lend itself to a myriad of difficulties and is deserving of more exploration.

Guidance is here sought by reference to Money Laundering Offences: The Law Society, Chapter 5, 2013, October Practice Notes. This extract refers to the P.O.C.A. It can help us understand the mental elements necessary under our Legislation. To keep in mind is that our Chapter 373 speaks only of knowledge and suspicion, whereas the POCA speaks of three elements including that of "reasonable grounds for suspicion", this within the limitations hereunder outlined:

"5.3 Mental elements

The mental elements which are relevant to offences under Part 7 of POCA are:

- *knowledge*
- *suspicion*
- *reasonable grounds for suspicion*

These are the three mental elements in the actual offences, although the third one only applies to offences relating to the regulated sector. There is also the element of belief on reasonable grounds in the foreign conduct defence to the money laundering offences. A person will have a defence to a principal offence if they know or believe on reasonable grounds that the criminal conduct involved was exempt overseas criminal conduct.

For the principal offences of money laundering the prosecution must prove that the property involved is criminal property. This means that the prosecution must prove that the property was obtained through criminal conduct and that, at the time of the alleged offence, you knew or suspected that it was.

For the failure to disclose offences, where you are acting in the regulated sector, you must disclose if you have knowledge, suspicion or reasonable grounds for suspicion; while if you are not in the regulated sector you will only need to consider making a disclosure if you have actual, subjective knowledge or suspicion.

These terms for the mental elements in the offences are not terms of art; they are not defined within P.O.C.A and should be given their everyday meaning. However, case law has provided some guidance on how they should be interpreted.

5.3.1 Knowledge

Knowledge means actual knowledge. There is some suggestion that wilfully shutting one's eyes to the truth may amount to knowledge. However, the current general approach from the criminal courts is that nothing less than actual knowledge will suffice.

5.3.2 Suspicion

The term 'suspects' is one which the court has historically avoided defining; however because of its importance in English criminal law, some general guidance has been given.

In the case of Da Silva [1996] EWCA Crim 1654, which was prosecuted under the previous money laundering legislation, Longmore LJ stated:

'It seems to us that the essential element in the word 'suspect' and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.'

There is no requirement for the suspicion to be clear or firmly grounded on specific facts, but there must be a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond speculation.

The test for whether you hold a suspicion is a subjective one. If you think a transaction is suspicious, you are not expected to know the exact nature of the criminal offence or that particular funds were definitely those arising from the crime. You may have noticed something unusual or unexpected and after making enquiries, the facts do not seem normal or make commercial sense. You do not have to have evidence that money laundering is taking place to have suspicion."

(P.O.C.A Proceeds of Crime Act 2002 (U.K).

This therefore is the level that the Prosecution must reach to prove the mental element of this crime, knowledge or suspicion as here explained, beyond reasonable doubt, on the part of the offender of the illegal provenance of the proceeds.

It is obviously only after an acute examination of all the facts of the case presented to the Court, that one of these elements can be proved. Obviously knowledge transcends any suspicion.

The proof of the underlying offence is regulated by Article 2(2)(a) of Chapter 373 that reads:

"A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity and without it being necessary to establish precisely which underlying activity."

Therefore, the Prosecution are aided, to a degree, in proving the necessary crime originator of the questioned laundered proceeds by direct evidence where available, or by circumstantial evidence or any other evidence, and need not necessarily produce an actual conviction that establishes the underlying offence. Neither does the Law require them to proof with precision the nature of the crime involved.

Therefore the launderer need not be knowledgeable of the precise nature of the crime whose proceeds he is helping to convert into unsuspicious clean property. Suffice that he has knowledge or a suspicion that these proceeds might have a dubious origin.

Applied to the case in question this therefore means that the Prosecution need not proof John Joseph Evans' guilt but the nature of his operations, in his instance drug trafficking or that something appeared amiss at a stage in time to the accused.

Yet another exception arises in this Chapter concerning the level of proof and or the burden thereof. This emanates from Section 3(3) of Chapter 373 which refers directly to a shift in the burden of proof found entrenched in Chapter 101 of the Laws of Malta.

Fil-fatt l-**Artiklu 3(3) tal-Kapitolu 373**, Ligijiet ta' Malta, li ġja saret riferenza għalih jipprovdi:

(3) Fi proc

eduri dwar reat ta' money laundering taħt dan l-Att id-disposizzjonijiet tal-artikolu 22(1C

)(b) tal-Ordinanza dwar il-Medic

ini Perikoluz

i., għandhom ikunu mutatis mutandis japplikaw.

Fl-artikolu 22(1C)(b) tal-Ordinanza msemmija nsibu:

(b) Fi proc

edimenti għal reat taħt il-paragrafu (a), meta l-prosekuzzjoni g

g

ib prova li l-imputat jew akkuz

at ma jkun ta ebda spjegazzjoni rag

onevoli li turi li dawk il-flus, proprjetà jew rikavatma kenux flus, proprjetà jew rikavat kif deskritti fl-imsemmi paragrafu, l-oneru li jipprova l-provenjenza lec

ita ta' dawk il- flus, proprjetà jew rikavat tkun tinkombi fuq il-persuna imputata jew akkuz

ata.

Il-Qorti fil-każ ċitat kompliet:

Obviously this last quoted Section deals with proceeds of crimes dealt with under Chapter 101. This presumption is however applicable to all predicate offences and their proceeds as regulated by Chapter 373.

It therefore transpires that for a charge of money laundering to be proven successfully, the Prosecution must prove the nexus between the criminal activity and the questioned dubious proceeds, but it lies with the charged or accused, failing a reasonable explanation thereof to prove, now to a level of probability, the lawful origin of the monies in question.

In this regard, for a better understanding of the level of proof the Prosecution has to reach to establish the underlying offence and that necessitated by the accused as rebuttal of the illegal knowledge of the proceeds, the Court is once again referring to the Carlos Frias Mateo decision above cited, dated 19th January, 2012, wherein the Court said:

"F'din il-kawza, l-appellat qed jiġi akkużat bil-ksur ta' provvedimenti tal-Kap 373 tal-Ligijiet ta' Malta iżda dan il-Kap jagħmel referenza wkoll għall-Artiklu 21(1C) (b) tal-Kap 101 tal-Liġijiet ta' Malta li wkoll jitfa' l-piż li juri l-oriġini leċita tal-flus, proprjeta jew rikavat fuq il-persuna akkużata.

Għalhekk, dan il-livell ta' prova "*prima facie*" japplika kemm għall-persuna li tkun akkużata b'money laundering taħt il-Kap 101 kif ukoll taħt il-Kap 373.

Issa, peress illi l-Artiklu 2(2)(a) ta' l-istess Att jeżimi mir-responsabilta' l-prosekuzzjoni illi tipprova xi ħtija preċedenti in konnessjoni ma xi attivita` kriminali, kull ma għandha tipprova l-prosekuzzjoni huwa illi l-flus illi nstabu fil-pussess tal-persuna li ma kienux konformi ma l-istil ta' ħajja tal-persuna, liema prova tkun tista' tiġi stabbilita anke minn provi indizzjarji. Dana jfisser illi l-prosekuzzjoni m'għandix tipprova lill-Qorti l-oriġini tal-flus, lanqas jekk il-flus kienu llegali. Kull ma trid tippruva huwa fuq grad ta' "prima facie" illi ma hemm l-ebda spjegazzjoni logika u plawsibbli dwar l-origini ta' dawk il-flus. Darba ssir din il-prova fil-grad imsemmi, jkun imiss lill-akkuzat sabiex juri illi l-origini tal-flus ma kienx illegali. [emfaži tal-Qorti]

Forsi f'dan l-istadju ikun opportun illi jigi kwalifikat il-prova "*prima facie*" u fiex din tikkonsisti.

Ikkunsidrat :

Hu ben saput illi l-Qrati ġeneralment jirrikonoxxu erba' tipi ta' prova, dak li huwa possibbli, l-probabbli, mingħar dubju dettat mir-raġuni u ċ-ċertezza. Iżda l-prova "prima facie" hija wżata mill-Maġistrat Inkwirenti meta jirrediċi l-Process Verbal u l-Maġistrat Istruttur fl-għeluq tal-Kumpilazzjoni. Fl-opinjoni tal-Qorti din hija livell ta' prova illi tidħol bejn il-possibbli u l-probabbli.

L-awtur **Blackstone** (At D 6.21) jgħid fost affarijiet oħra,

"Thus, the standard of proof the prosecution are now required to satisfy at committal proceedings is very low, lower than that resting on a plaintiff in civil proceedings. It is commonly expressed as establishing a prima facie case or a case to answer."

Il-probabbli huwa l-livell użat fi proċeduri ċivili. Għalhekk skond dan l-awtur "*prima facie*" huwa anqas minn hekk u jista' jiġi definit bħala "a case to answer", ħaġa li għandha tiġi investigata aktar fil-fond.

Fil-kuntest tal-provi illi l-proskuzzjoni ġabet f'dan il-każ, intlaħaq dan il-livell ta' "*prima facie*"? Kien hemm "*a case to answer*"?"

Further considers:

First and foremost the Court is of the opinion that the first issue to be tackled is one raised by the Defence in its note of submissions regarding the charges proffered claiming uncertainty on the part of the Prosecution, having directed at the accused all the content of Section 2(2) of the Money Laundering Act. True enough, Prosecution chose to debit the accused with the burden of all the criminal instances found in the said Section. Obviously he cannot be guilty of all, but one does not necessarily exclude the other. Obviously these are alternate charges, this being more evident and obvious in as far as the alleged complicity or attempted charges are proffered. One must also remember that at a later stage in the proceedings, Attorney General, exercising his discretion under Chapter 373, sent this case for a summary judgement, therefore inviting this Court to examine the facts against the requisites of Section 2(2) of the said Chapter.

Illi fl-istess każ il-Qorti tal-Appell Kriminali kellha l-opportunita` tagħmel analiżi approfondita u dettaljata dwar l-oneru tal-prova li tinkombi lill- partijiet f'kazijiet ta' ħasil ta' flus. Fil-fatt dik l-Qorti qalet hekk:

Ma hemmx dubju illi r-reat ta' money laundering huwa wieħed mir-reati l-aktar diffiċli u delikati biex jiġu nvestigati. It-teknika u s-sofistikazzjoni tal-mod kif il-flus jiġu ġirati u jinħbew mill-provenjenza leċita tagħhom jagħmluha kważi impossibli illi l-investigaturi jsibu traċċa tal-provenjeza tal-flus. Kien għalhekk illi f'dawn iċ-ċirkostanzi l-liġi tal-Money Laundering Kap 373 tpoġġi l-oneru fuq dak li jkun illi huwa jipprova għas-sodisfazzjon tal-Qorti l-provenjenza leċita tal-flus illi jkunu nstabu fuqu.

Dan il-bdil ta' l-oneru tal-provi m'hijiex waħda kapriċċuża u kif qalet il-Qorti fil-kawża "**Il-Pulizija vs John Vella**" "din hi liġi strordinarja li tintroduċi kunċetti radikali fis-sistema nostrana u li tirrikjedi applikazzjoni fl-aktar skruplu u attenzjoni biex ma tiġix reża xi sturment ta' inġustizzja, aktar reminixxenti taż-żminijiet ta' l-inkwizizzjoni minn dak ta' l-era' moderna tad-drittijiet tal-bniedem. . . .".

Il-Qorti qiegħda tagħmel dan il-pronunċjament fl-isfond tad-dispost ta' l-Artiklu 2(2)(a) u l-Artiklu 3(3) tal- Kap 373 tal-Liġijiet ta' Malta illi għandhom jinqraw fid-dawl ta' l-Artiklu 21(1C)(b) tal-Kap 101 tal-Liġijiet ta' Malta li jistipulaw li l-Avukat Ġenerali jista' jakkuża persuna bir-reat ta' "money laundering" mingħajr ma jkollu xi sentenza b'referenza għal xi offiża preċedenti. Ma dan kollu jibqa` l-fatt illi l-Avukat Ġenerali għandu jipprova n-ness bejn il-flus jew il-proprjeta u l-attivita kriminali li tkun ġenerat dawk il- flus.

Dwar il-livell ta' prova li jinkombi fuq l-Avukat Ġenerali, l-Qorti tagħmel referenza għall-kawża "Il-Pulizija vs Paul Borg" deċiza mill-Qorti ta' l-Appell Kriminali fis-sitta (6) ta' Ottubru tal-2003. F'din il-kawża l-Qorti kienet qalet illi meta l-Avukat Ġenerali jakkuża lil xi ħadd bl-offiża ta' money laundering taħt il-Kap 101 tal-Liġijiet ta' Malta, l-Avukat Ġenerali għandu jipprova "prima facie" n-ness bejn il-flus jew il-proprjeta u l-attivita kriminali li tkun ġenerat dak il-flus jew proprjeta. Minn eżami u qari akkurat ta' din id-dispożizzjoni din il-Qorti tħoss li una volta li l-prosekuzzjoni tiddeċiedi li tipproċedi skond l-Ordinanza Kap 101 u mhux taħt id-dispożizzjonijiet tal-Kap 373 ossia l-Att tan-1994 kontra "Money Laundering", fejn l-attivita' kriminali sottostanti tista' tkun varja u tirreferi għall-ksur ta' diversi liġijiet kif indikat fit-tieni skeda ta' l-istess Att, irid almenu jiġi "prima facie" pruvat li l-akkużat ikun qed jaġixxi bi ħsieb li jaħbi jew jikkonverti flus jew ir-rikavat ta' flus u jkun jaf jew ikollu suspett li dawk il-flus ikunu miksuba bħala

riżultat ta' ksur ta' xi dispożizzjoni ta' l-Ordinanza Kap 101 u dana qabel ma tiskatta l-inverzjoni ta' l-oneru tal-prova fuq l-akkużat."

Illi kif kkonkludiet b'mod konċiż iżda preċiż għall-aħħar, il-Qorti tal-Maġistrati (Malta) fil-kawża **Il-Pulizija vs Alfred Delia et:**

Illi għalhekk il-mistoqsija li trid tiġi riżolta fil-każ in ezami hija dik interposta mill-Qorti ta' l-Appell Kriminali fil-kawża hawn fuq kwotata u cioe fil-kuntest tal-provi illi l-proskuzzjoni ġabet f'dan il-kaz, (provi biex jiġi pruvat in-ness bejn il-flus utitlizzati biex jinxtraw il-vetturi imsemmija u xi attivita kriminali) intlaħaq dan il-livell ta' "prima facie"? Kien hemm "a case to answer" biex mbagħad l-oneru tal-prova jdur fuq l-imputati biex jippruvaw l-oriġini leġittima tal-flus utilizzati.[17]

Il-Qorti tal-Appell Kriminali (Sede Superjuri) rritiniet kif ġej dwar ir-rekwiżit li għandu jkun hemm indikazzjoni ċara tar-reat sottostanti ossia l-attivita` kriminali li ssir riferenza għaliha fl-artikolu 2(2) tal-Kapitolu 373:

7. In its judgement regarding these pleas, the Criminal Court said:

"That as regards the first count, the accused is claiming that this is null and void because it does not in any way indicate the antecedent offence or source which could give rise to money laundering.

"The accused is arguing that the Attorney General must at least prove prima facie that the money is coming from an illicit activity. If there is a shifting of the burden of proof, this must be accompanied by an illicit activity which illicit activity should show in the bill of indictment. In this case no previous offence was established, therefore there is no antecedent criminal act. The situation is very similar to the crime of receiving stolen property where there must be proof that the goods have a criminal origin. Therefore, in matters of money laundering, the Prosecution must prove the illicit origin of the money. The suspicion of a crime is not enough. It has yet to be established what is the predicate offence. .....

"This means, therefore, that if according to the accused, the bill of indictment does not in any way indicate the antecedent offence, or source, this does not mean that evidence of this offence can not be brought during the trial.([18])

Illi dwar l-ispjegazzjoni inverosimili li jagħtu l-imputati, partikolarment Buttigieg li jipprova jattribwixxi n-numru konsiderevoli ta' drabi fejn ordnijiet gew kanċellati bħala żbalji li saru minn trainees li kienu sorveljati minnu, u għal dak li tiddikjara meta xehdet quddiem il-Qorti Cutajar li l-flus ħasbet li kienu ġejjin mill-bejgħ ta' mutur u mill-part-time li kien jagħmel Buttigieg, ser issir riferenza ukoll għal dak li gie dikjarat minn l-istess Qorti:

18. It is also true that article 22(1C)(b) of Chapter 101 of the Laws of Malta is applicable to proceedings under Chapter 373 (see article 3(3) of said Chapter 373) and that this article provides:

17 Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali, per Onor. Magistrat Dr. Doreen Clarke. Deciza 23.05.2013, Kump. Nru 672/2010.

18 The Republic of Malta vs Morgan Ehi Egbomon, Appell fuq Decizjoni tal-Qorti Kriminali fuq Eccezzjonijiet Preliminari, Att t' Akkuza Nru. 16/2009. Dec 31.07.2014.

"In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused."

19. Nonetheless the following principles, as clearly outlined by the Constitutional Court in its judgement of the 1st April 2005 in the case The Republic of Malta vs Gregory Robert Eyre and Susan Jayne Molyneaux, must be applied:

"(i) it is for the prosecution to prove the guilt of the accused beyond reasonable doubt; (ii) if the accused is called upon, either by law or by the need to rebut the evidence adduced against him by the prosecution, to prove or disprove certain facts, he need only prove or disprove that fact or those facts on a balance of probabilities; (iii) if the accused proves on a balance of probabilities a fact that he has been called upon to prove, and if that fact is decisive as to the question of guilt, then he is entitled to be acquitted; (iv) to determine whether the prosecution has proved a fact beyond reasonable doubt or whether the accused has proved a fact on a balance of probabilities, account must be taken of all the evidence and of all the circumstances of the case; (v) before the accused can be found guilty, whoever has to judge must be satisfied beyond reasonable doubt, after weighing all the evidence, of the existence of both the material and the formal element of the offence."

Fid-deċiżjoni tagħha fil-proċeduri fl-ismijiet "**Il-Pulizija vs Dayang Sakienah Binti Mat Lazin**, il-Qorti tal-Maġistrati (Malta) ikkunsidrat:

That it is to be emphasised that the charge of money laundering brought against defendant is based on Chapter 373 of the laws of Malta and not Chapter 101. In the latter case the prosecution must necessarily show a link between the assets being laundered and some criminal activity prohibited under Chapter 101. In the former case (i.e. an offence under Chapter 373) what the prosecution must show is a link between the laundered assets and an offence listed in either the first or second schedule of the said Chapter 373 which however also include traffic in narcotic drugs and psychotropic substances.

That it must also be emphasised that what must be shown for the prosecution to satisfy its onus is a link between some criminal activity and the assets in question. This has been affirmed by the Court of Criminal Appeal in the case Republic of Malta vs John Vella when it said:([19])

"….l-Avukat Ġenerali jista' jakkuża persuna bir-reat ta' money laundering mingħajr ma jkollu sentenza ta' kundanna ta' dak li jkun qed jiġi allegat li huwa l-attivita kriminali sottostanti.... Ċertament pero ikun x'jkun il-każ, jekk l-Avukat Ġenerali jiddeċiedi li jakkuża lil xi hadd b'money laundering ... irid jindika n-ness bejn l-attivita kriminali sottostanti partikolari li jkun qed jallega."

That once the prosecution satisfied this onus, in terms of article 22(1C)(b) of Chapter 101 of the Laws of Malta which applies to proceedings for an offence of money laundering by application of article 3(2A)(3) of Chapter 373, the burden of

19 Deciza 29.11.1999 u citata f' Il-Pulizija vs Paul Borg (Qorti tal-Appell Kriminali sede Inferjuri) Deciza 06.10.2003.

proof then shits on defendant who has the onus of showing the lawful origin of the money in question. Defendant produced no such evidence.([20])" "

Fis-sentenza tal-**25 ta' Settembru 2023** deċiża mill-Qorti tal-Maġistrati (Malta) bħala Qorti ta' Ġudikatura Kriminali fl-ismijiet **Republic of Malta vs Sunday Eboh**, insibu dawn il-punti pertinenti:

"Thus it results that (i) once monies were received and retained in his account without lawful excuse, knowing full well, their tainted origins, and multo magis (ii) when the said monies were in his possession, transacted and withdrawn or purchases made therefrom, thus disguising the origin of the funds, Eboh became guilty of money laundering"

Fid-dawl ta' dawn is-sentenzi tal-Qrati tagħna u l-prinċipji hemm stabbiliti, ir-rikorrent jemmen li huwa laħaq il-grad ta' *prima facie* biex juri li timmerita *in genere* dwar is-suġġett materjali tad-delitt ta' ħasil ta' flus kommess minn **Clint Camilleri, Godwin Agius, Andrew Ellul u John Borg** sija bħala awturi u **sija bħala kompliċi fl-istess**

Il-perdurazzjoni tal-*money laundering* imwettaq fuq numru ta' xhur gie iffacilitat mhux biss min-numru ohrajn ta' atturi konsocjati facilitaturi professjonisti (professional enablers) izda anki tramite reati sottostanti ohrajn li jehtieg ikunu investigati u l-provi ippreservati minn Inkjesta Magisterjali.

20 Case Number: 197/2008; 23.11.2009, per Onor. Magistrate Dr Doreen Clarke.

Digrieti preċedenti fuq talbiet taħt l-artiklu 546(4A) tal-Kodiċi Kriminali

Ir-rikorrent issa ser jagħmel referenza għal xi digrieti taʼ Maġistrati tal-Għassa li fihom ġew esposti l-prinċipji bażiċi dwar kif għandu jkun interpretat l-artiklu 546(4A) tal-Kodiċi Kriminali, u dan qed isir biss fit-tama umli li jkunu taʼ għajnuna għall-Maġistrat tal-Għassa li jrid jiddeċiedi fuq dan ir-rikors odjern.

1) Digriet Maġistrat Dr Doreen Clarke tad-29 tʼApril 2019 fuq talba taʼ Marion Pace Axiaq et re 17 Black

"PRINCIPJI GENERALI

> Illi ai termini tal-artikolu 346 tal-Kodicî Kriininali' inkjesta ghandha *tinzamm wara* rapport, denunzja jew kwerela taʼ reat li jikkomporta piena taʼ prigunerija ghal aktar minn tlett snin u jekk is-suggest materjali tar-reat jkun ghadu jezisti. Din id-dispozizzjoni, fl-ewwel subartiklu taghha tipprovdi hckk:
>
> > "*Bla hsara tad-dispożizzjoníjiet tar-subartikli li jigu minnufih wara dan, wnra r-rapport, id-denunzja jew il-kwerela to' reat li jista ' jinghata l-piena taʼ prigunerija ghal izjed minn tliet snin, u jekk is-suggett materjali tar-reat ikun ghadu jezisti, ghandu jigi deskritt l-istat tieghu, bid-dettalji kollha wiehed wiehed u ghandu* jigi msemmi 1-istrument u 1-mod li bih dan 1-istrument setaʼ jgiu l-effett.

Ghall-finijiet ta' kull investigazzjoni bhal din, ghandu jsir access fuq il-post.

Minn din id-dispozizzjoni jirrizulta li meta Magistrat:

1. jircievi rapport, denunzja jew kwerela;

1. dwar reat li ghalib tista' tinghata 1-piena ta' aktar minn tlett snin prigunerja;
u

1. is-suggett materjali tar-reat ikun ghadu jezisti

Ghandha ssir inkjesta bl-ghan li:

A. jigi deskritt 1-i stat tas-suggett materjali, bid-dettalj i kollha wiehed wiehed;

A. u jigi imsemmi l-istrument u 1-mod li bih dan l-istrument seta' gab l-cffctt.

III is-subartikolu (1) hawn kwotat ma jsemmi xejn dwar minghand min il-Magistrat ghandu jircievi r-rapport, denunzja jew kwerela. Normalment pero huma 1-pulizija Ii, wara li jkun sar-ilhom rapport, denunzja jew kwerela u fil-fehma taghhom ikun mehtieg li ssir inkjestn, jinfurmaw lill-Magistrat u jitolbu 1i ssir 1-inkjesta. Kien fis-sena 2006, permezz ta' 1-emendi introdotti b1-Att XVI li gie stabbilit li kwalunkwe persuna, li mhux pulizija jew 1-Avukat Gencrali, setghct taghmel denunzja jew kwerela direttament lil Magistrat.

Illi I-fatt b'dawn l-emendi fi1-artikolu 546 imsemmija gew introdotti s-subartilcoli (4A), (4B) u (4C)[2]; dawn jipprovdu hekk:

(4A) *Mesa r-rapport, id-denunzja jew il-kwerela jsiru lil Magistrat toht dan 1-ortikolu minn xi persuna li ma tkunx 1-Avukat Generali jew ufficjal tal-pulizija, ir-rapport, id-denunzja jew il-kwerela gharidhom isemmu car lill-persona suspettata li ghamlet ir-reat (hawn izjed 'l quddiem f'dan l-artiklu msejha "il-persuna suspettata"). Il-Magistrat ghandu jordna li r-rapport, id-denunzju jew il-kwerela, skond ma jkun il-kaz, jigi notifikat lill-persuna suspettata fil-woqt li jaghtihu zmien ghal risposta u wara li jghaddi dak iz-zmien il-Magistrat ghandu jiddeciedi jekk jaghmilx l-access. II-Magistrat ghandu jiddeciedi li joghmel 1-access biss jekk ikun stabilixxa li l-prerekwiziti mehtiega biex isir dak l-access ikunu jezistu.*

(4B) Id-decizjoni tal-Magistrat taht is-*subartiklu (4A) ghandha tigi notifikata lill-persuna Ii ghomlet*

ir-rapport, denunzja jew il0-kwerela u lill-persona suspettata. Kull wiehed minnhom jista', fi zmien jumejn tax-xoghol mid-data tan-notifika tad-decizjoni jaghmel rikors lill-Qorti Kriminali biex tigi revokata d-decizjoni tal-Magistrat u l-Qorti Kriminali ghandha taghti d-decizjoni taghha fuq ir-rikors bl-urgenza.

(4C) F'kull kaz fejn ikun .ser isir access taht id-disposizzjonijiet tas-subartiklu (4A) u(4B) il-Magistrat 1i jmexxi l-access ghandu jintghazel bil-polza minn fost il-Magistrati kollha.

lili minn qari taghhom huwa car li dawn id-dispozizzjonijiet jistipulaw x'procedura ghandha tigi segwieta meta Magistrat jircievi denunzja minghand persuna li mhux pulizija jew 1-Avukat Generali; u, mehuda d- dccixjoni li ghandha tinzamm inkjcsta, kif ghnndu jintghazel il-Magistrat li effettivament ser ikun qed imexxi 1-inkjesta'. Dawn id-dispozizzjonijiet m a j bid-dlu xejn mir-rekwiziti predisposti fis-subartikolu (1) ta'1-artikolu 546 u li jridu jissussistu biex tkim tista' tinzamm inkjesta. Fil-fatt ir-rekwiziti imsemmi f'dan is-subartikolu japplikaw kollha u jridu jissussistu indipendentement minn min jitlob it-tnedija tal-inkjesta, u cioe hux il-pulizija, hux 1-Avukat Generali, jew hux id-denunzjant jew il-kwerelant.

Dawn 1-emendi lanqas ma biddlu xejn f dak li ghandu jkun l-ghan ta' 1-inkjesta.

……..

L-OGGEZZJONI SOSTANTIVA

Illi t-tieni kategorij ta' oppozizzjoni hija wahda "sostantiva" u tirreferi ghall-kwalita ta' provi li gew prodotti in sostenn tal-talba odjerna u ghall-fatt li ma gewx sodisfatti ir-rekwiziti elenkati f1-artikolu 546.

IIli jibda biex jinghad li fil-fehma tal-Magistrat sottofirmat hija zbaljata 1-premessa li minnha telqu tnejn mill-persuni suspettati flr-risposta taghhom cioe li r-rekwizicti eleikati fl-artikolu 546 u li jridu jissussistu biex tinbeda inkjesta buma erbgh. Dawn jikkontcndu li permezz tad-denunzja 1) jigi identilikat ir-rcat; 2) tr-reat ikun wiehed li jikkomporta piena ta' aktar minri tlctt swin prigonerija; 3) jigi dcskritt is-suggett materjali tar-reat bid-dettalyi kollha wiehed wlched; u 4) 1-istrumcnt jim imsemmi u jinghad ukoll il-mod li bih dan 1-istrument setn'

jgib 1-effctt, ossia kif gie attwat ir-reat denunzjat.

llli kif diga ntqal aktar '1 fuq, qari ta'1-artikolu 546 ghandu jwassal ghall-konkluzjoni li r-rekwizicti huma *tlieta*: 1) r-rapport, deriunzja jcw kwerela li jircievi 1-Magistrat; 2) ir-reat li ghalih tista' tinghata 1-piena ta' aktar minn tliet snin prigunerija; u 3) li s-suggett materjali tar-reat ikun ghadu jezisti. Ta' I-istess opinjoni jidhcr li huma t-tlett persuni suspettati 1- ohra ghaliex fir-risposta taghhom huma jelenkwa dawn 1-istess tlett elementi bhala rekwizieti li jridu jigu sodisfatti biex tinbeda inkjesta. Huma jmorru pass oltre ghaliex ighidu ukoll li li l-ewwwl zewg rekwiziti "*huama mera formalita u jirrikjedu biss daqqa ta' pinna*" mill-persuna li tkun qcd taghmel id-denunzja. Donnhom qed jimplikaw li kull ma jirrikjedu 1-ewwel zewg rekwiziti huwa allegazzjoni kwalsiasi, dedotta bil-miktub, ta' reat li jikkomporta piena ta' prigunerija ta' aktar minn tliet snin.

Illi 1-Magistrat sottofirmat sa certu punt tikkondividi dan il-hsieb ghaliex fil-verita 1-ewwe1 *zewg* rekwizieti jirreferu ghan-*notitia criminis* u jirrikjedu 1-allegazzjoni li gie kommess reat u li dan ir-reat jikkomporta piena ta' aktar rninn tlett snin prigunerija. lt-tielet rekwiziet kif gustament gie sottomess jirreferi qhas-suggett materjali tat-reat u cioe 1-ezistenza ta' tracci materjali tar-reat li jiehtieg li jigu preservati u deskritti. Pero 1-Magistrat sottofirmat ma tqies 1-ewwel zewg rekwizieti bhala mera formalita jew *daqqa ta' pinna.*

Illi tajjeb jigi rilevat li fil-Kodici hemm dispozízzjonijiet ohra li jirregolaw d-dcnunjza bhala wahda mill-mezzi li biha tinghata n-*notitia criminis*. B'mod partikolari dwar x'forma ghandha tiehu d-denunzja u x'informazzjoni ghandha tikkontjcni jipprovdu l-artikoli 535 *et sequitur* tal-Kodici. Ai termini ta' l-artikolu 535 d-denunzja ta' reat tista' ssir minn kwalunkwe persuna li tkun saret taf b'dak ir-teat ***b'kull mod li jkun***, purche jkun reat prosegwibbli *ex officio.* Aktar minn hekk il-Kodici jipprovdi (artiklu 536) li d- *denunzjant ghandu jfisser car il-fatt bl-irqaqat kollha tieghu, u ghandu jaghti,* ***kemm jista' jkun****, dawk il-partikularitajiet kollha mehtiega li jaccertaw ir-reat, li jistabilixxu x-xorta tieghu kif ukoll li juru min huma l-awturi u l-komplici.* Jipprovdi wkoll (artiklu 537) li *d-denuznja tista' ssir bil-fomm jew bil-miktub, izda meta ssir bil-fomm hija ghandha, hlief fil-kazijiet li ma jkunux iridu dewmien, titnizzel bil-miktub minnufih u ghandha tigi iffirmata mid-denunzjant.*

Ill s-subartikolu (1) ta' 1-artiktilu 546 mbaghad jipprovdi li meta n-*notitia criminis* permezz tad-denunzja (jew rapport jew kwerela) tkun tirrigwarda reat li jikkoinporta piena ta' aktar minn tlett snin prigunerija u fic-cirkostanzi hemm imsemmija ghandha ssir 1-inkjcsta. Is-subartiklu (4A) ta' 1-artikolu 546

imur oltre u jipprovdi li d-dcnunzja maghmula dircttnment til Magistrat ghandha ssemmi *rar lill-per.Tuna suspettaia Ii ghamle1 ir-rest.*

111i ghalhekk, u b'applikazzjoni ta' dawn id-disposizzjonijiet mehuda kollha flimkien, meta denunzja ssir mid-denunzjant direttament liI Magistrat ghandha ssit bil-miktub u d-denunzjat ghandu jfisser il-fatt denunzjat bl-irqaqat kollha tieghu; ***kemm jista' jkun*** (u ghalhekk mhux *sine qua non)* ghandu jaghti dawk il-partikolaritajiet kollha li jaccertaw ir-reat, u jistabilixxi x-xorta tieghu u ghandu jssemi car lill-persuna suspettata li ghamlet ir-reat.

Illi maghmula denunzja li tissodisfa dawn ir-rekwiziti ghandha tigi ordnata inkjesta jekk: 1) ir-reat denunzjat ikun wiehed prosegwibbli *ex officio* u li jikkumporta piena ta' aktar minn tlett snin prigunerija; u 2) jekk is-soggett materjali tar-reat ikun ghadu jezisti u cioe jekk ikunu jezistu tracci materjali tar-reat. Id-denunzjat mhux obbligat jiddeskrivi l-istat tas-suggett materjali bid-dettalji kollha tieghu, jew li jsemmi l-istrument u l-mod li bih dan 1-istrument seta' gab 1-effett. Dak ghandu jinizulta mill-inkjesta u huwa propju 1-iskop li ghalih issir l-inkjesta.

Illi dwar 1-iskop ta' 1-Inkjesta dwar l-*in genere* u r-rwol tal-Magistrat Inkwirenti kelllha opportunita tippronunzja ruhha 1-Qorti ta' l-Appell Kriminali fil-kawza **Repubblika ta' Malta vs Jason Calleja** **(3.7.1997)** :

> "*Il-Magistrat Inkwirenti fikors tal-Inkjesta…ma jagixxiex Qorti Istruttorja, izda bhala Mngistrat ut sic……*
>
> *Stabbilit li 1-Magistrat Inkwirenti f'Inkjesta ma jagixxiex bhala Qorti Istruttorja, x'inhija allura l-funzjoni tieghu? M'hemmx dubbju li l-ewwel konkluzjoni hija fl-Inkjesta huwaanqas m'ghandu l-funzjoni ta' Qorti ta' Gudikatura Kriminali. Certament huwa persuna intiga mill-Ligi stess bhala ta' importanza fondamentali fil-process tar-ricerka ghall-verita izda l-Magistrat Inkwirenti m'ghandux il-funzjoni li jistabilixxi l-htija jew l-innocenza ta' xi persuna, indiziata jew mhijiex…*
>
> *In linea general, il-Magistrat Inkwirenti hu fdat lilu l-inkarigu li fil-kazijiet previsti mill-istess titolu* ***jinvestiga ir-reat jew il-fatt rapport lilu u/jew izomm access li l-Ligi tipprevedi*** *u fl-ahharnett* ***jirredigi l-proces verbal*** *li l-Ligi stess tirregola u tattribwilx valur probatorju.* ***Dan kollu jifforma parti integrali mill-process geerali tar-ricerka tal-verita u jikkonsisti principalment fil-gbir u l-preservazzjoni ta' dawk il-provi kollha diretti u indiretti li l-Magistrat Inkwirenti jirnexxielu jiddentifika bhala pertinenti***

***ghall-grajja jew reat li jkun qed jinvestiga**. Bhala tali, u kuntrarjament ghal dak li jigri f'certi sistemi kontinentali, il-Magistrat Inkwirenti mhux parti mill-Pulizija u wisqanqas mill-Prosekuzzjoni; anzi jidher car li fis-sistema taghna huwa årevist biex f'numru ta' kazijiet serji li l-ligi stess tispecifika, l-investigazzjoni ma ssirx biss, u l-provi ma jingabrux u ma jigux preservati biss mill-Pulizija, izda ukoll anzi essenzialmente minn persuni indiepdenti mill-poter ezekuttiv tal-Istat u li jiggarantixxi li r-ricerka tal-verità ma tkunx inkwinata minn xi interess hlief dak suprem li kollot isir skond il-haqq u l-gustizzja. Rwol dan li Lord Tucker, fl-appell quddiem il-Privy Council in re Regina vs George Terreni, obiter iddeskriva bhala a good way of preserving evidence.*

*S'intendi certi decizjonojiet il-Magistrat Inkwirenti irid bil-fors johodhom, anzi jista' jigi affermat li minghajr l-ezercizzju ta' din il-funzjoni, l-ufficju tieghu, f'diversi kazijiet jisfa bla sens…….**Hi certament il-funzjoni tal-Magistrat Inkwirenti li jinvestiga, okkorrendo permzz ta' esperti, ic-cirkostanzi kollha tal-kaz u jipprova jasal ghal konkluzjoni dwar jekk verament sarx ir-reat u jekk hemmx provi tali li jippuntaw lejn xi hadd partikolari li jista' jigi investigat ulterjorment jew addiritttura akkuzat**.*

*Certament mhijiex il-funzjoni tal-Magistrat Inkwirenti li jiddeciedi li ghar-reat investigat minnu huwa certament jew probabilment responsabbli xi hadd partikolari, ghax kif inghad huwa ma jagixxix qua Qorti, la ta' Istruttorja u annas ta' Gudikatura. **Izda certament hija certament il-funzjoni tieghu li jiddeciedi l-ewwel hemmx provi sufficjenti li verament sar reat u t-tieni jekk a bazi tal-provi—indipendentement mill-apprezzamento taghhhom—hemmx provi bizzejjed biex jinghad li xi hadd partikolari jista' possibilment ikun passibbli ghal proceduri kriminali**. Dan mhux biss jikkostitwixxi funzjoni tal-Magistrat Inkwirenti, izda fil-fehma ta' din il-Qorti huwa addirittura id-dover tieghu. Jigi ripetut li l-istitut tal-Magistrat Inkwirenti evidentement inholoq biex kemm hu possibbli certi indagnijiet li jistghu iwasslu ghall-kxif ta' reati u/jew ta' persuni responsabbli ghalihom jew li jistghu ikunu necessarji f'certi eventi serji, dawn isiru bl-ikbar serjeta u 'l fuq mis-suspett jew l-influwenza diretta jew indiretta tal-poter ezekuttiv tal-Istat."*

llli fis-sentenza moghtija mill-Prim Awla tal-Qorti Civili (Sede Kostituzzjonali) fil-kawza f1-ismijiet Il-Kummissarju tal-Pulizija George Grech vs ld-Direttur Generali u Registratur tal-Qrati u 1-Avukat Gcnerali (17.1.2022), din il-Qorti irribadiet il-principju li inkjesta tinzamm biex jigi determinat jekk hemmx tracci jew elementi ta' xi reat li ghalih xi persuna tista' tkun passibbli kriminalment; dik il-Qorti qalet hekk:

> "*Fuq rapport, denunzja jew kwerela, li fuqhom ghandhom isiru proceduri, maghmula mill-PuLizija Ezekuttiva jew lil Magistrat, ghandhom jibed procedure. Jistghu isiru accessi, jinstemghu xhieda, jigu elevati oggetti, nominati esperti biex jaghmlu ezamijiet tal-istess oggetti u jigu preparati rapporti. Il-Magistrat jista' jordna l-arrest ta' kull persuna li waqt l-access jikxef li hija hatja, jew li kontra taghha jkunu ingabru indizji bizzejjed. Jista' jordna l-qbid ta' oggetti u tfittxija f'postijiet—554.* ***Bazikament l-Inkjesta tal-Magistrat hi Intima ghall-preservazzjoni tal-provi*** *u hu b'mod eccezzjonali illi l-Magistrat jezercita l-poter tieghu taht l-artiklu 554(1) tal-Kodici u jordna l-arrest.* ***Suggett materjali tar-real ghandu jigi deskritt bid-dettalji kollha wiehed wiehed u ghandu jigi msemmi l-istrument u l-mod li bih dań l-istrument seta' jgib l-effett****. Waqt l-access jistghu jittihdu ritratti. Jistghu jinstemghgu diversi xhieda u Din ghandhom jigu mdahhla fil-process verbal.....L-Inkjesta Magisterjali b'ebda mod ma tista' tkun kunsidrata bhala "a trial" izda kostatazzjoni ta' fatti, ghalkemm il-Magistrat spiss jesprimi opinjoni prima facie dwar jekk ghandhomx jittiehdu proceduri fil-konfront ta' persuna jew persuni in konnessjoni ma'xi reat....*
>
> *F'kaz ta' guri, jew Kumpilazzjoni jinghad li bniedem ghadda guri jew Kumpilazzjoni. Izda f'kaz ta' Inkjesta mhux legalment ezatt u korrekt dak li jghid ir-rikorrent fl-ewwel paragrafu tar-rikors tieghu u cjoe illi hu kien ghaddej inkjesta;* ***fil-verita tkun qed issir Inkjesta dwar allegazzjonijiet illi jinvolvu lir-rikorrent. Dak li qed jigi ind agat u investigat fl-Inkjesta hu l-veracita tal-allegazzjonijiet li setghu saru fil-konfront tar-rikorrent u biex jigi determinat jekk hemmx tracci jew elementi ta' xi reat li ghalih xi persuna (jista' jkun kemm ir-rikorrent kif ukoll xi persuna ohra inkluz min ghamel l-allegazzjonijiet tista' tkun mitliuba tirrispondi ghalihom***[21]*."*[22]

21 dawn l-istess principji gew ripetuti verbatim f'sentenza ohra ta' dik il-Qorti deciza fis-17.01.2022 ukoll: Karl Heinrich Muscat vs Avukat Generali et.

22 is-sottolinear huwa KOLLU tal-Magistrat Dr Doreen Clarke.

Illi minn qari tas-subartikolu (1) tal-artikolu 546 u tenut kont ta' dak li tipprovdi l-gurisprudenza hawn kwotata ghandha tkun cara id-distinzjoni fl-imsemmija dispozizzjoni bejn dawk li huma r-rckwiziti rikjesti biex issir inkjesta u dak li huwa 1-iskop ta' 1-inkjesta. Id-denunzjant ghandu jfisser il-fatti b'l-irqaqat kollha taghhom u li wassluh biex jissusspetta li sar reat, ghandu, kemm jista' jkun jaghti dawk il-partikolaritajiet meht-iega biex jaccertaw ir-reat u li jistabilixxu n-natura tieghu u ghandu jindika min huma 1-pcrsuna susspettati. Jekk ir-reat huwa wiehed li jikkomporta piena ta' aktar minn tlett snin pri-gunerija u s-soggett materjali tar-reati ghadu jezisti allura ssir inkjesta bicx jigi preservati u deskritti dawk il-provi u biex jigi aaccertat jekk verament sarx ir-real (l-istrumenti u kif setghu gabu dak 1-effett) u jekk hemmx provi tali li jippuntaw lejn xi hadd partikolari li jista' jigi investigat ulterjorment jew addirit-tura akkuzat.

llii ghalhekk d-denunzjant mhux tenut ifforni hu, lill-Magistrat li ntalab jordna li ssir inkjesta, it-tracci materjali tar-reat, ossia il-provi li permezz taghhom jista' jigi accertat jekk verament sehhx reat jew le. Dawk it-tracci jew provi jridu jigu migbura, preservati u deskritti fil-kors ta' l-inkjesta; dak li obbligat jagh-mel id-denunzjant huwa li jforni 1-informazzjoni kollha dwar il-fatti relevanti u dwar il-prov i li ghandhom jigu preservati.

lkkunsidrat

Illi din 1-ahhar kunsiderzzjoni twassal ghal ilment iehor tal-persuni indikati bhala suspettati mir-rikorrenti, cioe in-nuqqas ta' provi li jsostnu dak li qed jallega r-rikorrent, u 1-inammissi-bilita ta' dawk il-provi li huwa fil-fatt produca mhux biss f'dan 1-istadju imma ankc f'kwalunkwe proceduri penali li jistghu jkunu indikati.

Illi 1-Magistrat sottofirmat ma tikkondividiex dan il-hsieb propju ghaliex kif intqal aktar '1 fuq issir inkjesta propju biex jigu prescrvati t-tracci materjali (il-provi) tar-reat li huwa alle-gat li gie kommess u biex dan isir bil-kawteli kollha li trid il-Ligi u b'mod li 1-prova tkun ammissibbli f'eventwali proceduri penali jekk dawn javveraw ruhhom. Biex jinghata ezempju wiehed jista' jirreferi ghal recordings mehuda minn CCTV meta il- kommissjoni ta' delitt jew xi parti minnu tinqabad f'filmat. Jekk denunzjant ikun jaf b'1-ezistenze ta' dan il-filmat fid-de-nunzja ghandu jghid li jezisti dan il-filmat pero mhux obbligat jipprezenta kopja tieghu mad-denunzja. Anke jekk jipprezenta xi kopja li jirnexxielu jottjena, jibqa' l-obbligu tal-Magistrat Inkwirenti, permezz ta' l-esperti relattivi, li jaccerta li dak il-fil-

mat jigi deskritt u preservat bil-kawteli kollha li trid il-Ligi b'mod li tigi salvagwardjata ic-*chain of custody* u tigi zgurata l-awtenticita u l-ammissibilita tal-filmat bhala prova f'proceduri penali. Il-kopja tal-filmat li jkun ottjena d-dcnunzjant (li ma tistax titqiex prova ammissibili minhabba l-mod kif ottjenuta) tista' taghti aktar sahha lill-allegazzjoni tieghu li sar reat u li hemm provi x'jigu preservati; il-preservazzjoni u d-deskrizzjoni pero tibqa fil-mansjoni tal-Magistrat Inkwirenti.

……

Illi tenut kont tas-suespost, tenut kont li r-rikorrenti jelenkaw sensiela ta' fatti li jindikaw li seta' gie kommes reat, tenut kont li huma jindikaw bi precizjoni a bazi ta' dawn il-fatti liema reati setghu gew kommessi; u peress li s-suggett materjali ta' dawn ir-reati ghadu jezisti hija l-fehma tal-Magistrat sottofirmat li r-rekwiziti kollha rikjesti ai termini tal-artiklu 546 gew sodisfatti u t-talba tar-rikorrenti ghat-tnedhija tal-Inkjesta hija gustifikata." "

2. Mid-digriet tal-Qorti Kriminali per Sinjura Imħallef Edwina Grima fid-29.11.2019 għat-talba tal-*in genere* li kienet saret dwar il-VGH minn Repubblika:

"Illi dwar l-ilment ventilat mill-appellanti fir-rigward tal-interpretazzjoni li ghandha tigi moghtija lill-artikolu 546(4A) meta abbinat mal-artikolu 546(1) tal-Kodici Kriminali, din il-Qorti, kif ippresjeduta, kellha diga okkazjoni tesprimi ruhha u tistqarr minnufih illi ma tistax taqbel ma' dak mistqarr mid-denunzjati/appellanti fl-aggravju minnhom intentat.

Illi jibda biex jinghad illi l-ligi, kemm fl-artikolu 537 tal-Kodici Kriminali u cioe' meta d- denunzja issir lill-Pulizija Ezekuttiva, kif ukoll meta din issir lill-awtorita gudizzjarja u cioe' lil Magistrat permezz tal-procedura odjerna, tohloq il-formalita tal-kitba ghad- denunzja jew rapport u dan sabiex id-denunzjant jesponi b'mod car il-fatti illi fuqhom huwa qieghed isejjes ir-rapport tieghu. Dan ghaliex:

"Il-formalita' tal-kitba dwar il-fatti ddenunzjati (artikolu 537) hija ovvjament diretta biex jigi evitat kull ekwivoku dwar il-fatti ddenunzjati, u biex tigi assikurata l-fidatezza u l-attendibilita' tad-denunzja.[23] *"*

Illi bl-istess kejl allura l-legislatur ried illi meta din meta din issir quddiem il-Magistrat, dawn il-fatti ukoll jigu indikati kif ukoll tigi indikata l-persuna suspettata u dan sabiex l-istess ikollha jedd twiegeb ghal dan ir-rapport maghmul fil-konfront taghha. Dan kollu sabiex jigi assigurat, kif inghad fis-

23 Il-Pulizija vs George Grech 22/07/1996

sentenza hawn fuq iccitata "il-fidatezza u l-attendibilita" tad-denuznja meta dan issir mic-cittadin. Il-Qorti tista' tifhem madankollu illi c-cittadin privat li jaghmel uzu mill-procedura unika imfassla fl-artikolu 546(4A) tal-Kodici Kriminali ma jistax ikollu l-ghoddu kollha ghad-disposizzjoni tieghu sabiex ikun jista' jressaq 'l quddiem il-provi in sostena tal-investigazzjoni minnu mitluba. Dan huwa fil-fatt l-ghan tal-in genere u cjoe sabiex jigu migbura u ippreservati l-provi kollha li jistghu jkunu pertinenti ghalbiex jigi stabbilit jekk twettaqx xi reat u jekk jistax ikun hemm persuna jew persuni passibbli ghal proceduri penali meta ghandu jigi deskritt "is-suggett materjali tar-reat bid-dettalji kollha wiehed wiehed u ghandu jigi msemmi l-istrument u l-mod li bih dan l-istrument seta' jgib l-effett[24]*."*

Jidher illi dawn il-provi ghadhom jezistu biex b'hekk l-istrument li bih seta' gie kommess ir-reat jista' jigi ippreservat, tant illi kif inghad diga' hemm inkjesta dwar l-in genere fuq saqajha marbuta mal-istess fatti rappurtati mid-denunzjanti fid-denunzja odjerna. Id- denunzjanti fil-fatt sahansitra jezebixxu kopji ta' kuntratti u dokumenti u jindikaw ukoll diversi socjetajiet kummercjali u persuni ohra li jistghu jitressqu biex jaghtu x-xiehda taghhom waqt l-in genere.

Issa id-denunzjati/appellati jishqu illi dawn il-fatti kif rappurtati mid-denunzjanti huma biss serje ta' kummenti u kongetturi li lanqas jindikaw il-mod kif huma bhala persuni suspettati setghu kkomettew dawn ir-reati. Kwindi din fil-fehma taghhom tista' tammonta biss ghal kritika politika u mhux ghal kummissjoni ta' xi reat. Fir-risposta taghhom jidhlu fil-mertu tal-fatti u r-reati abbinati mal-istess, ezercizzju li madanakollu ma jistax isir minn din il-Qorti, f'dan l-istadju, ghaliex kif diga' sottolinjat, dan huwa biss ix-xoghol tal-Inkwirenti. Per ezempju meta l-appellanti isemmu r-reat tal-hasil tal-flus u r-rekwiziti marbuta mal-istess, indikati komunement bhala dawk ta' placement, layering u integration b'referenza ghall-allegat flus riciklat, dawn il-fatti jistghu jemergu biss mill-istharrig li isir fl-in genere u certament mhux il-kompitu ta' din il-Qorti li tinvestiga u tara x'sar per ezempju mill-flejjes mghoddija lil grupp VGH minn fondi pubblici. L-istess fir-rigward tar-reati l-ohra indikati mid-denunzjanti.

Illi l-Qorti ma tistax taqbel mad-denunzjati/appellati illi l-fatti esposti huma kongetturi billi dawn il-fatti huma fid-dominju pubbliku, fatti li fil-fehma tad-denunzjanti ghandhom jigu mistharrga sabiex jigi stabbilit jekk kienx hemm il-kummissjoni tar-reati kollha jew uhud minnhom li huma jid-deskrivu fid-dettall.

Illi kif abbilment espost fid-decizjoni impunjata, l-inkjesta fit-termini tal-artikolu 546 tal- Kodici Kriminali ghandha issir jekk ir-reat li dwaru tkun saret dik id-denunzja jkun reat li igorr mieghu iktar minn tlett snin prigunerija, is-suggett materjali tar-reat ghadu jezisti tant illi ghandu jigi deskritt l-istat tieghu bid-dettalji kollha u l-istrument adoperat sabiex igib l-effett allegatament inkriminatorju. Illi l-manzjoni risposta f'idejn il-Magistrat fit- termini tal-artikolu 546(4A) tal-Kodici Kriminali u f'idejn din il-Qorti, meta jkun hemm talba ghar-revizjoni ta' dik id-decizjoni, mhijiex sabiex tqies jekk prima facie giex kommess xi reat, izda biss sabiex tara li

24 Artiklu 546(1) tal-Kodici Kriminali

jezistu r-rekwiziti mehtiega fil-ligi sabiex tigi varata inkjesta dwar l-in genere.

Issa f'dan il-kaz gie indikat ir-reat jew reati li jista'/setghu gie/gew kommess/i, liema reati igorru piena ta' aktar minn tlett snin prigunerija. Il-persuni suspettati huma indikati mid-denunzjanti tant illi anke jigi minnhom indikat ghal liema reati huma jistghu jkunu passible, u s-suggett materjali tar-reat ghadu jezisti tant illi jigu esposti serie ta' fatti u esibire diversi dokumenti flimkien mad-denunzia, oltre ghal fatt illi uhud mill-provi jistghu jitqieghdu ghad-disposizzjoni tal-Magistrat Inkwirenti mill-entitajiet pubblici u governativi. Dan ma jfissirx b'daqshekk illi l-persuni suspettati ghandhom ikunu soggetti ghal xi proceduri kriminali f'dan l-istadju, izda biss li ghandha ssir inkjesta sabiex jigi stabbilit jekk il-fatti rapportati jammontawx prima facie ghar-reati infraskritti, decizjoni imbaghad li rispetta lil Magistrat Inkwirenti u mhux lil din il-Qorti u lil Magistrat qabilha.

Jerga' jigi ribadit illi l-mansjoni tal-Magistrat fit-termini tal-artikolu 546(4A) tal-Kodici Kriminali huwa sabiex jigi stabbilit jekk war li ssir id-denunzja jezistux ir-rekwiziti biex issir l-Inkjesta dwar l-in genere u mhux biex jigi stabbilit il-fondatezza o meno tar-rapport maghmul u dan ghaliex b'daqshekk dan ma ifissirx illi l-fatti kif rapportait necessarjament ser iwasslu ghal xi proceduri kriminali kontra s-suspettati jew kontra xi persuni ohra, izda biss illi ghandha issir l-investigazzjoni sabiex jigi stabbilit dan il-fatt.

Illi finalment ghalkemm il-Qorti tqies illi l-Avukat Generali ma ghandux locus standi f'dawn il-proceduri, u dan sabiex ma ikunx hemm pregudizzju ghar-rwol tieghu kif imhaddan fl-artikoli 550A u 569(6) tal-Kodici Kriminali, madanakollu huwa gie notifikat bl-atti ghal fini ta' kompletezza fil-proceduri fejn fir-risposta tieghu rrimetta ruhu ghad- decizjoni tal-Qorti.

…….

Ghal dawn il-motivi il-Qorti taqta' u tiddeciedi billi tichad l-appell maghmul mid- denunzjati u tikkonferma d-decizjoni appellata fl-intier taghha."

3. **Mid-Digriet tal-Maġistrat tal-Għassa Dr C Farrugia Frendo tas-7 ta' Novembru 2019 fuq talba għal *in genere* magħmula minn Emanuel Delia dwar bejgħ ta' passaporti.**

"Hekk kif issir id-denunzja u r-reat rappurtat ikun igår piena ta' aktar minn tlett snin prigunerija, u ukoll meta s-suggett materjali tar-reat ikun ghadu jezisti, l-Magistrat jipprocedi ghall-0investigazzjoni hekk imsejha in genere.

Ghalhekk meta denunzja ssir ai termini tal-Artikolu 546(4A) tal-Kapitolu 9 tal-Ligijiet ta' Malta, lill-Magistrat minflok lill-Pulizija, bil-Magistrat allura irid jiehu decizjoni jekk ghandhiex issir inkjesta dwar id-denunzja maghmula o meno u cjoe jekk jezistux dawk il-prerekwiziti fil-ligi mehtiega biex issir dik l-inkjesta u mhux li jigi investigat prima facie jekk sehhx xi delitt mid-denunzjati. L-artiklu 546 ighid hekk:

"Bla ħsara tad-dispożizzjonijiet tas-subartikoli li jiġu minnufih wara dan, wara r-rapport, id-denunzja jew il-kwerela ta' reat li jista' jingħata l-piena ta' priġunerija għal iżjed minn tliet snin, u jekk is-suġġett materjali tar-reat ikun għadu jeżisti, għandu jiġi deskritt l-istat tiegħu, bid-dettalji kollha wieħed wieħed, u għandu jiġi msemmi l-istrument u l-mod li bih dan l-istrument seta' jġib l-effett. Għall-finijiet ta' kull investigazzjoni bħal din, għandu jsir aċċess fuq il-post."

Dan ifisser illi l-Inkjesta ghandha issir jekk ir-reat li dwaru tkun saret dik id-denunzja jkun reat li jgorr mieghu piena iktar minn slett snin prigunerija, s-suggett materjali tar-reat ghadu jezisti tant illi ghandu jigi deskritt l-istat tieghu bid-dettalji kollha u l-istrument adoperat sabiex igib l-effett allegatament inkriminatorju.

***L-artikolu 546(4A)** ighid hekk:*

"Meta r-rapport, id-denunzja jew il-kwerela jsiru lil Magistrat taht dan l-artiklu minn xi persuna li ma tknu l-Avukat Generali jew ufficjal tal-Pulizija……..li l-prerekwiziti mehtiega biex isir dak l-access ikunu jezistu."

Ghalhekk ir-rekwiziti sabiex il-magistrat tordna ftuh ta' Inkjesta ta' dan it-tip huma tlieta:

1. *Id-denunzja;*
2. *Reat li ghalih tista' tinghata l-piena ta' aktar minn tlett snin prigunerija;*
3. *Li s-suggett materiali tar-reat ikun ghadu jezisti.*

…….

Illi ladarba l-Magistrat jara li dawn il-prerekwiziti gew sodisfatti u li s-suggett materjali tar-reat ikun ghadu jezisiti, allura l-Magistrat trid tiftah Inkjesta.

Illi certament il-Magistrat li jkun qed ritratta rikors bhal dan ma jistax joqghod jidhol u jara jekk jezistux provi sal-grad tal-prima facie jekk ghandhiex tinfetah inkjesta jew le, ghaliex inkella l-Magistrat jkun qed juzurpa x-xoghol tal-Magistrat Inkwirenti u sussegwentement tal-Qorti tal-magistrati waqt il-kumpilazzjoni. Lanqas ma jfisser li jekk jigi ordnat li tinfetah Inkjesta allura jirrizulta fiz-zgur li r-reat li qed jigi allegat huwa prosegwibbli.

Id-denunzjant mhux tentu kont li jfoprsi provi f'dan l-sitadju izda ghalkemm il-Magistrat f'dan l-istadju mhux tenut jevalwa l-provi sal-grad tal-prima facie, tal-andas id-denunzjant irid jaghti hjiel fir-rikors tieghu jew permezz tax-xhieda tieghu ftit ifnormazzjoni dwar xi provi il-Magistrat ghandu jippreserva fl-sitadju ta' l-Inkjesta. Xi forma ta' direzioni jew hjiel ghandu jinghata ghaliex jekk ma jkunx hekk allura jkun hemm riskju li tinfetah inkjesta fuq suppozizzjonijiet u semplici allegazzjonijiet b'dan li l-Magistrat Inkwirenti jintbaghat fuq fishing expedition…..Qed jinghad hekk ghaliex jekk ma jkunx hemm provi x'jigu preservati allura inutili tinfetah Inkjesta u jsiru spejjez ghalxejn.

Fil-fatt din il-Magistrat ser tikkwota estensivament id-digriet tal-Magistrat Doreen Clarke datat 29.4.2019, u dan peress li gie prezentant bhala parti mill-Korp ta' dokumenti esebiti mar-rikors promotur ta' manwel Delia f'dawn il-proceduri:

"Illi ghalhekk id-denunzjant mhux tenut ifforni hu, lill-Magistrat li intalab jordna li ssir Inkjesta, it-tracci materjali tar-reat, ossia il-provi li permezz taghhom jista' jigi accertat jekk verament……..

…….u d-decizjoni pero tibqa' fil-mansjoni tal-Magistrat Inkwirenti."

4) **Digriet moghti mis-Sur Magistrat Dr Philip Galea Farrugia fit-12.08.2024 fejn laqa' t-talba ta' Dr Jason Azzopardi ghall-ftuh ta' Inkjesta Magisterjali fuq korruzzjoni f'Identity Malta**.

*"..l-artiklu 546(4A) tal-Kodici Kriminali jistila b'mod car u inekwivoku illi l-access ghandu jsir **biss**[25] kemm-il darba jkunu jezistu l-prerekwiziti mehtiga";*

.... "illi l-prerekwiziti mehtiega li jirreferi ghalihom is-subartikolu (4A) tal-artiklu 546 tal-Kodici Kriminali huma li:

1. *Ir-reat denunzjat ikun suggett ghal piena ta' iktar minn 3 snin prigunerija….u li*

2. *Is-suggett materjali tar-reat denunzjat jkun ghadu jezisti.*

*Una volta jkunu jissusistu dawn iz-zewg (2) prerekwiziti, il-Magistrat **ghandu**[26] jaghmel access, ossia jiftah Inkjesta….*"

Applikati dawn il-principji ghal dan ir-rikors odjern, l-esponent umilment jemmen li wera li l-prerekwiziti mitluba mill-artiklu 546(4A) gew soddisfatti minnu.

25 Emfazi tal-Magistrat Dr Galea Farrugia
26 Emfazi tal-istess Magistrat Dr P Galea Farrugia

KONKLUZJONI

Ghaldaqstant u in vista tas-suespost, u filwaqt li minn issa r-rikorrent qed ipoggi lilu nnifsu ghad-disposizzjoni totali tal-Magistrat Inkwirenti jekk ihoss/thoss mehtieg minnu, jitlob bil-qima li l-Magistrat jiftah **B'MOD URGENTI** access u jibda "*in genere*" in konnessjoni mal-artikli tal-Ligi li r-rikorrent qed jindika li fuq bazi *prima facie* gew miksura

u cjoe l-**Artikli 48A, 115, 118, 124, 125, 126, 127, 293 u 294 (dawn aggravati bl-artiklu 141 tal-Kap.9) tal-Kodici Kriminali, kif ukoll id-delitt ta' hasil ta flus fl-artiklu 3 tal-Kap.373 (skond id-definizzjoni ta' *money laundering* fl-artiklu 2 tal-Kap.373) tal-Ligijiet ta' Malta,**

u dawn bl-applikazzjoni tal-artikoli 18 u 42 tal-Kodici Kriminali

mill-persuni suspettati On Clint Camilleri, l-Perit Godwin Agius, John Borg u l-Perit Andrew Ellul (kif fuq spjegat, sew bhala awturi u sew bhala komplici)

u dan stante li s-suggett materjali tad-delitti ghadu jezisti u huwa impellenti li jkun ippreservat mill-iktar fis.

Hija Inkjesta Magisterjali BISS li tista' u ghandha l-mezzi u l-awtorita tordna l-preservazzjoni tas-suggett materjali tad-delitti, inkluz billi jkunu issekwestrati s-servers u mobile phones u devices elettronici tal-ufficjali pubblici indikati hawn fuq.

Dan dejjem taht kull ordni, direttiva u provvediment li l-Magistrat ihoss mehtieg.

Avv. Jason Azzopardi

jason@azzopardibusiettaadvocates.com

Indirizzi persuni suspettati:

On. Clint Camilleri, (ID 115088M), residenti: 19, Diana, Triq Cicciano, Nadur, Ghawdex, jew Ministeru ta' Ghawdex, Pjazza San Frangisk, Rabat, GHAWDEX;

John Borg, Segretarju Permanenti fil-Ministeru t'Ghawdex. Indirizz: Ministeru ta' Ghawdex, Pjazza San Frangisk, Rabat, GHAWDEX;

Perit Andrew Ellul, 42 Triq il-Kungress Ewkaristiku, Mosta, (Mobile 79 499 442)

Perit Godwin Agius, 37, Triq San Pawl tal-Pitkali, Dingli (**residenza**). ((**Ufficji**: 60, Zebbug Street, Zebbug, Malta JEW Hercules House, St. Mark Street, Valletta JEW Engineering Resources Ltd, Sliema Road, Kappara, San Gwann, SGN 4419))