

The Court of Magistrates (Malta)
As a Court of Court of Criminal Judicature

Magistrate Dr Aaron M. Bugeja M.A. Law, LL.D. (melit)

The Police

(Inspector Rennie Stivala)

vs

Asparuh Ivanov Balabanov

The Court after seeing the charges in respect of **Asparuh Ivanov Balabanov**, holder of Maltese identity card number 40275A who was charged with “having in these Islands, in September 2011 ;

1. by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made any gain to the prejudice of Colin Sammut, exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37);
2. commit forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the writing or signature, by feigning any fictitious agreement,

disposition, obligation or discharge, or by the insertion of any such agreement, disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instruments or documents were intended to contain or prove;

3. knowingly made use of any of the false acts, writings, instruments or documents;

4. rendered yourself a recidivist by various sentences given by the Court of Magistrates' Malta, which sentences have become definitive and cannot be changed."

Having seen that during the sitting of the 17th February 2014 this Court ordered that proceedings be carried out in the English language after that it ascertained that the accused is English speaking in terms of law.

Having seen that on the same date the Prosecuting Officer confirmed the charges on oath and during the examination of the accused in terms of Article 392(1)(b) of the Criminal Code the accused declared that he was not guilty.

Having seen that in terms of a formal written accusatory document issued on the 6th May 2014 the Attorney General found that from the preliminary investigation in this case there might result an offence or offences under the provisions of :

- a. Articles 308, 309 and 310(1)(a) of the Criminal Code, Chapter 9 of the Laws of Malta;
- b. Article 183 of the Criminal Code, Chapter 9 of the Laws of Malta;
- c. Article 184 of the Criminal Code, Chapter 9 of the Laws of Malta;
- d. Articles 49 and 50 of the Criminal Code, Chapter 9 of the Laws of Malta;
- e. Articles 17, 31, 532A and 533 of the Criminal Code, Chapter 9 of the Laws of Malta;

And decided in terms of Article 370(3)(a) of the Criminal Code to send the accused for trial by this Court subject to no objection being made by the accused in accordance with Article 370(3)(b)(c)(e) of the Criminal Code.

Having seen that during the sitting held on the 22nd June 2015 the accused declared that he was guilty as charged.

The Court warned the accused in the most solemn manner about the consequences that arose from his declaration that he was guilty as charged in the sense that the Court was going to find him guilty and pass a sentence against him that could entail imprisonment. The Court

granted the accused sufficient time within which to consult his Lawyer and to reconsider his guilty plea. After granting such opportunity to the accused the Court asked the accused once again whether he wished to reiterate his guilty plea and the accused replied that he was reiterating his guilty plea.

In the circumstances the Court has no option but to find the accused guilty as charged.

The Court heard submissions by the Prosecution and Defence in relation to the punishment that ought to be meted out.

The Court ordered the Director of Probation and Parole Services to prepare a verbal report in terms of the Articles 11 and 18 of Chapter 446 of the Laws of Malta.

The Court heard the testimony of Probation Officer Svetlana Bezzina, who presented her verbal report and who stated that he qualified for community work, though she also stressed that he has sporadic working times that could interfere with him doing community work.

Decide : -

That after having seen the articles of the Law propounded by the Attorney General in his written accusatory document abovementioned and namely Articles 49, 50, 183, 184, 308, 309 and 310(1)(a) of the Criminal Code (as they stood before the Amendments introduced in 2014 which increased the punishment against persons convicted of committing the offence of fraud), upon his unconditional guilty plea, finds the accused Asparuh Ivanov Balabanov guilty as charged.

The Court notes that in so far as these criminal offences are concerned, Articles 183 and 184 of the Criminal Code entail the punishment of imprisonment between thirteen months and four years whereas the punishment prescribed by Articles 308 and 310(1)(a) of the Criminal Code at the time of the offence was that of imprisonment between thirteen months and seven years.

As for the punishment to be meted out, the Court considered that : -

- (a) the accused did not register a guilty plea at an early stage of the proceedings. Therefore he cannot benefit from any discount in punishment.
- (b) The accused is a recidivist in terms of Articles 49 and 50 of the Criminal Code.

- (c) Furthermore he was already found guilty of committing the offence of fraud in 2009 and for which he was given a conditional discharge for one year. It is clear that the accused did not learn the lesson as in 2011 he committed the same crime once again.
- (d) Given that he is a recidivist in terms of Article 50 of the Criminal Code it is not possible for this Court to award a sentence of imprisonment with suspended effects in terms of Article 28A of the Criminal Code or a combination order in terms of Article 28G of the Criminal Code.
- (e) Furthermore, he did not prove himself trustworthy to follow a combination order or a community service order as he was already given a conditional discharge and despite this he relapsed.
- (f) It is not possible for this Court to implement the provisions of Article 337(1) of the Criminal Code thus reducing the punishment of the accused on account of the fact that the accused failed to pay the victim of this crime before proceedings were instituted against him.
- (g) In view of the above, this Court finds it difficult at this stage to award a probation order or a combination order in as much as a conditional discharge was already meted out and he later relapsed, thus showing that he did not learn the lesson to stay away from criminal offending.

In the circumstances, the Court, after having seen Article 17(b)(h) of the Criminal Code condemns the accused to a total period of **eighteen months imprisonment**.

The Court having seen Article 392A(1)(2) of the Criminal Code orders that the record of the proceedings together with a copy of this judgment be delivered to the Attorney General's Office within six working days.

Aaron M. Bugeja.