

# Confessions in a Court of Law

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In this article, Madame Justice Consuelo Scerri Herrera examines confessions in a Court of Law. The rest of the article can be found in id-Dritt XXX.

**TAGS:** Criminal Law, Confessions, Court of Law

**Madame Justice Consuelo Scerri Herrera obtained her Diploma of Notary Public from the University of Malta in 1988 and her Doctorate of Laws from the University of Malta. She obtained her Diploma in Canonical Marriage Cases and Jurisprudence and Procedure from the Ecclesiastical Tribunals of Malta in 1999. She was called to the bench in 1997 as a Magistrate and presided over civil and criminal cases which fell within the competence of the Magistrates Courts. She was promoted to Judge in June 2018 and now presides over the Criminal Court of Appeal. Currently, she is reading for a Ph.D at the University of Malta, on the subject of rights pertaining to a subject prior to interrogation.**

## **1. Introduction**

The law in Malta does not provide a definition for the term ‘*confession*’, but it is understood to be not just a mere statement of the accused, but a statement by which the accused admits to his guilt. The confession of an accused is only applicable to that particular accused, and not to a co-accused or third party. To this end, the law states that ‘a confession shall not be evidence except against the person making the same, and shall not operate to the prejudice of any other person’.<sup>1</sup>

‘A suspect in which he or she voluntarily, knowingly and intelligently acknowledges that he or she committed or participated in the commission of a crime and which makes it clear that there is no defence in law that would make his or her conduct lawful, may define a confession as an out-of-court statement’.<sup>2</sup> This is what the Court of Appeal meant in the *Becker* case<sup>3</sup>, when it held that a confession must be defined as ‘an unequivocal admission of guilt by an accused person’.

An accused may release two types of statements: (i) a confession; and (ii) an exculpatory statement where he disproves the confession. It was argued whether such a statement would also benefit a co-accused. Arguably, in Malta this would, since the law<sup>4</sup> expressly employs the word ‘confession’, and it would therefore follow that an exculpatory statement, which refers to another person, would be admissible. In a criminal trial, ‘exculpatory evidence’ is evidence that indicates the defendant did not commit the crime he has been accused of.

## **2. Difference between a confession and an admission**

Admission and confession are two very important concepts used in the law of evidence by lawyers, to strengthen their cases before a court of law. Both admissions and confessions are used as sources of evidence. Most of us are familiar with the concept of confession as we accept and talk about our wrongdoing and describe what has been done. Admission, on the other hand, refers to a statement accepted by a person. The acknowledgement of a fact is akin to admitting it. There are many similarities in the two concepts, but there are also subtle differences that will be highlighted in due course.

<sup>1</sup> Criminal Code (Chapter 9 of the Laws of Malta), Section 661

<sup>2</sup> Reuben Johnson ‘Admissibility of confessions in criminal trials Mbuli’ (Doctor Legum, University of Zululand 1993)

<sup>3</sup> Judgment of the Court of Justice delivered on the 19<sup>th</sup> January 1982 (1) *Ursula Becker vs. Finanzamt Münster-Innenstadt* (reference for a preliminary ruling from the Finanzgericht Münster).

<sup>4</sup> Criminal Code (Chapter 9 of the Laws of Malta), Section 661

For example, if during interrogation a suspect or accused person nods to a fact or statement, then he is admitting or acknowledging that fact which is being discussed. Admission by a person can be taken in a court of law as a statement that proves guilt or a crime. Accused persons make admissions in their confessions many a times, about their participation in the events being imputed to them. Confession, on the other hand, is the act of acknowledging one's involvement in an act of crime or wrongdoing, however; a confession does not necessarily amount to an admission.

Whereas a confession is an acceptance of guilt in a crime or wrongdoing, an admission is the acknowledgment of a statement or a fact. An accused person can retract from a confession made earlier during the interrogation, but retraction from admission is very hard to call back unless it is proved that such admission was obtained illegally. Also, a confession can only be made by the accused; an admission can be made by others too.

Section 82 of the PACE Act 1984 defines the term confession which includes an informal admission made out of court. No distinction is to be made between a full confession and admissions that fall short of a null confession. It is insignificant to whom the confession was given. Therefore, what a person says to another person, even if not in authority, is tantamount to a confession. It includes any statement whether made in writing or otherwise, for example, a suspect releases a written statement to the police. Alternatively, admissions can be made in other forms of documents. For example, an accused person makes an admission to a crime in writing to a friend, which letter is later intercepted by a third party, or that letter is handed over for further investigation by the same friend. Such admissions would also be admissible at common law in the United Kingdom. In Malta, on the other hand, the Courts would be very weary of such evidence and would have to be convinced of its source and purpose.

A question may arise as to whether an admission by conduct is admissible. For example, if a police officer asks a suspect if he has committed a particular offence and the suspect simply nods as a reply, can we take this as a full-blown admission upon which to base a verdict of guilt? It appears that this conduct would fall in the definition of an admission. However, admissions by conduct are only admitted in exceptional cases. In *Preece vs. Parry*<sup>5</sup> the Divisional Court held that the behaviour of the suspects when arrested was abusive and violent and thus, this same behaviour could amount to an admission.

This situation of admissions by conduct are hard to come by, especially in the Maltese system where the far majority of interrogations take place without video camera recording. If the interrogation were to be recorded on camera, the behaviour and mannerisms of the suspect could be recorded, and thus interpreted by the person who has to judge upon the facts.

Unlike confessions, admissions which are not based on personal knowledge are

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<sup>5</sup> (1983) Crim L.R 170.

not admissible to prove facts. In the case of *Sturujpaul vs. R*,<sup>6</sup> the Privy Council held that a suspect can confess as to his own acts, knowledge or intentions, but he cannot 'confess' as to the acts of other persons which he has not seen, and of which he can only have knowledge by hearsay. By example, a reference can be made to the handling of goods, which it is sought by admission that the goods were in fact stolen. Now, if the accused admitted that he bought the goods in question very cheaply at night in a remote place, he would be admitting to a fact within his own personal knowledge and it may lead the Jury to infer that from the circumstance of the acquisition of the goods the goods were actually stolen. However, if on the other hand the accused simply says that he believed the goods to be stolen or that he was told that they were stolen, he would not be speaking from his personal knowledge. Such evidence is not tantamount to an admission that the goods were in fact stolen. This reasoning is based on the proposition that 'if a man admits something of which he knows nothing, it is on no real evidential value' as was held in the case *Comptroller of Customs vs. Western Lentic Co Ltd* per Lord Hodson.

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<sup>6</sup> 1958 1 W.R.L 1050 1056.

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