

**COURT OF MAGISTRATES (MALTA)**  
**AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR. JOSETTE DEMICOLI LL.D**

**Police**  
**(Superintendent Paul Vassallo)**  
**(Inspector Raymond Aquilina)**

**Vs**

**Gernot Knoess**

Today 28<sup>th</sup> June 2017

The Court,

Having seen the charges brought against Gernot Knoess, son of Karl and Helga nee' Zoppi, born in Mainz, Germany on the 25<sup>th</sup> of September 1959 and residing at No. 114, Melita Street, Valletta, holder of identity card number 34346(A) personally and as the director, shareholder and judicial representative of M. Architecture Ltd, registration number C-30595:

Charged with having: on these islands, during September 2004, and in the following months, by several acts even though committed at different times but constituting a violation of the same provisions of law and committed in pursuance of the same design.

1) Carried out acts of money laundering by:

- a) converting or transferring property knowing that such property is derived directly or indirectly from the proceeds of criminal activity, or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity
- b) concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, of ownership of property, knowing that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity
- c) acquiring property knowing that same was derived from or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity
- d) retaining, without reasonable excuse, property knowing that same was derived from or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity
- e) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (a), (b), (c) and (d) within the meaning of article 41 of the Criminal Code
- f) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (a), (b), (c), (d) and (e)

2) Acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of fraud.

The Court was requested to prohibit the said Gernot Knoess from transferring, pledging, hypothecating or otherwise disposing of any

movable or immovable property in terms of Article 5(1)(b) of the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta as well as to issue orders as provided for in Articles 5(1) and 5(2) of the same act.

Having seen the order of the Attorney General issued in terms of subarticle (2A)(b)(c) of Article 3 of Chapter 373 of the Laws of Malta by virtue of which the accused was sent to be tried before the Court of Magistrates (Malta) as a Court of Criminal Judicature with regards to the charges brought against him for the breach of the provisions of Chapter 373 of the Laws of Malta.

Having heard witnesses.

Having heard final submissions.

Having seen the acts and documents of this case.

Considers

The accused is being charged personally and as the director, shareholder and judicial representative of M. Architecture Ltd<sup>1</sup> with money laundering. An additional charge of acting as an accomplice in respect of fraud but no mention of this charge is found in the Attorney General's order.

Superintendent Paul Vassallo<sup>2</sup>, the investigating officer in this case, testified that this case started after the sum of four million euro (€4,000,

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<sup>1</sup> Registered on the 3<sup>rd</sup> December 2002 at the Registry of Companies – Dok IC2 at fol 51 of the acts

<sup>2</sup> Sitting held on 23<sup>rd</sup> November 2011

000) was sent to the accused in September 2004. Subsequent to such transfer, the Maltese authorities received a rogatory request from the German authorities to assist them in investigating this money. The German authorities suspected that this was a tax fraud perpetrated against the German Government since part of the €4,000,000 had been returned to Germany. The witness continued that a certain Margit Cezkowski, a property developer together with her husband, had been interested in renovating a property. Gernot Knoess was supposed to be the architect who was to be in charge of this property's conversion. The price agreed upon was eight point five million euro (€8,500,000) and Gernot Knoess had received the €4,000 000 here in Malta in the account of his company as a down payment. After this money was transferred to Malta, part of it was sent back to Germany allegedly because Margit Cezkowski needed a loan because of a cash problem. The German investigators from the German tax authorities were interested in the money transferred back to Germany because it found its way into Margit Cezkowski's personal account and also her lawyer's, namely Michael Wolski. The building which had to be renovated belonged to Margit Cezkowski. This had been previously rented out to a company and the end of the lease was coming up and the building was either to be released to its owner or a new client was to be found. The German authorities found out that instead of this building being renovated, the lawyer Michael Wolski had negotiated with the company tenant to end the lease earlier than the term stipulated and in order to do so the tenant company paid the Cezkowski's the sum of €13, 500,000. Michael Wolski was meant to receive €1,500,000 for negotiating such a deal. Apparently Mr Wolski and Ms Cezkowski purported this amount as a tax free gift and this money was sent to Malta and then subsequently returned to Germany under the guise of a loan. Gernot Knoess's involvement in this matter went to the limit where he has accepted the money into his account under the guise of a contract. There was no detailed document or specifications as to the conversion of the building. There was only a document of a page and a half which was only a general contract agreement which bore no specifications, no price details. Gernot Knoess was not able to provide any details to the Maltese police because when the rogatory letter had been executed in Malta

there had been a request to seize all the documents and computers and these in turn were sent to Germany in execution of the search. Superintendent Vassallo stated that subsequently he learnt from the German authorities that they had asked for details of this agreement and these were not forthcoming and thus it appeared that there was no valid contract. The witness also stated that when the prosecution was to get the information back from Germany, it seemed that a computer file found showed that the agreement had been created after the date when it was supposed to have been signed. The accused denied wilfully involving himself in this venture. At the time the office was searched, Mr Knoess was not in Malta but was in Germany. He was on his way to visit Mrs Cezkowski allegedly to arrange matters with regards to the reversing of the loan because he wanted the money back in his account. This meeting did not take place due to the German Police's intervention. Also there was another company that had been set up with the assistance of the accused called Modern Malta Investments Sicav Ltd<sup>3</sup>. In cross examination, the witness declared that the German authorities decided not to proceed against Mr Knoess.

Dr Kevan Azzopardi<sup>4</sup> testified that towards August 2006 he was employed at the prosecution office. At the time, a letter of request from the German authorities had been received to conduct investigations with regards to a number of companies and persons. The companies were M Architecture Limited and Modern Malta Investment Sicav. Throughout these investigations, the German authorities had requested the Maltese counterparts to affect searches in both these premises. Thus a search team was formed, including himself, of which team Inspector Paul Vassallo was in charge. On the day of the searches in August 2006 the witness together with the other members of the team went to the office from which M Architecture operated in 114, Melita Street, Valletta. Since no one answered, PC1116 Timothy Zammit remained on the spot whilst the other members of the search team proceeded to the other premises in 166, Old Bakery Street, Valletta. There they gained access to the offices. The search was twofold – it was to be performed on computers

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<sup>3</sup> Registered with the Registry of Companies on the 30<sup>th</sup> December 2004 – Dok IC1 at fol 31 of the acts.

<sup>4</sup> Sitting of 21<sup>st</sup> March 2012

and a physical search to see whether any files regarded the two companies were to be found. A court expert was appointed to conduct the computer search and the computer was later seized. Various files and envelopes were seized against a receipt. During this search in these premises, PC 1116 Timothy Zammit informed Dr Azzopardi that one of M Architecture's employees, Architect Alexei Pace, had turned up at the premises (114, Melita Street, Valletta) and was asked to remain there. Thus, the search team gained access to these premises too which also comprised of Mr Knoess's personal quarters. A number of files were again seized and also two computers and two CDs were seized. All the documents which related to the investigations were exhibited by himself in the letters rogatory before the then Magistrate Dr Padovani Grima which were eventually handed over to the Attorney General to be conveyed to the German authorities.

Dr Azzopardi confirmed that he had witnessed a statement released by the accused who at the time was assisted by an interpreter.

Dr Azzopardi stated that he was also involved in the cooperation and coordination process between the German and Maltese authorities. He recalled that there was an attachment order issued on the accounts of M Architecture Ltd and the accounts revealed that there had been a swift transfer from an account in Dresne Bank account number 0203998900 of four million euro to an account in Malta held at Bank of Valletta plc with number 400126998089 pertaining to M Architecture Ltd of which Mr Knoess was a member and director. At some time there was also a transfer of two million euro to an account held by Mrs Cezkowski. There were also a number of transfers of an amount of one point eight million euro from one's account to another. The German authorities had explained how they were investigating. The four million euro were meant to finance a project which the accused was to conduct in Cologne. This amount included both the money which was to be used for the material and what was necessary to carry out for the conversion of the building. The German authorities were claiming that this project was fictitious because it then transpired that this building was infact sold. Mr Wolski, the lawyer of the Cezkowski family, was involved in the negotiations so that the premature termination of the lease of the building. Supposedly,

Mr Knoess had to come in through his company to convert this building into an IT centre as soon as the lease was terminated. A few days, a month or so, following the swift transfer of four million euro, two million euro were transferred back to Mrs Cezkowski. Mr Knoess during his statement had explained that it was Mrs Cezkowski who asked him to transfer the latter amount because she had liquidity problems. Mr Knoess had consulted his lawyer in Malta, Dr Rutter Giappone, and his accountant in Germany. He then made a loan agreement to Mrs Cezkowski whereby it was stipulated that the money had to be returned to him towards the end of 2005. This agreement appeared fictitious because there was nothing in it to enforce the said return. Mr Knoess during his statement revealed that such money was never returned to him. He explained also that he had already made certain payments from this account.

Architect Alexei Pace, an architect and civil engineer, testified<sup>5</sup> that in August 2006 he was employed with M Architecture Ltd and confirmed that he was present during a search being carried out. He recalled that he had worked on a variety of projects on buildings situated in Germany and Italy. He also confirmed that he had worked for a few days on a project which concerned the conversion of a building from a studio to an IT facility but he could not specify the details because the police seized all documents and computers from the office.

Gernot Knoess testified<sup>6</sup> that he is an architect since 1988 and he is a licensed architect since 1989. He explained that he set up a company in Malta, M Architecture Ltd, roughly in 2003 to perform architectural service to foreign clients. He was not allowed to work for Maltese clients. He set it up in Malta because there were Libyan companies interested and they started to do a design for a project but the business with Libya did not go through. He still continued with the company because he had to service an American hotel. He was involved in various projects such as

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<sup>5</sup> Sitting held on 21<sup>st</sup> March 2012

<sup>6</sup> on the 4<sup>th</sup> May 2017

housing, hotel, apartments, sky scraper, computer building, small hotel in Italy. The company employed two full-time architects.

The accused explained that Margit Ceszowski was a representative of the Ceszowski group which were in the business of property development since the Second World War. He had been working for her since 1988. He had to meet Mrs Ceszowski on the 7<sup>th</sup> August 2006. He arrived at her office in Germany and there was a search being effected. He was presented with a piece of paper and he was informed that he will be summoned as a witness in the case against Michael Wolski who was Margit Ceszowski's lawyer. The accused had no business connections with Michael Wolski but he knew him just as Margit Ceszowski's lawyer. After the investigators searched the office, they wanted to see the accused's house in Germany and at the same time parallel searches in his office in Malta to find documents regarding the conversion of the computer building in Cologne.

In 2004, Margit Ceszowski approached the accused for a new project. She had a building for a new German Bank Sparkasse in Cologne. Adjacent to this building there was an underground part which was used as a tv studio for RTL. This was roughly 600m<sup>2</sup>. It was very deep. It had a volume with no ceilings inside. RTL was terminating the lease and so the Ceszowski group (the owner of such building) needed to find a solution what to do with this building. It could be used for many purposes. His task was to convert this building into several levels. Thus, part of the project was to have some ceilings inside. The structure was checked. They had to find a special way to place the ceilings because they could not use concrete. Hence, a contract was signed in 2004 between the Ceszowskis's company and the accused. It was a two-three page contract. There was no need for a lengthy contract because it was about basic construction, concrete work or primary construction work not about technical details of a computer or electronic or whatever needed to be put in. This was kind of a first agreement which would then be specified by his specifications which he did. It was prepared in a file but it was seized in Germany and he never saw the file again. He does not have a copy because he usually worked paperless and he printed one or two copies and handed them to the client. He did not get



hold of the soft copy since it was seized in Germany and in Malta. The value of this contract was eight point five million euro. The scope of such contract was to convert a single volume into four different levels and to make some ceilings, to clear out steel and concrete etc. His services included dismantling and construction of staircases. So, they had to carry out demolition, concrete work, steel work, carpentry, landscaping. Basically a construction site. All this detail was left out because it is usual to do something like this. In Germany it is not necessary to repeat what is usual and covered by the German Industrial Norms guidelines.

This was a general contract which meant that he took over all the work as a contractor not only as an architect and he had to pay all workers and his services were included in the value of the contract indicated. After the contract was signed, he issued an invoice and he received by bank transfer the amount of four point five million into M Architecture's account at BOV. He presented a contract to BOV beforehand so as they were advised of such transfer. He received go to start plannings, to meet structural agreements, decide what to do inside. He started drawing up some designs with his two employees. Specifications and dimensions, volumes and weights were done. Some time later, Margit Cezkowski told him that she had a shortage in money (which was common in Germany at the time in the sector according to the accused) and she wanted to have a loan out of the 4.5 million to cover some other projects and then return the money. They signed a loan contract after the accused asked his accountant in Germany and in Malta as well as Dr Rutter Giappone (who was guiding him in the setting up of his company in Malta) if this was possible. After a positive confirmation, Margit Cezkowski drew up a contract consisting of a loan of 2 million euro, it was signed and the accused transferred 2 million euro to her company's account in Germany. The remaining amount originally transferred into M Architecture's account remained in Malta. The accused stated that he asked Margit Cezkowski several times to repay the money.

The accused knew that the building he should have converted could have been sold. Eventually, the project was terminated and on the 7<sup>th</sup>

August 2006 he was at the office to sort out with Mrs Cezkowski how to transfer the rest of the funds to her account. He took the bills which covered his services. Roughly, he charged her about half a million and stated that they had to discuss also about the fact that since he took over as contractor there was a higher risk and so they had to discuss how to settle this matter. Due to the searches such matter was not discussed.

Gernot Knoess stated that he now knows about the investigation which was being carried out for tax evasion against Michael Wolski. At the time though he did not know about such investigation. To his knowledge Mrs Cezkowski was not investigated. As a result of this investigation, the accused was not charged in Germany whilst Michael Wolski was charged and found guilty for tax evasion and sentenced to two years and ten months imprisonment. He reiterated that he had no business relationships with Michael Wolski.

The accused continued to state that at the end of September 2006, the senior prosecutor for Frankfurt declared that there was no longer a reason to hold funds and documents seized from his office and thus stated that the freezing of assets should be lifted. In September/October 2006 he was notified in Malta that there was an investigation in Malta against M Architecture Limited, Margit Cezkowski, Michael Wolski and the Sicav on money laundering. The funds were released momentarily but then blocked again because of the Maltese investigation. This investigation started in 2006 till 2011 when he was charged. During this period his assets were frozen and his company has been blown and he could not work as an architect because he was not getting any contracts due to this case. Till today he could not open a bank account and he cannot work as an architect.

Gernot Knoess testified that he received the money from Cezkowski's company directly. He had no dealings with Michael Wolski and he never knew that there was something wrong going on. He knew the Cezkowskis for a long time and they were always correct. They worked on public-private projects in Germany which meant that they would be continuously monitored.

The accused continued to state that after the money was frozen in Malta, Margit Cezkowski asked for the money but she could not get it back. So, she opened a Court case in Germany in front of a Regional Court against the company and the Court decided - after he did not present himself because he was not aware that he should have appeared – that she was entitled to get the money back minus a small amount. This judgment was enforced in Malta. The accused appealed because he had to settle his credit for the work and contractor's risk and for the investigation. He declared that he had and still have demands against the Cezckowskis. He confirmed that the money which is frozen in Malta is the same money forming part of the case in Germany (which has been recognized by the Maltese Courts). The accused stated that two German witnesses who testified in the case in Germany did not say the truth and the German Court found them untrustworthy.

In cross-examination the accused agreed that following the general contract, a supplementary agreement was signed in September 2004. He stated that he had to start immediately with the plans before September 2004. In the supplementary agreement the parties contracted that Margit Cezkowski had a single-sided right to step out of the general contract. There was a letter from Mrs Cezkowski asking him not to start constructing because he had a free hand and he had funds and he could start with the contractors and sub-contractors. Only the planning and dismantling of the building had started. Then, Mrs Cezckowski requested the money on loan. The remaining funds were never transferred back. It was clear to him at the beginning of 2006 that property in question was sold by the Cezkowski's group to an investor. The accused stated that he was not part of the negotiations. He only received a letter that the project will not take place. The contract was signed, then he had to meet Mrs Cezkowski as to how much money was owed to him and how much he had to transfer back to Germany. It should have been decided on the 7<sup>th</sup> August 2006. They could not discuss the matter due to the search. With regards to the money owed to him he stated that he had the money at hand but he had to present invoices and any money left had to be transferred. Finally, the accused confirmed his statement.

The accused also released a statement to the police<sup>77</sup> on the 17<sup>th</sup> November 2006 which has been exhibited by the defence and not the prosecution. The accused's statement is very much on the same lines as his testimony. In this statement he also explained that till about 2005 (he had been working with Margit Cezkowski and the group since 1988) Mrs Cezkowskwi was his main client. He explained that the amount of four million was transferred to him from one of the Cezkowskis' companies to convert a TV studio into an IT centre and the general upgrading of the building. He *was to take care of the planning and execution of the entire project. I was also to be responsible for the sourcing of material, builders and providers of whatever was required to complete the project. As such, I was responsible for paying the bills for the said materials and workers. This is why I was given the €4 million.* The end sum for the project would have been €8.5 million. The €4 million were sent on account in order to get the project started. He also explained that Mrs Cezkowskwi asked him to submit a quotation for the project and there were also other quotations from third parties. He also stated that after he transferred €2 million to Mrs Cezkowski, which amount was on loan , he never received any repayments but he sent them a number of reminders. The accused also explained that in March 2006 it transpired that the project was to be cancelled as the building was to be sold off. After numerous discussions, they agreed to meet on the 7<sup>th</sup> August 2006 to arrange the return of the money to Mrs Cezkowski. On that very day, the police raids took place and his house was searched in Malta and Germany.

In the acts of the case, the judgment which has been delivered against Michael Wolski has also been exhibited. Also the investigation report which has been prepared by the German Tax Fraud Investigation Office (STEUFA) forms also part of the acts of this case. STEUFA established that in the year 2004 Michael Wolski amassed an amount of €1,500,000 in fees payable by Margit Cezkowski. These fees became due as a result of legal and consultancy service given in 2003 and 2004 by Michael Wolski to Margrit and Ignaz Cezkowski GbR. These fees became due in August 2004 upon the signing of a rescission agreement between GbR

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<sup>77</sup> Dok MV at fol 1508

and another company referred to as Swest GmbH. The report states that the investigations revealed that the aforementioned fees agreed with Michael Wolski were to be paid from a sum of €4 million that was transferred in September 2004 by Margit Cezkowski to M Architecture Ltd. The allegation is that in order to create a justification for the payment to M Architecture, a General Contractor's agreement was completed between GbR and M Architecture in August 2004 with a total value of €8,500,000. On the basis of this general contractor's agreement, an advance payment of €4 million was transferred in 2004 to M Architecture Ltd from the private account of Mr Ignaz and Margit Cezkowski. Michael Wolski was involved in all stages of the General Contract Agreement. The allegation is that in spite of the Agreement, there was never the intention to carry out the planning and building work mentioned in the agreement. Considering the financial volume of the agreement, the General Contractor's Agreement contains no concrete details of the construction work to be carried out. The report continued that in December 2004 an amount of €2 million was transferred back to Margit Cezkowski from the €4 million transferred to M Architecture Ltd on 15<sup>th</sup> September 2004 by Margit Cezkowski. During the course of the search of the residence and business premises of Gernot Knoess in Malta on 7<sup>th</sup> August 2006, the Maltese authorities seized a loan agreement dated 16<sup>th</sup> December 2004 between M Architecture (lender) and Margit Cezkowski (borrower) for an amount of €2 million. This loan came from the advance payment of the €4 million.

Before the Court delves further into the matter, reference is made to the case in the names of **Il-Pulizija vs Mark Brincat**<sup>8</sup> wherein it was held:

"Archbold 2012 jiddeskrivi r-reat ta' money laundering hekk:

"The explanatory notes to the PCA (Proceeds of Crime Act 2002) define money laundering as "the process by which the proceeds of crime are

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<sup>8</sup> Court of Magistrates (Malta) as a Court of Criminal Judicature decided on the 23<sup>rd</sup> July 2014. This case referred to the charge of money laundering with reference to the year of 2005 and periods before

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<sup>9</sup> 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 charged 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.”

Ikompli:

“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).

Saljenti hawn li jigi nnotat dak li qalet il-Qorti tal-Appell Krimnali fil-kawza fl-ismijiet “Il-Pulizija (Spt Angelo Gafa’) vs Carlos Frias Mateo” deciza nhar id-19 ta’ Jannar, 2012:

“Kif ben qalet tajjeb l-Ewwel Qorti diversi awturi jaqsmu l-process tal-hasil ta’ flus fit-tlett stadji imsejha “placement”, “layering” u “integration”. Dawn l-istadji gew imfissra b’mod konciz mill-Qorti tal-Magistrati. Pero` mill-bidunett ta’ min jipprecisa, li dawn l-istadji huma biss deskrizzjoni generali tal-process tal-hasil tal-flus. Hija skola ta’ taghlim li nholqot sabiex gurija tkun f’posizzjoni aktar felici sabiex tifhem

L-intricci u l-kumplikazzjonijiet li jinvolvu dawn it-tip ta' reati. Ghalhekk il-qasma tal-process tal-hasil ta' flus f'dawn it-tlett stadji hija wahda generali u bl-ebda mod dogmatika. Fil-fatt awturi ohrajn jikkritikaw din il-klassifikazzjoni minhabba li tissemplifika wisq is-sitwazzjoni u f'hafna kazijiet ma hiex riflessjoni veritjiera ta' dak li realment ikun qed jigri. Ghalhekk dawn l-istadji ghandhom jittiehdu biss bhala punto di partenza u bhala deskrizzjoni generali tal-process tal-"money laundering" b'mod flessibbli tant li ma hux rikjest li l-prosekuzzjoni trid tipprova l-intenzjoni f'kull wiehed u wahda minn dawn l-istadji. Dan qieghed jinghad 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 analizi taghhom ma tirrikjediex li l-prosekuzzjoni tipprova li l-imputat kellu l-intenzjoni li jikkommetti "placement", "layering" u "integration" bil-propjeta'."

Qabel l-emendi varji li saru fuq il-Kapitolu 373, u ghall-fini ta' din is-sentenza, li jinteressana hawn hija l-Ligi vigenti fis-sena 2005<sup>10</sup>, Lulju, cioe' dik il-Ligi applikabbli ghaz-zmien illi gie kommess l-allegat reat.

Ir-reat ta' money laundering fi zmien tar-reat in ezami kien definit hekk fil-Kapitolu 373 tal-Ligijiet ta' Malta, inkluz hawn id-definizzjoni ta' attivita' kriminali:

"2. (1) F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tehtiegx xort'ohra -

"attività kriminali" tfisser kull attività, tkun fejn tkun magħmula, u tkun meta tkun magħmula, li taht il-ligi ta' Malta jew ligi oħra, tammonta għal:

(b) wiehed mir-reati elenkati fit-Tieni Skeda għal dan l-Att;

"money laundering" tfisser:

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<sup>10</sup> In this present case the charges refer to the September 2004 and the following months. The quoted case applies perfectly to the case at issue

- i. Il-konversjoni jew trasferiment ta' proprjeta' meta wiehed ikun jaf li dik il-proprjeta' tkun direttament jew indirettament inkisbet minn, jew mir-rikavat ta', attivita' kriminali jew minn att jew atti ta' partecipazzjoni f'attivita' kriminali, għall-iskop ta' jew skopijiet ta' habi jew wiri haga b'ohra ta' l-origini tal-proprjeta' jew ta' għoti ta' għajnuna lil xi persuna jew persuni involuti jew koncernati f'attivita' kriminali;
- ii. Il-habi jew wiri haga b'ohra tal-veri xorta, provenjenza, lok, disposizzjoni, moviment ta' jeddijiet rigward, fi jew fuq proprjeta', meta wiehed ikun jaf li dik il-proprjeta' tkun inkisbet direttament jew indirettament minn attivita' kriminali jew minn att jew atti ta' partecipazzjoni f'attivita' kriminali;
- iii. L-akkwist ta' proprjeta' meta wiehed ikun jaf li l-istess proprjeta' tkun inkisbet jew originat direttament jew indirettament minn attivita' kriminali jew minn att jew atti ta' partecipazzjoni f'attivita' kriminali;
- iv. Ir-ritenzjoni minghajr skuza ragonevoli ta' proprjeta' meta wiehed ikun jaf li l-istess proprjeta' tkun inkisbet jew originat direttament jew indirettament minn attivita' kriminali jew minn att jew atti ta' partecipazzjoni f'attivita' kriminali;
- v. It-tentattiv ta' xi hwejjeg jew attivitajiet definiti fis-subparagrafi (i), (ii), (iii), u (iv) ta' hawn fuq, u dan fit-tifsir ta' l-artikolu 41 tal-Kodici Kriminali;
- vi. L-agir bħala komplici fit-tifsir ta' l-artikolu 42 tal-Kodici Kriminali rigward xi wahda mill-hwejjeg jew attivitajiet definiti fis-subparagrafi (i), (ii), (iii), (iv), u (v) ta' hawn fuq

Illum il-Legislatur f'din id-definizzjoni, issa anke in linja ma' legislazzjoni estrani, dik Ingliza per eżempju, zied il-kliem "jew jissuspetta", fejn qabel ix-xjenza kienet determinata biss bl-element ta' 'knowledge', għarfen – il-kelma tal-Ligi 'jaf' (emendi 2007), bil-provenjenza illecita tal-proprjeta'.

Certament u bla dubbju, il-Ligi llum tiffacilita ferm il-posizzjoni tal-Prosekuzzjoni, stante li l-Ligi llum tqiegħed il-livell ta' 'mens rea' necessarju fuq livell baxx hafna – cioe' jekk l-awtur jissuspetta biss li



rikavat kien gej minn attivita' kriminali. Verament it-test ta' dan is-suspett ried ikun wiehed soggettiv – x'haseb l-awtur, u ma jistax jigi kkunsidrat oggettivament wara li jitressqu l-provi, ghalhekk il-prova trid tkun dak li l-imputat fehem u ssuspetta hu fiz-zmien tar-reat.

Ill-Ligi fil-Kapitolu 373 qabel l-imsemmija emendi allura riedet illi l-awtur kien jaf bil-provenjenza tal-proprijeta', (flus fil-kaz in ezami), jaf li dawn kienu provenjenti minn attivita' kriminali, biex jigi kostitwit u rizzultanti r-reat. Ghalhekk spetta ghall-Qorti li tezamina mill-atti, mill-provi anke dokumentarji u cirkostanzjali li tara jekk jirrizultax li l-awtur, Mark Brincat, kienx fil-fatt 'jaf' bil-provenjenza llegali tal-flejjes imqiegħda golkont bankarju tieghu.

L-ezami ta' dan l-gharfien, 'knowledge', tal-imputat irid anke jittiehed in konsiderazzjoni mill-mod kif il-Prosekuzzjoni trid tipprova r-reati sottostanti. Ghalhekk il-Kapitolu 373 tal-Ligijiet ta' Malta qabel l-emendi tas-sena 2010, fl-Artikolu 2(2)(a) kien jaqra:

"Persuna tista' tinstab hatja tad-delitt ta' money laundering taht dan l-Att, anke fin-nuqqas ta' sentenza tal-Qorti li tistabilixxi 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 għall-attivita' kriminali sottostanti."

Per parentesi, illum dan l-Artikolu wkoll gie emendat biex jiffacilita l-prova u l-prosekuzzjoni tar-reat in ezami, in kwantu llum lanqas ma trid il-Prosekuzzjoni tipprova b'mod preciz liema hija l-attivita' sottostanti – tant huwa ampju u 'far reaching' dan l-Artikolu llum.

In vista' ta' dan il-livell ta' prova mogħtija lill-Prosekuzzjoni, cioe' l-mod kif il-Prosekuzzjoni għandha tipprova li l-attivita' kriminali, huwa għaqli li ssir referenza għall-kawtela ndirizzata mill-Qrati tagħna fir-rigward tal-prova li trid tilhaq il-Prosekuzzjoni f'dan il-kaz ta' money laundering.

Il-Qorti, fil-kawza “Repubblika ta’ Malta vs John Vella” deciza nhar id-9 ta’ Novembru, 2007 qalet hekk:

“L-Avukat Generali jista’ jakkuza persuna bir-reat ta’ money laundering minghajr ma jkollu sentenza ta’ kundanna ta’ dak li jkun qed jigi allegat li huwa l-attivitá 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-attivitá 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 skuplu u attenzjoni biex ma tigix reza fi strument ta’ ingustizzja, iktar reminixxenti taz-zminijiet tal-inkluzjoni minn dawk tal-era moderna tad-drittijiet tal-bniedem.”

Mela minn dan kjarament isegwi li ghalkemm il-Prosekuzzjoni hija meghjuna fil-mod tal-prova, dan xorta trid taghmlu bi skruplu u tressaq il-provi kollha rilevanti senjalament fuq in-ness hawn suriferut.”

Going back to the case, it thus results that:

- The accused has been an architect since 1988. Since that year he has been working with Margit Cezkowski and the Cezkowski Group in his capacity as an architect. He worked on various projects.
- In 2002 the company set up of M Architecture Ltd was initiated. In December 2002 this company was registered with the Registry of Companies in Malta. The accused is the director of this company.
- M Architecture Ltd employed two full-time architects since 2003. Alexei Pace, one of the company’s employees, confirmed that he had worked on various projects during his employment.
- On 12th August 2004 M. u. I. Cezkowski GbR represented by the partners Margit and Ignaz Cezkowski entered into a General Contractors Agreement with M Architecture Ltd. The contract awarded contracted the contractor for the structural alteration of Studios 3 and

4 of a property in Cologne which were formerly used by television broadcaster RTL. The contractor was obliged to complete all structural alterations ready for occupancy. He had to bear all the risks associated with this, in particular planning with future tenants. the issue of construction permits, the subcontracting of construction companies and the connected insolvency risks. Furthermore, the contractor was in particular responsible for the supervision of all construction work. This contract was awarded for the total sum of €8.5 million. The structural alterations that were to be carried out had to be completed latest by the end of the year 2006.

- On 1st September 2004 a Supplementary Agreement to the General Contractors Agreement was signed between M. u. I. Cezkowski GbR represented by the partners Margit and Ignaz Cezkowski entered into a General Contractors Agreement with M Architecture Ltd. In this agreement it was stated that the contractor had to begin construction work after prior agreement with the contract awarder. Planning work had already been carried out and should be completed by the end of the year 2005. In clause 2 of this Agreement thr contract awarder reserved the right to withdraw from the General Contractors Agreement.
- On 16th September 2004 the amount of €4,000,000 was transferred by means of a swift transfer into the account of a company registered in Malta, namely M Architecture Limited<sup>11</sup>.
- Few weeks following this transfer of money, Mrs Cezkowski informed the accused that she had a requirement for interim financing and it was suggested that a loan agreement be signed so that he could transfer some of the money back to her. A loan agreement was signed on 16th December 2004 and the €2 million was transferred to an account held with the Dresdne Bank
- In August 2006 searches were carried out in M Architecture's, Modern Malta Investment Sicav's premises and also in Mr Knoess's personal quarters following a request from German authorities. Various documents and computers were seized.

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<sup>11</sup> At fol 223 of the acts of the case – Account number 40012699809

- End of September 2006, the senior prosecutor for Frankfurt declared that there was no longer a reason to hold funds and documents seized from his office and thus stated that the freezing of assets should be lifted and the moneys and/or bank accounts could be released since under German law the preconditions for freezing the assets have currently not been met<sup>12</sup>.
- Immediately after, an investigation in Malta started and the accused's and the company's assets were frozen once again because an investigation and attachment order was sought.
- Statement released by the accused on the 17<sup>th</sup> November 2006.
- Michael Wolski was condemned to two years and ten months imprisonment by means of a judgment which became final on the 26<sup>th</sup> July 2011.
- No charges were proffered against the accused in Germany
- In the acts of the case, namely in the investigation report by Stuefa one finds the record of an interview with the accused at the Tax Office in Germany which took place on the 11th July 2007. It is evident from this interview that the accused was referred to several documents which were in possession of the German authorities but which do not form part of these procedures. In this report Stuefa also commented that during its investigations it was revealed that there had been an agreement between Margit Cezkowski and Michael Wolski that he would receive fees of at least €1,500,000 in return for services connected with the dissolution of landlords and tenant relations. It was also revealed from their investigations that the fees agreed were to be paid from a sum of €4 million that was transferred in September 2004 by Margit Cezkowski to M Architecture Ltd. These conclusions cannot be made by this Court since no evidence has been produced in this respect.
- Charges were proffered against the accused on 20th December 2011.
- By means of a decree dated 8th February 2012 the Court issued a seizure order vis-a-vis the accused and M Architecture Limited in terms of article 5(b) of Chapter 373 of the Laws of Malta.

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<sup>12</sup> A fol 1456 of the acts

- Margit Cezkowski sued the accused and his company for the transfer of money which is the money constituting the merits of this case. The judgment upheld the applicant's claims and such judgment was then enforced by the Maltese Courts.
- Accused also filed an appeal in Germany because he is claiming that the Cezkowski group owes him money for the services he rendered. Thus he is stating that not all the amount which is in the Maltese Banks should be transferred.
- It is to be noted that various documents were seized from the accused's office which documents were never returned to him and thus he was not able to present them in this case.

Considers:

As has already been noted above, the allegation is that the accused was an integral part of the whole plan for tax evasion to occur. The allegation against the accused is that since the General Contractor's Agreement signed was fictitious because it lacked detail considering the amount of money involved was €8.5 million, consequently this agreement and the following actions were used to serve the purpose for tax evasion by Michael Wolski, so much so that a few weeks later, €2 million were transferred to Margit Cezkowski's personal account under the guise of a loan. The underlying criminal activity thus, according to the prosecution, is the tax evasion committed by Michael Wolski who was found guilty and sentenced to two years and ten months imprisonment. It has been established that Michael Wolski was found guilty of tax evasion but other than this the evidence brought forward by the prosecution does not satisfy the burden of proof required by law vis-a-vis the accused.

This Court first of all deems that it has not even been proven that the €4 million transferred into M. Architecture's bank account and the amount of €2 million transferred to Margit Cezkowski's personal account was in fact the money which was intended to be eventually transferred to Michael Wolski by Mrs Cezkowski as alleged to pay him for the services

rendered and hence facilitate tax evasion. Moreover, the judgment exhibited in the acts of this case which was delivered against Michael Wolski does not even mention the accused or the company.

When considering the evidence produced, this Court furthermore concludes that it has not been proven that the accused had the knowledge that tax evasion was going to take place. The Court notes first and foremost that despite several notes of renvoie denoting that letters rogatory were needed so that Margit Cezkowski and Michael Wolski testify, at the end the Prosecution renounced to these witnesses. From the evidence produced it cannot be safely concluded that M Architecture Ltd was formed to serve as a vehicle for tax evasion. In fact it was registered with the Registry of Companies in 2002. In 2003 it had employed two full-time architects. Architect Alexei Pace (one of the full time architects employed with M Architecture) confirmed that he had worked on various projects in Germany and Italy during his employment. This testimony corroborates Gernot Knoess's testimony. A quick review of the company's bank account with a local Bank also indicates that the account was being made use of. The accused has also managed to prove that the General Contractors Agreement was not fictitious as alleged. In his testimony, the accused explained the works which were intended to be done for this conversion. He stated that he had prepared specifications but they were seized by the authorities and thus he was precluded from producing them. The seizure of the documents was also confirmed by Superintendent Paul Vassallo. Architect Alexei Pace confirmed that he had worked briefly on the conversion of a building into a computer building. No proof whatsoever has been brought forward that the accused and Michael Wolski had a business relationship or else that they were familiar with each other. The accused denied having any kind of relationship with Michael Wolski.

With regards to the transfer of €2 million, the accused was always consistent that prior to transferring such money he asked for an advice both from his lawyer in Malta and his accountant in Germany. The loan

agreement which has been mentioned several times during these proceedings is not to be found in the acts of this case.

With regards to the contract, Gernot Knoess declared during his testimony that he intended to re-transfer the money to Margit Cezkowski since the contract was stopped but he had claims against the group. So much so that from the acts of the case, it results that there have been several cases in Germany with regards to the money involved in this contract. Margit Cezkowski wanted the remaining amount back and she filed a case. She won the case in Germany and this judgment was enforced in Malta by the Maltese Courts. The amount subject to all this litigation is still frozen in the local Bank. Gernot Knoess, on the other hand, has filed proceedings in Germany and is putting forward claims so that he gets paid for the work he carried out on the project which is the merit of this criminal case.

Furthermore, even though it has transpired that the building subject of the General Contractors Agreement was not actually converted to a computer building but it was sold after negotiations by Michael Wolski, this does not necessarily lead to the conclusion that the accused was aware of what was happening. Infact it has not transpired (not even by means of circumstantial evidence) that Gernot Knoess knew of these negotiations and of Michael Wolski's dealings. The accused stated under oath that he was not involved in the negotiations but that of course he knew that there was a possibility that the building would be sold because there was a clause stipulated in the contract.

It is also to be noted that Gernot Knoess trusted Margit Cezkowski both because of her good reputation in Germany and also because he had been working with her and the Cezkowski group since 1988. The accused has been consistent with his version of events.

The accused apart from being charged in his personal capacity has also been charged as director, shareholder and judicial representative of M Architecture Ltd. This refers to corporate liability which implies that although the criminal responsibility falls upon a physical person, however

a pecuniary fine is imposed upon the company. As stated in the case of **Il-Pulizija vs Daniela Debattista**<sup>13</sup>

*“Illi qabel ma jista’ jinghad illi il-korp maghqud qed jinzamm responsabbli ghal xi agir penali, izda, trid tinsab htija fil-persuna fizika li tirrapprezenta dik is-socjeta. Hekk kif tigi stabbilita r-reita allura u jigi ippruvat illi r-reat sehh ghal beneficcju sew ghal kollox jew in parti ta’ dak il-korp maghqud, mela imbaghad dak il-korp maghqud kif rapprezentat mill-persuna akkuzata jista’ jehel il-penali stabbilita fil-forma ta’ hlas tal-multa. Dan ghaliex huwa meqjus illi kull att jew ommissjoni maghmula mill-persuna jew persuni li jagixxu ghan-nom tal-korp maghqud, ghandu jitqies illi huwa att jew ommissjoni maghmul mill-korp maghqud innifsu.”*

In this case, the accused as explained above and for the reasons above-mentioned is not being found guilty and thus neither the company is to be found guilty.

In the charge sheet the accused has also been charged of fraud. In the counter-order this has been omitted. In any case no proof has been produced to substantiate such charge.

For the above-mentioned reasons, the Court does not find the accused as charged guilty of the charges brought against him and thus acquits him from same.

In view of the fact that the accused is being acquitted of all the charges proffered against him, the Court orders the lifting up of the freezing order imposed by this Court against the accused and M Architecture Ltd. Thus, orders that this judgment be notified to the Registrar of the Criminal Courts and Tribunals to take cognizance of this order and to take the necessary steps for its removal.

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<sup>13</sup> Court of Criminal Appeal decided on 16<sup>th</sup> November 2016. This case dealt with article 121D of Chapter 9 of the Laws of Malta. It can though be applied to the case at hand



**Dr Josette Demicoli LL.D**

**Magistrate**