



Court of Magistrates (Malta) as a Court of Criminal Judicature

THE POLICE (INSPECTOR NICHOLAS VELLA) V. MIGUEL ANGEL GARCIA GARCIA (ID. 138417A)

MAGISTRATE: DR. VICTOR G. AXIAK

07/03/2023

THE COURT,

Having seen the charges issued against the accused:

As you have been charged that 26/09/2021 at about 19.30 hrs in limits of I-Ghajn il-Kbira, Siggiewi, drove vehicle No.ECB 504;
1. Drove a motor vehicle or any other vehicle without a driving licence **Sec. 15(1)(a)(3), Chap. 65**

Having heard the witnesses summoned before it and having considered the testimony that was produced, that is, the testimony of PC 541 Liam Fava (affidavit), PS 661 Christian Grech (affidavit), Kenneth Pace (affidavit, Transport Malta) and Karen Cremona (Transport Malta);

Having seen all the acts of the case;

Having heard final submissions made by the Prosecution and the Defence;

Is giving the following

Judgement

From the affidavits of PC 541 Liam Fava and PS 661 Christian Grech it results that on the date, at the time and in the place indicated on the summons, the accused had been driving a motor-cycle with registration number ECB-504. The accused was in possession of a driving license issued by the Spanish authorities under Categories B and B1. The Prosecution's position is that

under Maltese law (that is, the Motor Vehicles (Driving Licences) Regulations, S.L. 65.18), Category B applies to motor vehicles with a maximum authorised mass not exceeding 3 500 kg and designed and constructed for the carriage of no more than eight passengers in addition to the driver and Category B1 applies to quadricycles. Therefore according to the Prosecution the accused, who was driving a motorcycle with an engine cubic capacity of 125cc (see vehicle details report filed by Kenneth Pace with his affidavit) had to be in possession of a driving license issued under Category A1, that applies to such motorcycles .

The accused contends that under Spanish law a driver licensed to drive under Category B and B1 is allowed to drive A1 category motorcycles and therefore in accordance with Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, the accused's driving license together with its benefits under Spanish law should be recognised and also apply under Maltese law.

The Court notes that Directive 2006/126/EC was transposed into Maltese law by virtue *inter alia* of the Motor Vehicles (Driving Licences) Regulations. Article 6.2 of the Directive, as transposed under Article 50 of the Regulations, provides as follows:

'6.2. The validity of driving licences shall be determined as follows:

(a) licences granted for categories C1E, CE, D1E or DE shall be valid for combinations of vehicles in category BE;

(b) licences granted for category CE shall be valid for category DE as long as their holders are entitled to drive vehicles in category D;

(c) licences granted for category CE and DE shall be valid for combinations of vehicles in categories C1E and D1E respectively;

(d) licences granted for any category shall be valid for vehicles in category AM. However, for driving licences issued on its territory, a Member State may limit the equivalences for category AM to categories A1, A2 and A, if that Member State imposes a practical test as a condition for obtaining category AM;

(e) licences issued for category A2 shall also be valid for category A1;

(f) licences granted for categories A, B, C or D shall be valid for categories A1, A2, B1, C1, or D1 respectively. '

The Directive also provides in Art 6.3 that:

'6.3 For driving on their territory, Member States may grant the following equivalences:

(a) motor tricycles under a licence for category B, for motor tricycles with a power exceeding 15 kW provided that the holder of the licence for category B is at least 21 years old;

(b) category A1 motorcycles under a licence for category B.

As this paragraph is only valid on their territories, Member States shall not indicate on the driving licence that a holder is entitled to drive these vehicles.'

It is indeed the case that under Spanish law, drivers in possession of a driving license for category B are also authorised to drive category A1 motorcycles. However the Maltese State opted out of transposing this provision under Maltese law. Given that the Directive itself states that such equivalence applies only on the territories of the Member States who opt for it, it is clear that it cannot be made applicable under Maltese law given that the legislator opted not to transpose it.

Decision

For the abovementioned reasons, having seen the relevant article/s of the law (Chapter 65, Art. 15(1)(a)) the Court finds the accused guilty of the charge brought against him and fines him the amount of four hundred euro (€400). In addition to the fine, the Court disqualifies the offender from holding or obtaining a driving licence for a period of sixteen (16) days (Ch. 65, Art. 15(3)).

V.G. Axiak
Magistrate

Y.M. Pace
Dep. Registrar