

**Fil-Prim' Awla tal-Qorti Ċivili  
Sede Kostituzzjonali**

**Frank Sammut (KI 39351M)**

vs.

**(1) L-Onorevoli *Speaker* tal-Kamra tad-Deputati Dr. Angelo Farrugia;**

**(2) Iċ-*Chairperson* tal-Kumitat tal-Kontijiet Pubbliċi L-Onorevoli Dr. Jason Azzopardi;**

**ilkoll fil-kwalità tagħhom premessa  
u in rappreżentanza tal-istess  
Kamra tad-Deputati u tal-istess  
Kumitat rispettivament**

**Rikors kostituzzjonali ta' Frank Sammut (KI 39351M)**

Jesponi bir-rispett –

1. Illi fit-23 ta' Jannar 2014, ir-rikorrent gie mgħarraf li l-Kumitat tal-Kontijiet Pubbliċi ordna li huwa jagħti x-xhieda tiegħu dwar ir-rapport tal-Awditur Generali intitolat *An Analysis of the Effectiveness of Enemalta Corporation's Fuel Procurement* fil-5 ta' Frar 2014, u dana sabiex jirrispondi għall-mistoqsijiet li jistgħu jsirulu in konnessjoni mal-imsemmi rapport. Gie mitlub ukoll sabiex jieħu miegħu xi dokumenti li għandu disponibbli f'idejh u li huma relatati mal-każ. Kopja ta' din l-ittra hija annessa ma' dan ir-rikors u mmarkata **Dok FS1**.
2. Illi mal-istess ittra, giet annessa kopja tal-*Guide for witnesses appearing before the Public Accounts Committee of the House of Representatives, Parliament of Malta* mahruġa f'Ottubru 2011, li jstipulaw *inter alia* fil-paragrafi numerati 4 u 5 l-konsegwenzi tan-nuqqas ta' apparenza ta' persuna lit kun giet imħarrka sabiex tixhed quddiem il-Kumitat. Kopja ta' dawn il-linji gwidi hija annessa u mmarkata **Dok FS2**.
3. Illi r-rikorrent kien tressaq quddiem l-Onorabbli Qorti tal-Magistrati bħala Qorti Strutturja akkużat, fost akkużi oħra, b'korruzzjoni u hasil ta' flus, liema

proċeduri għadhom pendenti quddiem l-istess Onorabbli Qorti presjeduta mill-Magistrat Antonio Vella u jinstabu differiti għat-13 ta' Marzu 2014.

4. Illi r-rikorrent deher quddiem il-Kumitat tal-Kontijiet Pubbliċi nhar il-5 ta' Frar 2014, kif debitament ingunt, fejn spjega permezz tal-Avukat tal-fiduċja tiegħu li huwa ma seta' ma jirrispondix għall-ebda mistoqsija *stante* li huwa kien gie akkużat b'reati li kienu potenzjalment konnessi mal-investigazzjoni li kienet qiegħda tiġi kondotta mill-istess Kumitat u għal din ir-raġuni, kien qiegħed jipprevalixxi ruħu mid-dritt tas-silenzju.
5. Illi l-intimat *Chairman* tal-Kumitat ġibed l-attenzjoni tar-rikorrent għar-*ruling* tal-Onorevoli *Speaker* intimat fl-10 ta' Diċembru 2013 dwar xhieda quddiem l-istess Kumitat, kopja ta' liema *ruling* hija annessa u mmarkata **Dok FS3**, li essenzjalment jistipula li minkejja li persuna akkużata għandu d-dritt li ma jwegibx domandi li jistgħu jinkriminawh, fl-aħħar mill-aħħar il-membri tal-Kumitat tal-Kontijiet Pubbliċi għandhom id-dritt li jagħmlu kull mistoqsija li jridu u f'każ li jkun hemm oġġezzjoni minn xi membru dwar jekk xi mistoqsija partikolari tkunx inkriminanti fil-konfront tax-xhud, tkun *ruling* tal-*iSpeaker* li tiddeterminna jekk ix-xhud għandux iwieġeb għal dik il-mistoqsija jew le.
6. Illi fl-umli opinjoni tar-rikorrent, ir-*ruling* tal-*iSpeaker* intimat tal-10 ta' Diċembru 2013 suriferit ma japplikax għall-każ odjern u, fi kwalunkwe każ, ir-*ruling* jikser id-drittijiet fundamentali tiegħu, senjatament id-dritt ta' smiġħ xieraq kif sanċit, *inter alia*, mill-Artikolu 39 tal-Kostituzzjoni ta' Malta u l-Artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem, liema konvenzjoni ġiet trasposta fil-Liġijiet ta' Malta permezz tal-Att dwar il-Konvenzjoni Ewropea, Kap. 319 tal-Liġijiet ta' Malta, u dan in vista tal-fatt li r-rikorrent *qua* xhud quddiem il-Kumitat tal-Kontijiet Pubbliċi preżentament jinstab akkużat b'reati konnessi mal-investigazzjoni li qiegħed jikkonduċi l-istess Kumitat tal-Kontijiet Pubbliċi u li dwaru l-istess Kumitat irid isaqsi mistoqsijiet lir-rikorrent.
7. Illi l-obbligu li xhud jirrispondi għal kull mistoqsija magħmula lilu, ukoll skond kif spjegat fil-linji gwida fuq imsemmija (Dok FS2 suriferit u anness), senjatament fil-paragrafu numru 16, li tistipula li "*subject to guideline 19 below, if a witness, personally, or through his/her legal counsel, objects to a question asked by an individual Committee member, he/she is obliged to reply unless any one member requests that the issue of admissibility be referred to the Speaker for his/her decision which decision shall bind the Committee,*" jikser id-dritt fundamentali tiegħu ta' smiġħ xieraq kif protetti, *inter alia*, mill-Artikolu 39 tal-

Kostituzzjoni ta' Malta u l-Artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem.

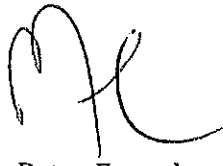
8. Illi l-*Speaker* tal-Kamra tad-Deputati intimat ċertament mhux *au courant* mal-atti proċesswali kriminali pendenti fil-konfront tar-rikorrent, *multo magis* mal-linja difensjonali tar-rikorrent, u dak li għall-*Speaker* intimat jista' jidher innokwu jista' jkun kruċjali għat-teżi difensjonali mħaddna mill-istess rikorrent akkużat.
9. Illi *in oltre*, l-ebda *ruling* tal-*Speaker* ma tista' tipprovdi l-garanziji neċessarji sabiex jiġi garantit li d-dritt ta' smiġh xieraq tar-rikorrent mhux ser jiġi mittiefes.
10. Illi kif inhu risaput f'Malta, is-supremazija tal-Parlament hija soġġetta u limitata biss għall-limiti mposti mill-Kostituzzjoni u l-Kostituzzjoni ma torbotx biss liż-żewġ fergħat l-oħra tal-iStat, *ossia* l-Eżekuttiv u l-Ġudikatura, iżda torbot ukoll u bl-istess mod lill-Parlament, li wkoll ma jistax imur *oltre* l-limiti mposti mill-Kostituzzjoni.
11. Illi l-Parlament jagħmel il-Liġijiet biss bis-saħħa tal-Kostituzzjoni u jekk dik l-istess Kostituzzjoni titfarrak bin-naqriet, eventwalment tiflew l-awtorità suprema u aħħarija li suppost tgawdi.
12. Illi għal dawn il-fini għalhekk kellha tiġi istitwita l-odjerna proċedura fejn qiegħda umilment tintalab dikjarazzjoni minn din l-Onorabbli Qorti li, lil'hinn minn kull *ruling* li ta jew li jista' jagħti l-*Speaker* tal-Kamra tad-Deputati, il-Kostituzzjoni ta' Malta tipprevali fuq kull *ruling* u konsegwentement, xhud ingunt sabiex jixhed quddiem il-Kumitat tal-Kontijiet Pubbliċi jista' jipprevalixxi ruħu mid-dritt li ma jirrispondix mistoqsijiet li jistgħu jilledulu d-dritt ta' smiġh xieraq *in vista* tal-eżistenza ta' proċeduri kriminali dwar l-istess materja.

Għaldaqstant ir-rikorrent, għar-raġunijiet fuq premissi, umilment jitlob lil din l-Onorabbli Qorti jogħgobha:-

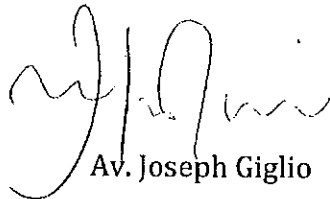
1. Tiddikjara li r-*ruling* mogħti mill-Onorevoli *Speaker* tal-Kamra tad-Deputati intimat fl-10 ta' Diċembru 2013 jikser id-dritt fundamentali tar-rikorrent għal smiġh xieraq kif sancit, *inter alia*, mill-Artikolu 39 tal-Kostituzzjoni ta' Malta u l-Artikolu 6 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem, in kwantu jobbligawh jirrispondi għal mistoqsijiet lili imressqa mill-membri tal-Kumitat tal-Kontijiet Pubbliċi li jistgħu jiksrulu d-dritt ta' smiġh xieraq.

2. Tiddikjara li l-linji gwida għax-xhieda maħruġa mill-Kumitat tal-Kontijiet Pubblici ta' Ottubru 2011 jiksru dritt fundamentali tar-rikorrent għal smiġh xieraq kif sanċit, *inter alia*, mill-Artikolu 39 tal-Kostituzzjoni ta' Malta u l-Artikolu 6 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem, in kwantu jobbligawh jirrispondi għal mistoqsijiet lilu imressqa mill-membri tal-Kumitat tal-Kontijiet Pubblici li jistgħu jiksru d-dritt ta' smiġh xieraq.
3. Konsegwentement, tiddikjara bħala nulla u bla effett fil-konfront tar-rikorrent ir-*ruling* mogħtija mill-Onorevoli *Speaker* tal-Kamra tad-Deputati tal-Parlament ta' Malta tal-10 ta' Diċembru 2013.

Bl-ispejjeż kontra l-intimati li huma minn issa ingunti in subizzjoni.



Av. Peter Fenech  
36, Triq l-Arcisqof  
Valletta VLT 1447



Av. Joseph Giglio

P.L. Joeline Pace Ciscaldi

17 FEB 2014

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bla dok/h..... (3)..... dokumenti

**Fil-Prim' Awla tal-Qorti Ċivili**  
**Sede Kostituzzjonali**

**Frank Sammut (KI 39351M)**

vs.


**(1) L-Onorevoli *Speaker* tal-Kamra tad-Deputati Dr. Angelo Farrugia;**

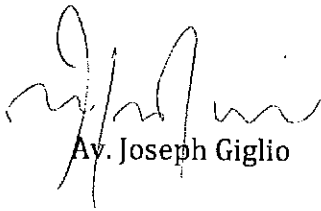
**(2) Iċ-*Chairperson* tal-Kumitat tal-Kontijiet Pubbliċi L-Onorevoli Dr. Jason Azzopardi;**

**ilkoll fil-kwalità tagħhom premessa u in rappreżentanza tal-istess Kamra tad-Deputati u tal-istess Kumitat rispettivament**

**Lista ta' xhieda**

1. Ir-rikorrent għall-konferma u elaborazzjoni tal-fatti kif minnu fuq esposti.
2. L-intimati in subizzjoni u sabiex jixhdu fuq l-istess fatti u r-retroxena tal-fatti.
3. L-*Speaker* tal-Kamra tad-Deputati tal-Parlament ta' Malta jew rappreżentant tiegħu, il-*Clerk of the House* u l-istaff klerikali tal-Parlament ta' Malta, ilkoll għall-konferma tal-fatti.
4. Ir-Reġistratur tal-Qrati Kriminali sabiex jikkonferma l-fatti.

  
Av. Peter Fenech  
36, Triq l-Arċisqof  
Valletta VLT 1447

  
Av. Joseph Giglio

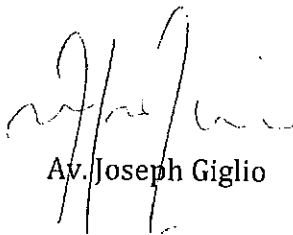
P.L. Joeline Pace Ciscaldi

## Lista ta' dokumenti

- Dok FS1** Kopja tat-taħrika datata 27 ta' Jannar 2014  
**Dok FS2** Kopja tal-linji gwida datati Ottubru 2011  
**Dok FS3** Kopja tar-*ruling* datata 10 ta' Diċembru 2013



Av. Peter Fenech  
36, Triq l-Arcisqof  
Valletta VLT 1447



Av. Joseph Giglio

P.L. Joeline Pace Ciscaldi

## Notifiki

Rikorrent: 'Stafford', Triq il-Patrijiet Tereżjani, Marsaxlokk

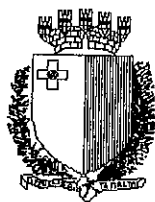
Intimati: (1) Onorevoli Speaker tal-Kamra tad-Deputati tal-Parlament ta' Malta, il-Palazz, Triq ir-Repubblika, Valletta

(2) *Chairperson* tal-Kumitat tal-Kontijiet Pubbliċi, il-Palazz, Triq ir-Repubblika, Valletta

## Notifika ulterjuri

Avukat Generali: Il-Palazz, Triq ir-Repubblika, Valletta

ls/ca/rks kost fs



House of Representatives

MALTA

Kamra tad-Deputati

Public Accounts  
Standing Committee

Kumitat Permanenti dwar  
il-Kontijiet Pubbliċi

Tel: 356 25596241

Fax: 356 25596264

23 ta' Jannar 2014

### Is-Sur Frank Sammut

Nirriferi għar-rapport tal-Awditur Ġenerali intitolat "*An Analysis of the Effectiveness of Enemalta Corporation's Fuel Procurement*" datat Lulju 2013 li hemm għad-diskussjoni quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubbliċi.

Permezz ta' dan l-avviż inti mitlub tagħti x-xhieda tiegħek dwar l-imsemmi rapport u tkun fil-Kamra tal-Kumitati fil-Palazz il-Belt Valletta **nhar l-Erbgħa, 5 ta' Frar 2014 fis-6:30 p.m.** sabiex tirrispondi għall-mistoqsijiet li jistgħu jsirulek in konnessjoni mar-rapport imsemmi. Inti mitlub ukoll sabiex iġġib miegħek xi dokumenti li għandek disponibbli f'idejk u li huma relatati ma' dan il-każ.

Ma' din l-ittra qed nibgħhatlek għall-informazzjoni tiegħek kopja tal-*Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives*.

**Anna Brincat**  
għaċ-Chairman - PAC

1302

**Guide for Witnesses appearing before  
the Public Accounts Committee of the House of Representatives,  
Parliament of Malta**

October 2011

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Clearly, the underlying principle must be that all protection afforded to witnesses under the Criminal Code CAP 9, the Code of Organisation and Civil Procedure CAP 12 and the Civil Code CAP 16, including protection from incrimination, shall be applicable to witnesses appearing before the Public Accounts Committee.

## **Guidelines**

### *Power to summon Witnesses*

1. Any Standing Committee and any Select Committee shall have power to summon witnesses and to order the production of documents and reports before it, at such time and place as may be indicated in the relative warrant and at such place and time to which the meeting of the Committee may be adjourned. Witnesses may be ordered to attend by means of a warrant issued by the Chairman of the relative Committee and signed by the Clerk; any oath or affirmation taken or made by any witness may be administered by the Chairman or by the Clerk attending such Committee (SO 132).
2. The House shall have power and authority to summon before the House itself or before any Committee thereof any person to give evidence or advice with regard to any matter within the jurisdiction of the House, subject to the provisions of the House of Representatives (Privileges and Powers) Ordinance (Cap. 179) (SO 164).

### *Invitation to appear before a Committee*

3. The final determination as to who will be invited to appear rests with the Committee.<sup>1</sup> The request is formally signed and sent out by the Clerk of the Committee.<sup>2</sup>
4. A person who, having been duly served with a copy of the warrant as prescribed in article 3 above, fails, without lawful excuse, to appear before the Committee, or having appeared before the Committee refuses to be sworn or, subject to guideline 19 below, to answer questions shall be guilty of contempt of the House and shall be liable to the penalties prescribed in article 11 of the House of Representatives (Powers and Privileges) Ordinance (CAP 113).<sup>3</sup>
5. A person who fails to attend before the Committee when so required as aforesaid may be compelled to attend by warrant of arrest issued by order of the House, signed by the Clerk thereof and executed by the Police, or by a messenger of the House.

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<sup>1</sup> Rulings by Speaker Michael Frendo of 11 October 2010 and 8 November 2010.

<sup>2</sup> House of Representatives (Powers and Privileges) Ordinance – CAP 113 (Art 5(1))

<sup>3</sup> House of Representatives (Powers and Privileges) Ordinance – CAP 113 (Art 8(1))



6. Whenever a witness or an expert is for any just cause unable to attend before the Committee, the Committee may appoint a person or persons, under such conditions or directions as in each particular case it may consider necessary or expedient, to receive, on behalf of the Committee, the evidence or opinion required. Such person or one of such persons shall be vested by the Committee with the power to administer the oath or affirmation.<sup>4</sup>
7. An oath or affirmation taken or made by a witness or by an expert before the Committee shall for the purposes of the Criminal Code be comparable to an oath or affirmation taken or made before a court in civil matters.<sup>5</sup>
8. Any questions concerning the procedural and administrative rules of the Committee are to be addressed to the Clerk of the Committee.

#### *Swearing-in of Witnesses*

9. Any witness appearing before the Committee may be required to take an oath or make a solemn affirmation, if the Committee so decides.<sup>6</sup>
10. The form of oath to be administered to witnesses shall be the following:

*You [A. B.] do swear (or do solemnly affirm) that the evidence which you shall give, shall be the truth, the whole truth, and nothing but the truth. So help you God.<sup>7</sup>*

11. Any oath or affirmation shall be administered by the Clerk of the Committee.

#### *Hearing of Witnesses*

12. All evidence is taken in public and members of the press can be present during these sessions. These sessions are streamed live on the Parliament's website and a transcript of the sessions are published.
13. Witnesses may make an oral presentation and/or present a written statement to the Committee concerning the subject being debated by the Committee. The Committee can decide that a written brief be read out in its entirety in order to be part of the session's record. A written statement, in any case, is to be appended to the minutes of the relevant Committee meeting.<sup>8</sup>
14. After the presentation by the Witness, the Members of the Committee may ask questions, as directed by the Committee Chair. Witnesses must answer all questions put by the Committee, subject to the protection granted to witnesses under the Laws of Malta, and in particular, without prejudice to guideline 19.

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<sup>4</sup> House of Representatives (Powers and Privileges) Ordinance – CAP 113 (Art 6)

<sup>5</sup> House of Representatives (Powers and Privileges) Ordinance – CAP 113 (9)

<sup>6</sup> Guide for Witnesses appearing before committees of the House of Commons (Canada), October 2008

<sup>7</sup> Criminal Code – CAP 9 (Art 632)

<sup>8</sup> Guide for Witnesses appearing before committees of the House of Commons (Canada), October 2008

15. The Committee can provide an informal indication of the possible lines of inquiry to Witnesses in order to assist them in preparing for the session, however, the questions actually put by the Members are not restricted to the lines indicated.

16. Subject to guideline 19 below, if a Witness, personally, or through his/her legal counsel, objects to a question asked by an individual Committee member, he/she is obliged to reply unless any one Member requests that the issue of admissibility be referred to the Speaker for his/her decision which decision shall bind the Committee.

A witness who, subject to guideline 19 below, refuses to answer questions may be reported to the House.

17. If the information requested is not immediately at hand, the Committee can ask for this information to be submitted in writing after the session.

#### *Parliamentary Privilege*

18. Members of the House, including Ministers, may refuse to appear as witnesses and thus may not be formally summoned to attend as witnesses before the Committee. The House shall be informed of such a refusal.<sup>9</sup>

19. No Witness is to be compelled to answer a question which might incriminate him/her.

#### *Evidence by the witnesses*

20. Witnesses are to answer questions put to them carefully, fully and honestly.

21. Witnesses shall be entitled to legal representation but questions will be put to the witness and answers shall be given by the witness and not by the lawyer representing him/her. The lawyer may only reply on behalf of the client on legal points that may arise.<sup>10</sup>

22. A question put to a witness may be objected to by a Member. In such a case, the witness and any strangers present at the proceedings are to withdraw until the matter is considered and a decision on how to proceed is arrived at.<sup>11</sup>

23. The Committee may concede for certain evidence to be taken *in camera* when the evidence relates to confidential matters of State or sensitive commercial information.<sup>12</sup>

24. Tampering with evidence given by a witness, somehow deterring him/her from giving evidence, or threatening a Witness who has appeared before a Committee may constitute a breach of privilege and may be treated as such by the House.<sup>13</sup>

<sup>9</sup> Erskine May p 759 (23<sup>rd</sup> Edition). This was also confirmed by the Clerk of the PAC, House of Commons (UK) – email dated 21 February 2011.

<sup>10</sup> This is over and above the provision in the COCP (Article 577(2)) which states that ‘Witnesses may not be assisted or advised by any person.’

<sup>11</sup> Erskine May p 762 (23<sup>rd</sup> Edition)

<sup>12</sup> Guide for Witnesses appearing before committees of the House of Commons (Canada), October 2008

<sup>13</sup> Guide for Witnesses appearing before committees of the House of Commons (Canada), October 2008

25. Subject to guideline 19 above, refusing to be sworn or make a solemn affirmation, refusal to answer questions, refusal to produce or destruction of documents in their possession and deliberately attempting to mislead a Committee is a contempt of the House which the House has the power to punish.<sup>14</sup>
26. False evidence given to the Committee is considered by the House as contempt, and as perjury if given under oath.<sup>15</sup>
27. The procedure established by Article 11 of the House of Representatives (Privileges and Powers) CAP 113 shall be followed in proceedings for contempt against any witnesses.

October 2011

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<sup>14</sup> Erskine May, p 130 (23<sup>rd</sup> Edition)

<sup>15</sup> Erskine May, p 725 (23<sup>rd</sup> Edition)

13.1.13

**RULING MOGĦTI MILL-ISPEAKER ANĠLU FARRUGIA FIS-SEDUTA NRU. 101  
tal-10 ta' Diċembru 2013**

Fil-5 ta' Diċembru 2013 l-Onor Jason Azzopardi kiteb lis-Sedja biex jitlob riling in konnessjoni max-xhud George Mario Farrugia li kellu jidher quddiem il-Kumitat dwar il-Kontijiet Pubbliċi u dan fir-rigward tal-maħfra Presidenzjali tal-10 ta' Frar 2013.

It-test tal-ittra tal-Onor Azzopardi jgħid hekk:

“Neħtieg ruling mingħandek dwar jekk u safejn il-proklama mogħtija lilu tkoprih jew le għat-testimonjanza quddiem il-PAC, biex nilqa' għal kull punt legali li jista' jkun sollevat”.

L-Onor Jason Azzopardi kien qiegħed jagħmel din it-talba fil-kapaċità tiegħu bħala Chairperson tal-Kumitat dwar il-Kontijiet Pubbliċi wara li huwa gie maħtur imexxi dan il-kumitat meta fuq l-aġenda jkollu r-Rapport tal-Awditur Ġenerali: *An Analysis of the Effectiveness of the Enemalta Corporation's Fuel*.

Irid jingħad mill-ewwel li f'Ottubru tal-2011 kienu ħarġu linji gwida għax-xhieda li jidhru quddiem il-Kumitat dwar il-Kontijiet Pubbliċi. Id-dokument huwa intitolat *a "Guide for Witnesses appearing before the Public Accounts Committee of the House of Representatives – Parliament of Malta"* – fejn gie sottolineat illi:

*“the underlying principle must be that all protection afforded to witnesses under the Criminal Code Cap 9, the Code of Organisation and Civil Procedure Cap 12 and the Civil Code Cap 16, including protection from incrimination, shall be applicable to witnesses appearing before the Public Accounts Committee.”*

Dawn il-linji gwida jgħidu li f'każ ta' diffikultà, meta jkun hemm xhud li, jew hu stess jew permezz tal-konsulent legali tiegħu, joġġezzjona għal xi domanda li tkun saret minn xi Membru tal-Kumitat, huwa jkun obligat jirrispondi sakemm ma jkunx hemm xi Membru tal-kumitat li jitlob li l-kwestjoni tal-ammissibilità

tad-domanda tiġi riferuta lill-Ispeaker biex jagħti deċiżjoni li mbagħad tkun torbot lill-kumitat. Nikkwota mill-artikolu 16 ta' dawn il-linji gwida:

"16. Subject to guideline 19 below, if a witness, personally, or through his/her legal counsel, objects to a question asked by an individual committee member, he/she is obliged to reply unless any one member requests that the issue of admissibility be referred to the Speaker for his/her decision which decision shall bind the committee.

A witness who, subject to guideline 19 below, refuses to answer questions may be reported to the House."

L-artikolu 19 tal-linji gwida - liema artikolu jaqa' taħt it-taqsima li titkellem fuq parliamentary privilege - jgħid hekk:

"19. No witness is to be compelled to answer a question which might incriminate him/her."

Dan ifisser li xhud huwa mistenni li jixhed quddiem il-Kumitat dwar il-Kontijiet Pubbliċi.

Hawnhekk nixtieq nagħmel referenza għall-proċedura tal-House of Commons fuq dan il-punt u nikkwota mill-Erskine May Parliamentary Practice (24ed) paġna 823:

"A witness is bound to answer all questions which the committee sees fit to put to him, and cannot excuse himself, for example, on the ground that he may thereby subject himself to a civil action, or because he has taken an oath not to disclose the matter about which he is required to testify, or because the matter was a privileged communication to him, as where a solicitor is called upon to disclose the secrets of his client; or on the ground that he is advised by counsel that he cannot do so without incurring the risk of incriminating himself or exposing himself to a civil suit, or that it would prejudice him as defendant in litigation which is pending, some of which would be sufficient grounds of excuse in a

court of law. Nor can a witness refuse to produce documents in his possession on the ground that, though in his possession, they are under the control of a client who has given him instructions not to disclose them without his express authority.”

Il-proċedura tal-House of Commons hija daqsxejn differenti mil-linji gwida adottati mill-Parlament Malti f'Ottubru 2011 applikabbli għall-Kumitat dwar il-Kontijiet Pubbliċi fis-sens li filwaqt li s-sistema Maltija tagħti l-fakultà li xhud ma jwegibx jekk ikun se jinkrimina ruħu – għalkemm irid jingħad li dan tagħmlu b'ċerti kundizzjonijiet kif diġà msemmi – fis-sistema Ingliża x-xhud m'għandux din il-fakultà.

Issa hawnhekk għandna xhud li ġie mgħajjat biex jixhed quddiem il-Kumitat dwar il-Kontijiet Pubbliċi, li huwa s-Sur George Mario Farrugia, li ġie mogħti l-proklama ċitata aktar 'il fuq f'dan ir-Ruling, u li skont il-kundizzjoni numru (2) tal-istess proklama s-Sur Farrugia jrid jgħid:

“is-sewwa, is-sewwa kollu u xejn ħlief is-sewwa”

f'kull depożizzjoni li jagħti in konnessjoni mar-reati kif deskritti fil-proklama u li sakemm jgħid il-verità huwa qatt ma jista' jiġi inkriminat. Tant hu hekk li l-kundizzjoni numru (6) tal-istess proklama tagħmilha ċara u nikkwota:

“Illi din il-maħfra tapplika biss dwar reati u pieni ta' natura kriminali u għandha tkun irtirata u għandha titqies li qatt ma ngħatat fil-każ illi jirriżulta illi f'xi depożizzjoni jew stqarrija tiegħu George Mario Farrugia ma jkunx qal is-sewwa kollu u xejn ħlief is-sewwa jew ma jkunx ta kull informazzjoni li jaf dwar il-fatt tar-reati fuq imsemmija fil-paragrafu (1) jew ma jkunx osserva xi kundizzjoni ta' din il-maħfra.”

Is-Sedja hija tal-fehma li allura l-artikolu 19 tal-linji gwida li jgħid li:

“a witness is not to be compelled to answer a question which might incriminate him/her”

ma japplikax għax-xhud George Mario Farrugia. Anzi dan ix-xhud huwa marbut li jrid jgħid il-verità kollha u s-sewwa kollu kif indikat fl-istess proklama.

Dan qed jingħad minkejja li fil-kundizzjoni numru (2) tal-proklama li tispeċifika quddiem min hemm l-obbligu li trid tingħad il-verità, m'hemmx inkluż il-Kumitat Permanenti tal-Kamra tad-Deputati dwar il-Kontijiet Pubbliċi. Hawnhekk is-Sedja tiġbed l-attenzjoni li f'din l-istess kundizzjoni numru (2) jingħad li s-Sur Farrugia jrid jgħid is-sewwa, is-sewwa kollu u xejn inqas mis-sewwa:

“F’kull proċeduri quddiem kull Qorti kemm jekk ta’ ġurisdizzjoni Kriminali kif ukoll jekk ta’ ġurisdizzjoni Ċivili jew Kostituzzjonali”.

Is-Sedja hija tal-fehma li f’dan il-kuntest dak li japplika għal xhud li jidher quddiem qorti ta’ ġurisdizzjoni Kostituzzjonali għandu japplika wkoll għal xhud li jidher quddiem kumitat tal-ogħla Istituzzjoni Kostituzzjonali tal-pajjiż, jiġifieri l-Parlament ta’ Malta u hawn niċċita mill-artikolu 51 taħt il-kapitolu 6 tal-istess Kostituzzjoni li jgħid li:

“Għandu jkun hemm Parlament ta’ Malta li jkun magħmul mill-President u minn Kamra tad-Deputati.”

Għaldaqstant b’risposta għat-talba tal-Onor Jason Azzopardi, din is-Sedja qiegħda tiddeċiedi li l-kopertura tal-Proklama msemmija għandha tapplika għax-xhieda tas-Sur George Mario Farrugia quddiem il-Kumitat dwar il-Kontijiet Pubbliċi u li f’każ li jagħmel talba blex jiġi eżentat milli jirrispondi għal domanda li tista’ tinkriminah, il-protezzjoni tal-artikolu 19 tal-linji gwida hawn fuq imsemmija m’għandhomx ikunu applikabbli. Minkejja dan, xejn ma jzomm lil kull Membru tal-Kumitat Permanenti għall-Kontijiet Pubbliċi li, *ai termini* tal-artikolu 16 tal-linji gwida hawn fuq imsemmija, jirreferi tali talba għad-deċizzjoni tas-Sedja.