



THE COURT OF CRIMINAL APPEAL

HON. MADAME JUSTICE NATASHA GALEA SCIBERRAS B.A., LL.D

Appeal Number: 177/2023

The Police

vs

Milosz DLUGOSZ

Today, 22nd February, 2024

The Court:

Having seen the following:

A. THE CHARGES

1. This is an appeal filed by the Attorney General from the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on 4th May 2023 against **Milosz DLUGOSZ**, aged 33 years, born in Germany on 26th December 1989, residing at Bay Square Court, Flat 3, Sant'Antnin Street, St. Paul's Bay and holder of Polish Passport Number: EM4793270, who was charged with:

Having on the 22nd April 2023 between 04.30hrs and 05.00hrs at St. Paul's Bay and/or on the Maltese Islands:

- (i) Without the intent to kill or to put the life of his partner namely Sonya Griffiths in manifest jeopardy, voluntarily caused bodily harm or ill

health of grievous nature on his partner Sonya Griffiths as certified by Dr. Vanessa Mercieca (Med. Reg. 4602);

- (ii) And more that on the same date, time, place and circumstances, uttered insults or threats to his partner namely Sonia Griffiths not otherwise provided for in the Criminal Code, or upon being provoked, carried his insult beyond the limit warranted by the provocation;
- (iii) And more that on the same date, time, place and circumstances, committed a crime while on an operative order of conditional discharge of a sentence given by the Court of Malta, presided over by Magistrate Dr. Ian Farrugia LL.D. on the 16th April 2023, which sentence became definitive and cannot be changed and this in violation of Article 22 of Chapter 446 of the Laws of Malta;
- (iv) And more that on the same date, time, place and circumstances, re-offended with sentences handed down by the Court of Malta, which sentences are definitive and cannot be changed and this in violation of Articles 49 and 50 of Chapter 9 of the Laws of Malta.

The Court was requested to issue a Protection Order during the proceedings against Milosz DLUGOSZ for the benefit of Sonya Griffiths as per Article 412C of Chapter 9 of the Laws of Malta;

In the case of conviction, the Court was requested to provide for the safety of Sonya Griffiths or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, which requires that Milosz DLUGOSZ enters into his own recognizance in a sum of money fixed by the Court as per Article 383 et seq of Chapter 9 of the Laws of Malta.

In the case of conviction, the Court was further requested, besides awarding punishment according to law, to order that Milosz DLUGOSZ pays the costs incurred in the employment of experts, as per Article 533 of Chapter 9 of the Laws of Malta.

B. THE APPEALED JUDGMENT

2. The Court of Magistrates (Malta) as a Court of Criminal Judicature, after having seen Articles 49, 214, 216, 222(1)(a), 202(2)(h)(vi), 339(1)(e) of the Criminal Code and Article 22(3) of Chapter 446 of the Laws of Malta, upon his guilty plea, found Milosz DLUGOSZ, as recidivist in terms of Article 49 of the Criminal Code, but not in terms of Article 50 of the Criminal Code, guilty of the first, the second and the fourth charge brought against him and condemned him to thirty six (36) months imprisonment.

With regards to the third charge, the Court, after seeing Article 23 of Chapter 446 of the Laws of Malta, dealt with the accused for the charges brought against him and for which he was found guilty by virtue of the judgement of the Court of Magistrates as a Court of Criminal Judicature of the 16th April 2023, and whilst, for all intents and purposes, it confirmed the guilt of the accused of all the charges, after seeing Articles 17, 31, 221(1), 251(1) and (3), 339(e), 339(d) and 338(d) and (m) of the Criminal Code, condemned Milosz DLUGOSZ to eighteen (18) months imprisonment.

Hence, the accused was condemned to a total of fifty four (54) months imprisonment.

In terms of Article 412D of the Criminal Code, the Court issued a Treatment Order so that Milosz DLUGOSZ is helped to address his alcohol problem.

In terms of Article 382A of the Criminal Code, the Court issued a Restraining Order to safeguard Sonya Griffiths.

The Court also explained to the person sentenced the consequences of breaching these orders.

The Court ordered that copies of the Treatment Order be served forthwith on the respondent and the Director of Probation Services so as to assign

a Probation Officer to be responsible for the supervision of the person sentenced, and on the Director of the Corradino Correctional Facility.

Finally, the Court did not take cognizance of the Prosecution's request to condemn Milosz DLUGOSZ to pay the costs incurred in the employment of experts as per Article 533 of the Criminal Code, as no experts were appointed.

C. THE APPEAL

3. The Attorney General appealed from the said judgement requesting this Court "*to reform the judgment appealed from by modifying only the name of the victim in favour of whom the restraining order was issued in terms of Article 382A of the Criminal Code and to confirm/provide for the security of Sonya Griffiths.*" Saving that part, the Attorney General also requested this Court "*to confirm the said judgment in its entirety*".

D. CONSIDERATIONS OF THIS COURT

4. During the hearing of the present appeal on 8th January 2024, this Court *ex officio* raised the nullity of the judgement delivered by the Court of Magistrates (Malta), firstly because in the conclusive part of the judgement, the Court of Magistrates (Malta) failed to declare the respondent DLUGOSZ guilty of the third charge as proffered against him, despite dealing with him for the offences of which he was found guilty by means of the judgement delivered by the Court of Magistrates (Malta) on 16th April 2023, and secondly because it failed to indicate the correct articles of law creating the offences forming the subject matter of the judgement delivered against the respondent on 16th April 2023.
5. With regards to the first ground of nullity, the Court refers to the provisions of Article 382 of the Criminal Code, which reads as follows:

The court, in delivering judgment against the accused, shall state the facts of which he has been found guilty, shall award punishment and

shall quote the article of this Code or of any other law creating the offence.

6. According to Article 382 of the Criminal Code, in delivering judgement against the accused, the Court is required *ad validitatem* to state the facts of which the accused has been found guilty. It therefore follows that the Court cannot proceed to deliver a valid judgement without first having pronounced itself with a declaration of guilt in regard to the facts for which the accused is then awarded punishment. If the Court fails to make such declaration, the judgement delivered is defective and null, lacking the formalities prescribed in Article 382 of the Criminal Code.
7. In this regard reference is being made to the judgement in the names **II-Pulizija (Spettur Pierre Micallef Grimaud) vs Joseph Agius**, decided by the Court of Criminal Appeal, as differently presided, on 15th March 2012, where it was held that:

Minn ezami akkurat tal-parti konklussiva tas-sentenza l-Qorti ssib illi wara li l-Ewwel Qorti ghaddiet biex issemmi l-artikoli ghaddiet mill-ewwel biex tikkundanna lill-appellant, minghajr ma ddikjaratu hati tal-akkuzi illi gew dedotti kontra tieghu.

L-artikolu 382 tal-Kap. 9 jghid testwalment illi meta l-Qorti taghti sentenza kontra imputat ghandha tghid l-fatti li taghhom dan ikun gie misjub hati, taghti l-piena u ssemmi l-artikolu ta' dan il-Kodici jew ta' kull ligi li tkun tikkontempla r-reat.

Ovvjament la l-Qorti hija marbuta illi taghti l-fatti li taghhom l-appellant ikun gie misjub hati, tfisser illi ghandu jkun hemm id-dikjarazzjoni ta' htija ghax altrimenti huwa inutili li ssemmi l-fatti. In-nuqqas ta' dikjarazzjoni ta' htija twassal ghal nuqqas ta' formalita' sostanzjali bhal ma wkoll hija suggetta ghall-istess censura n-nuqqas ta' dikjarazzjoni ta' x'hix l-akkuzat qed jinstab hati.

Ghalhekk peress illi l-ewwel sentenza hija karenti minn dawn l-elementi din il-Qorti m'ghandhix triq ohra hlief illi tilqa' dan l-aggravju, tiddikjara s-sentenza ta' l-Ewwel Qorti nulla u bla effett

u tordna illi l-atti jigu rimandati lill-Ewwel Qorti sabiex tinghata sentenza skont il-ligi. (sottolinear ta' din il-Qorti)

8. The same was held in the judgement delivered by the Court of Criminal Appeal, differently presided, on 31st October 2013, in the names **Il-Pulizija (Spettur Trevor Micallef) vs Omissis, Benjamino Camilleri** wherein it was held that:

... Ovjament la l-Qorti hija marbuta illi taghti l-fatti illi taghhom l-appellant ikun gie misjub hati dana jfisser illi ghandu jkun hemm id-dikjrazzjoni ta' htija ghax altrimenti huwa nutli illi ssemmi l-fatti, jsegwi f'kaz ta' mputazzjoni multipla illi l-Qorti jew taghti piena wahda kompleksivament jew inkella ssemmi wahda wahda l-imputazzjonijiet u taghti l-piena skont il-kaz. ... F'pozizzjoni bhal din twassal ghan-nuqqas ta' formalita sostanzjali u l-ewwel Sentenza hija suggetta ghal censura ghan-nuqqas ta' dikjarazzjoni ta' xiex l-akkuzat qed jinstab hati (ara Il-Pulizija vs Joseph Agius Appell Kriminali 15 ta' Marzu, 2012). Ghalhekk peress illi s-Sentenza appellata hija karenti minn dan l-element l-ewwel aggravju ta' l-appellant jimmerita konferma.

9. In the present case, it is clear that following the respondent's guilty plea, the Court of Magistrates (Malta) found guilt in the respondent DLUGOSZ also with regards to the third charge proffered against him, so much so that it proceeded to confirm the respondent's guilt for those offences of which he was found guilty and in respect of which he had been conditionally discharged by a judgment delivered on 16th April 2023. However, the Court failed to first make a declaration of guilt in respect of this third charge and the conclusive part of the judgement is therefore lacking in terms of Article 382 of the Criminal Code as it does not "*state the facts of which [the accused] has been found guilty*". In this respect, the said judgement is therefore defective and null.
10. Furthermore, the Court *ex officio* raised a second ground of nullity of the said judgement and this in respect of that part of the judgment where the Court proceeded to deal with the respondent for the offences of which he had been found guilty by means of the judgement delivered by the Court of Magistrates (Malta) on 16th April 2023, in terms of the provisions of

Article 22(3) of Chapter 446 of the Laws of Malta. This Court notes that in referring to the offences for which the respondent was declared guilty by the judgement dated 16th April 2023, the Court of Magistrates referred to an incorrect article of law creating one of the said offences. Indeed in the judgement dated 16th April 2023¹, the Court of Magistrates found the respondent DLUGOSZ guilty *inter alia* of the offence contemplated in Article 338(dd) of the Criminal Code, which was erroneously cited by the Court of Magistrates (Malta) in the judgement dated 4th May 2023 as Article 338(d) of the Criminal Code. With reference to the judgement delivered on 16th April 2023, it is evident that in that case, the Court found the respondent guilty *inter alia* of the offence prescribed in Article 338(dd) of the Criminal Code and that Article 338(d) of the said Code is not an article of law which creates any of the offences of which the respondent was found guilty by means of that judgement.

11. A judgement which does not refer to the correct article of law creating the offence of which the accused is found guilty, lacks in a formality that is prescribed *ad validitatem* in terms of Article 382 of the Criminal Code. In this regard, reference is being made to the judgement delivered by the Court of Criminal Appeal, differently presided, on 4th August 2006 in the names **Il-Pulizija (Spettur Kevin Borg) vs Edward Chatlani**, wherein it was stated that:

Hawn pero' din il-Qorti tirrileva li b'*lapses* evidenti, l-Ewwel Qorti, fis-sentenza appellata, meta kienet qed telenka l-artikoli li tahtom sabet htija, ghamlet riferenza ghall-artikolu 288 (B), li ma jezistix fil-Kodici Kriminali, minnflok ghall-artikolu 298B li kien gie indikat lilha fic-citazzjoni mill-Prosekuzzjoni.

Dan l-izball jirrendi s-sentenza nulla ghall-inqas f'din il-parti taghha ghaliex, kif dejjem gie ritenut skond l-artikolu 382 tal-Kap. 9 tal-Ligijiet ta' Malta, il-Qorti tal Magistrati, meta taghti s-sentenza kontra l-imputat, ghandha tghid l-fatti li taghhom dan ikun gie misjub hati, taghti l-piena w ssemmi l-artikolu tal-Kodici Kriminali jew ta' kull ligi ohra li tkun

¹ Exhibited as Doc. SB 11, a fol. 50 *et seq* of the records of the proceedings.

tikkontempla r-reat; (App. Krim. “Il-Pulizija vs. Daniel Lanzon” [20.10.05] u ohrajn)

Illi skond guriprudenza kostanti ta’ din il-Qorti n-nuqqas li jsir dan jimporta n-nullita’ tas-sentenza appellata. Dan ghaliex dan-nuqqas jammonta ghal nuqqas ta’ formalita’ sostanzjali. F’ kaz simili dan jintitola lil din il-Qorti li thassar is-sentenza appellata w tiddeciedi l-kaz mill-gdid. (ara f’ dan is-sens l-Appelli Kriminali: “Il-Pulizija vs. Paul Cachia” [25.9.2003]; “Il-Pulizija vs. Joseph Zahra” [9.9.2002]; “Il-Pulizija vs. Benjamin Muscat” [10.7.2002 u 28.6.2002] “Il-Pulizija vs. Donald Cilia” [24.4.2002] u ohrajn)

Illi gie ukoll ritenut li l-indikazzjoni tal-artikolu hazin jew addirittura l-indikazzjoni tal-ligi skorretta hu ekwiparat ma n-nuqqas ta’ citazzjoni tal-artikolu tal-ligi li tahtu tkun instabet htija. (ara “Il-Pulizija vs. Mario Agius” [3.2.1995] u ohrajn)

Illi gie ukoll ritenut li l-Qorti tista dejjem tirrileva tali nuqqas “ex officio”, ghalkemm ma jkun hemm ebda aggravju dwar dan. (ara. App.Krim. “Il-Pulizija vs. Anthony Zahra” [26.5.1994]; “Il-Pulizija vs. Vincent Cucciardi” [6.1.2005]; “Il-Pulizija vs. Stefan Abela” [2.2.2006] u ohrajn)

Fic-cirkostanzi ghalhekk din il-Qorti trid necessarjament tannulla w tiddeciedi mill-gdid dik il parti tas-sentenza li tirrigwarda s-sejbien ta’ htija skond it-tieni imputazzjoni w l-piena relattiva²

12. Having made the above considerations, this Court declares null the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on 4th May 2023, and in terms of Article 428(3) of the Criminal Code, it proceeds to quash the said judgement and decide on the merits of the case.

² This same principle was also referred to *inter alia* in the judgements Il-Pulizija (Spettur P. Micallef Grimaud) vs John Axiaq, Omissis (Court of Criminal Appeal, 19th May 2005); Il-Pulizija vs Carmel sive Charles Spiteri (Court of Criminal Appeal, 3rd December 2019); Il-Pulizija vs Domenic Chircop (Court of Criminal Appeal, 26th September 2023).

Considers further that:

13. During the respondent's arraignment before the Court of Magistrates (Malta) as a Court of Criminal Inquiry on 23rd April 2023, the respondent DLUGOSZ pleaded guilty to all the charges proffered against him. From the minute of the said sitting, it results that following the said plea, in line with Article 392A of the Criminal Code, the Court explained to the respondent (then accused) the applicable punishment in terms of law and gave him some time to reconsider his plea. Subsequently, the respondent confirmed that he had been given sufficient time to reconsider the said plea and proceeded to confirm it.³
14. In respect of the punishment to be inflicted, the Court notes that the first Court rightly took into consideration the fact that the respondent admitted to the charges brought against him at a very early stage of the proceedings and that he co-operated with the police. The first Court also considered that the respondent caused grievous injuries to his partner, so however that in respect of the first charge, the Prosecution declared that the injuries inflicted were of a grievous nature in terms of Article 216 of the Criminal Code.⁴ The applicable punishment of one year to seven years imprisonment, in terms of the mentioned Article 216, is then subject to an increase by one degree (and not by one or two degrees, as stated by the Court of Magistrates (Malta)) in terms of Article 222(1)(a) and 202(h)(vi) of the Criminal Code, since the injured party is the respondent's partner. In line with the considerations made by the Court of Magistrates (Malta), this Court also considers that in view of the serious nature of the offence contemplated in the first charge, and the circumstances of the case as resulting from the Current Incident Report and the medical certificate exhibited by the Prosecution⁵, it is appropriate to inflict upon the respondent a custodial sentence, accompanied by a Treatment Order in order that he may be given suitable guidance and assistance to address and hopefully, overcome his problems.

³ A fol. 10 and 11 of the records.

⁴ *Vide* the minute of the sitting held on 23rd April 2024, where the Prosecution declared "*that the injuries can be classified as grievous under Section 216 of the Criminal Code*" (a fol. 11).

⁵ Doc. SB 1, a fol. 13 and Doc. SB 3, a fol. 35 of the records.

15. As stated by the first Court, the second charge contemplates a contravention and thus in terms of Article 17(d) of the Criminal Code, the respondent is liable to be punished merely for the first charge, which prescribes a punishment of more than three months imprisonment.
16. In respect of the third charge, the Court notes that the respondent was conditionally discharged by the Court of Magistrates (Malta) by means of a judgement delivered on 16th April 2023 and thus, a mere seven days prior to the date on which he was arraigned in Court and charged with having committed a crime during the operative period of that conditional discharge. It is clear to this Court that despite the wording of the third charge, namely, that the judgement of 16th April 2023 delivered by the Court of Magistrates (Malta) as presided by Magistrate Dr. Ian Farrugia, had become final and definitive, this was not the case on the date on which he committed the offences of which he is being found guilty by means of this judgement, namely on 22rd April 2023, as the period within which an appeal could be lodged from that judgement was still running. Thus, once it cannot be said that the judgement was final and definitive at the time of the commission of the said offences, despite entering a guilty plea in respect of the third charge, the Court cannot find the respondent guilty thereof.
17. In respect of the fourth charge, the Court notes that the first Court considered that the respondent may be deemed a recidivist in terms of Article 49 but not Article 50 of the Criminal Code, since in terms of Article 25 of Chapter 446 of the Laws of Malta, a conviction discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purpose other than those listed in the same article. In respect of the said charge, therefore, the first Court found the respondent guilty in terms of Article 49 of the Criminal Code.
18. In this respect, the Court notes that from the conviction sheet exhibited by the Prosecution, it results that the respondent had been found guilty of several offences by a judgement delivered by the Court of Magistrates (Malta) as presided by Magistrate Dr. Ian Farrugia on 16th April 2023, and conditionally discharged for a period of three (3) years. This is in fact the judgement to which the third charge refers. Additionally, the Prosecution also exhibited the said judgement. Apart from the fact that

this Court's reasoning in respect of the third charge applies also to this charge since the judgement was not yet final and definitive at the time of the commission of the offences of which the respondent is being found guilty by means of this judgement, furthermore, in terms of Article 25(1) of Chapter 446 of the Laws of Malta:

(1) Subject as hereinafter provided, a conviction for an offence for which an order is made under this Act placing the offender on a community sanction or discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purpose whatsoever other than –

- (a) the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act, and
- (b) in the case of a public officer, the purposes or any disciplinary proceedings which may be taken against, or any disciplinary punishment which may be imposed upon, such public officer in consequence of any such conviction or of any of the facts constituting the offence:

Provided that where an offender, being not less than eighteen years of age at the time of the conviction of an offence for which he is placed on a community sanction or conditionally discharged as aforesaid, is subsequently sentenced for that offence, the provisions of this subarticle shall cease to apply to the conviction.

19. In this regard reference is being made to the judgement delivered by the Court of Criminal Appeal, as differently presided, on 17th September 2004, in the names **Il-Pulizija vs Christopher Agius** where the Court, with reference to a Probation Order stated as follows:

Dak li qieghed jippreokkupa din il-Qorti pero` huwa l-fatt li l-appellat gie addebitat b'recidiva dwar sentenza li permezz taghha huwa kien tqieghed taht probation ghal perijodu ta' tliet snin skond l-artikolu 7 tal-Kap. 446. Ghalhekk, QATT MA SETA' JIGI ADDEBITAT MILL-PULIZIJA EZEKUTTIVA BIR-RECIDIVA DWAR DIK IS-SENTENZA. U m'hemm l-ebda

dubju dwar liema sentenza din l-imputazzjoni kienet qed tirreferi. Persuna titqies li hija recidiva "jekk, wara li tkun giet ikkundannata ghal reat b'sentenza li tkun saret definittiva, taghmel reat iehor" (artikolu 49 tal-Kap. 9).

Here the Court went on to cite Article 25(1) of Chapter 446 of the Laws of Malta and continued as follows:

Il-kaz odjern ma jaqa' taht l-ebda wahda mis-sitwazzjonijiet fil-paragrafi (a) jew (b). Konsegwentement id-dikjarazzjoni ta' htija fil-proceduri kontra l-appellat u li temmew bis-sentenza tal-Qorti tal-Magistrati tat-28 ta' Marzu 2003 li permezz taghha huwa tqiegħed taht probation għal perijodu ta' tliet snin, ma setgħet QATT titqies bħala dikjarazzjoni ta' htija għall-finijiet ta' recidiva.

20. The same principle applies to the present case, since Article 25(1) above cited applies also in those cases where the offender has been conditionally discharged. Thus, the respondent, then accused, could not enter a guilty plea in respect of the fourth charge, which has no legal basis. Accordingly, since the judgement of 16th April 2023 was not yet final and definitive at the time of the commission of the present offences, and since in any case, the said judgement conditionally discharged the respondent, notwithstanding his guilty plea in respect of the fourth charge, the Court shall acquit him thereof.

CONCLUSION

For these reasons, the Court, after having seen Articles 17(d), 31, 214, 216, 222(1)(a), 202(h)(vi) and 339(1)(e) of the Criminal Code, finds the respondent Milosz DLUGOSZ, not guilty of the third and fourth charges proffered against him and acquits him thereof, and upon his guilty plea, entered before the Court of Magistrates (Malta) as a Court of Criminal Judicature, finds him guilty of the first and second charges and condemns him to a term of thirty six (36) months effective imprisonment.

In terms of Article 412D of the Criminal Code, the Court is issuing a Treatment Order in respect of Milosz DLUGOSZ, in order that he may be provided with

professional assistance to address his alcohol problem and any other problem, regarding which he may require such assistance and this for a period of three (3) years from the date of this judgement.

The Court orders that a copy of the Treatment Order be served forthwith on the Director of Probation and Parole.

In terms of Article 382A of the Criminal Code, the Court is placing Milosz DLUGOSZ under a Restraining Order for the purpose of providing for the safety of Sonya Griffiths, a) prohibiting the respondent from approaching or following the movements of Sonya Griffiths, b) prohibiting access by the respondent to premises in which she lives, works or frequents and c) prohibiting the respondent from communicating, whether directly or indirectly, with Sonya Griffiths. The said Order shall remain in force for a period of three (3) years from the date of expiration or remission of the punishment imposed.

The Court orders that the said Order shall be immediately communicated to the Commissioner of Police.

The Court warned the respondent, in simple and clear language, of his responsibility in terms of the Treatment Order and the Restraining Order hereby issued and the legal consequences should he fail to abide by the conditions of the said orders.

Finally, the Court is not taking cognizance of the Prosecution's request to condemn the person sentenced to pay the costs incurred in the employment of experts, in terms of Article 533 of the Criminal Code, since no experts have been appointed in these proceedings.

Natasha Galea Sciberras
Judge