



**The Court of Magistrates (Malta)**

**As a Court of Court of Criminal Judicature**

**Magistrate Dr. Nadine Lia**

**B.A., LL.M(Kent), LL.D; Barrister at Law (England & Wales)**

**The Police**

**(Inspector Shaun Friggieri)**

**vs**

**Yulee Chekalarov**

Today the 25<sup>th</sup> March 2021

The Court after seeing the charges in respect of Yulee Stefanov Chekalarov, son of Stefan Atanasov and Sofia nee' Ariapova, resident at Cavalieri Hotel, Spinola Street, St Julians, born in Bolgas on 21/4/1965 holder of Bulgarian ID Card Number 6504210540

Who was hereby charged with having in these Islands, on the 18<sup>th</sup> and 19<sup>th</sup> June 2018 and days shortly preceding by means of several acts committed by them, even if at different times, which acts constitute violations of the same provisions of the law and are made with one resolution:

- 1) Was found to be in possession or was under your control any article for use in the course of or in connection with any fraud;

- 2) Without authorisation, used a computer or any other device or equipment to access any data, software or supporting documentation held in that computer or on any other computer, or used copies or modified any such data, software or supporting documentation;
- 3) Without authorisation copied any data, software or supporting documentation to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;
- 4) Without authorisation produced, sold, procured for use, imported, distributed, possessed or otherwise made available a device, including a computer program, designed or adapted primarily for the purpose of committing any of the acts in paragraphs (a) to (j) of the Criminal Code, Chapter 9 of the Laws of Malta, or a computer password, access code, or similar data by which the whole or any part of an information system is capable of being accessed;
- 5) Without authorisation modified computer equipment or supplies that are used or intended to be used in a computer, computer system or computer network;
- 6) Finally, with intent to commit a crime manifested such intent by overt acts which are followed by a commencement of the execution of the crime, such crime being the carrying out, to the prejudice of any other person, any fraudulent gain as contemplated in Article 309 of Chapter 9 of the Laws of Malta attempt to commit any other fraudulent gain to the prejudice of any other person not specified in the preceding articles;

The Court is also hereby kindly requested that in case of a finding of guilt of the accused, apart from inflicting the punishment prescribed at Law, also orders the forfeiture of all the objects exhibited in these proceedings.

The Court is also hereby kindly requested that in pronouncing judgment or in any subsequent order, sentence the person/s convicted, jointly or severally, to the payment, wholly or in part to the Registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, within such period and in such amount as shall be determined in the judgment or order, as per Section 533 of Chapter 9 of the Laws of Malta.

Having seen that during the examination of the accused in the sitting of the 30<sup>th</sup> December 2020 done in accordance with article 392(1) of the Criminal Code, the accused pleaded not guilty to the charges against him.<sup>1</sup>

Having seen that the Attorney General gave his consent that the proceedings be dealt with summarily;<sup>2</sup>

Having seen that the accused subsequently registered a plea of guilt during the sitting of the 23<sup>rd</sup> February 2021;

In view of the accused's declaration, the Court warned him in the most solemn manner of the consequences arising out of his guilty plea and granted him a reasonable time within which to retract such guilty plea should he so wish. After the Court granted this time to the accused, and after consulting with his legal counsel, the accused reiterated that he is guilty as charged.

In view of this declaration, duly reiterated, the Court has no option but to find the accused guilty as charged in accordance with article 392A of Chapter 9 of the Laws of Malta and could proceed to deliver judgment against him.

Having seen that there exist no valid reasons in accordance with article 392A(3) of Chapter 9 of the Laws of Malta for the Court to doubt the validity of such plea of admission, or that the accused is not guilty of the crimes with which he is charged. Therefore the crimes are sufficiently proven.

Having seen the records of the proceedings as well as the documents filed together with the charge sheet and the particular circumstances of this case;

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<sup>1</sup> Page 7 act of proceedings

<sup>2</sup> Dok YC1, Folio 9

Having heard submissions by the parties on the punishment;

Having seen the case was put off for judgment for today;

## **Having Considered**

### **The facts of the case**

This case concerns skimming devices being attached to Euronet ATM's in Paceville, St Julians. From the police investigations it resulted that the accused was the person responsible for placing these devices in the ATM's, which devices serve the purposes of defrauding ATM users.

## **Having considered**

### **The punishment**

The Court in its deliberations concerning the punishment took note of the following factors:

- The admission of the accused. Even though the admission by the accused was not done in the first instance, the accused admitted in the early on in the proceedings and therefore should still benefit from the fact that he registered an admission during the early course of proceedings and this shall serve in his favour in the circumstances of the cases.
- The prosecution in its final submissions reiterated that it was not insisting on a term of effective imprisonment as a punishment but that a non custodial alternative to imprisonment would serve as a suitable punishment. The prosecution however insisted that the pecuniary

punishment should reflect the seriousness of the charges and should not be towards the minimum allowed by law.

- The defence in its final submissions concurred with the prosecution that a non custodial alternative to imprisonment would be the most effective form of punishment and requested the court to impose a pecuniary punishment towards the minimum.

### Decide

The Court, upon the unconditional guilty plea registered by the accused charged and after having seen articles 18, 41, 310BA(1), 337C(1)(a), 337C(1)(c), 337C(1)(l), 337D(a), 309 of the Criminal Code of Chapter 9 of the Laws of Malta, finds Yulee Stefanov Chekalarov guilty as charged of all the charges against him and condemns him to two (2) years imprisonment, whereas by application of Article 28A of Chapter 9 of the Laws of Malta, the said term of two (2) years imprisonment is being suspended for a period of four (4) years from today and a fine (*multa*) of fifteen thousand Euros (€15,000) payable over a maximum period of three (3) years from today.

In terms of Article 28A(4) of Chapter 9 of the Laws of Malta, the Court explained to the accused in plain and simple language his liability under Article 28B of Chapter 9 of the Laws of Malta, if during the operational period of this suspended sentence he commits an offence punishable with imprisonment.

The Court after having seen article 23 of Chapter 9 of the Laws of Malta order the forfeiture of the *corpus delicti* and the instruments used or intended to be used in the commission of the crime and of anything obtained by such crime.

Furthermore, in view of the fact that no experts were appointed in this case, the Court abstains from taking further cognisance of the prosecutions requests in terms of Article 533 of Chapter 9 of the Laws of Malta.

Finally, the Court, after having seen Article 392A of the Criminal Code orders that this judgment together with the records of the proceedings be transmitted to the Attorney General within six working days in terms of law.

**Delivered today the 25<sup>th</sup> March 2021, at the Courts of Justice in Valletta, Malta.**

**Dr. Nadine Lia  
Magistrate**

**Lorianne Spiteri  
Deputy Registrar**