



**Court of Criminal Appeal**

**Onor. Imhalledf Consuelo Scerri Herrera, LL.D., Ph.D.**

**Appeal Number: 376/2023**

**The Police**

**vs**

**Pietro Pecchioni**

**Today, the 9<sup>th</sup> April, 2024**

The Court,

Having seen the charges brought against the appealed, Pietro Pecchioni ID card number; 0317819A was charged before the Court of Magistrates (Malta) as a Court of Criminal Judicature (hereinafter referred to as the Court of Magistrates) that:

On 29 May 2022 at about 09.25 am in Triq Tul il-Kosta, Naxxar, he drove a vehicle with registration number BCO 987 when it was not licensed by the Authority for Transport in Malta to be used on the road (Vehicle licence not renewed).

The Prosecution requested that the mentioned person be disqualified from all his driving licences for a period of time that the Court deems fit.

Having seen the judgment of The Court of Magistrates (Malta) as Court of Criminal Judicature of the 26th September 2023, the Court acquits the accused from the charge brought against him.

Having seen the application of the Attorney General where he is asking that this Honourable Court **reforms** the judgment proffered against the accused in these proceedings by revoking and annulling the appellate judgment, declare Pietro Pecchioni guilty of the charge brought against him and impose an adequate punishment according to law.

### **REASONS FOR AND GROUNDS FOR APPEAL**

That the appellant felt aggrieved by the aforementioned judgment delivered by the Court of Magistrates for the following reasons:

That, with all due respect, the appellant disagrees with and criticises the judgment of the Court of Magistrates because it made an incorrect assessment of the facts of the case and the evidence brought by the parties and, subsequently, cited the wrong law. The appellant argues that, as per the charge sheet exhibited and inserted in the acts of the case, and contrary to what the Court of Magistrates stated in its judgment, **the respondent was charged with driving a vehicle with registration number BCO 987 when such vehicle was not licensed by the Authority for Transport in Malta to be used on the road and not** with having a motor vehicle on the road, whether parked or in use, without a valid circulation licence. Admittedly, the charge ends with the phrase put in brackets “Vehicle licence not renewed” but it is clear that the respondent was actually accused of driving the said vehicle when it was not appropriately licensed by the Authority for Transport in Malta. In fact, the relevant law and article of the law were indicated in the upper left corner of the charge sheet.

The Court of Magistrates cited Regulation 13(2) of the Registration and Licensing of Motor Vehicles Regulations, Subsidiary Legislation 368.02, which Regulation states as follows:

No motor vehicle may be on the road, whether parked or in use, without a valid circulation licence, or a circulation permit or a temporary licence disc, as applicable, issued by the Authority, unless the motor vehicle is an exempt vehicle under the provisions of the Act.

However, the appellant contends that **the applicable law is the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta, and the relevant article of the law is Article 15(1)(a)(3)**, which holds as follows:

(1) Any person who –

(a) **drives** a motor vehicle or other vehicle without a licence or **an unlicensed motor vehicle** or other vehicle, or in a reckless, negligent or dangerous manner, provided that no licence shall be required in relation to a bicycle;

...

**shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding one thousand and two hundred euro (€1,200) or to imprisonment not exceeding one year.**

...

(3) In the case of any other offence **under sub-article (1)**, the court shall, in addition to the punishment under that sub-article, disqualify the offender for holding or obtaining a driving licence for a period of not less than eight days.

The appellant considers that, from an analysis of the evidence tendered before the Court of Magistrates, namely, the testimony of EO 337, the affidavit of Stephen Cachia and the various documents exhibited by the defence counsel marked as Dok X, Dok A, Dok B, Dok C and Dok D respectively, it can be ascertained that all the elements of the offence contemplated in the charge brought against the respondent subsist. Hence, **the Court of Magistrates should have found the respondent guilty beyond reasonable doubt of the charge brought against him, that is, of the offence contemplated in Article 15(1)(a) of the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta, and should have inflicted the relevant punishment, which is dictated in Article 15 and is enforceable** (in contrast to the one to be imposed for the commission of the offence contemplated in Regulation 13(2) of The Registration and Licensing of Motor Vehicles Regulations, Subsidiary Legislation 368.02).

Having seen the acts of the proceedings.

Having seen the updated conduct sheet presented by the prosecution as requested by the Court.

Having heard the submissions brought forward by the parties on the 5<sup>th</sup> of March, 2024.

### **Considers,**

The specific functions of this Court, as court of criminal appeal, were clearly explained in the case **Ir-Repubblika ta' Malta vs Emanuel Zammit**<sup>1</sup> decided by the Court of Criminal Appeal in its Superior Jurisdiction where it was held that:

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<sup>1</sup>Dated the 21<sup>st</sup> April 2005. Vide also: **Ir-Repubblika ta' Malta vs Domenic Briffa**, 16 ta' Ottubru 2003; **Ir-Repubblika ta' Malta vs. Godfrey Lopez u r-Repubblika ta' Malta v. Eleno sive Lino Bezzina** 24 ta' April 2003, **Ir-Repubblika ta' Malta vs. Lawrence Ascjak sive Axiak** 23 ta' Jannar 2003, **Ir-Repubblika ta' Malta vs. Mustafa Ali Larbed; Ir-Repubblika ta' Malta vs Thomas sive Tommy Baldacchino**, 7 ta' Marzu 2000, **Ir-Repubblika ta' Malta vs. Ivan Gatt**, 1 ta' Dicembru 1994; u **Ir-Repubblika ta' Malta vs George Azzopardi**, 14 ta' Frar 1989; u l-Appelli Kriminali Inferjuri: **Il-Pulizija vs Andrew George Stone**, 12 ta' Mejju 2004, **Il-Pulizija vs Anthony Bartolo**, 6 ta' Mejju 2004; **Il-Pulizija vs Maurice Saliba**, 30 ta' April 2004; **Il-Pulizija vs Saviour Cutajar**, 30 ta' Marzu 2004; **Il-Pulizija vs Seifeddine Mohamed Marshan et**, 21 ta' Ottubru 1996; **Il-Pulizija vs Raymond Psaila et**, 12 ta' Mejju

*'Kif dejjem gie ritenut huwa principju stabbilit fil-gurisprudenza ta' din il-Qorti li hija ma tiddisturbax l-apprezzament dwar il-provi maghmul mill-ewwel Qorti jekk tasal għall-konkluzjoni li dik il-Qorti setgħet ragjonevolment u legalment tasal għall-konkluzjoni li tkun waslet għaliha. Fi kliem iehor, din il-Qorti ma tirrimpjazzax id-diskrezzjoni fl-apprezzament tal-provi ezercitata mill-ewwel Qorti izda tagħmel apprezzament approfondit tal-istess biex tara jekk dik lewwel Qorti kinitx ragjonevoli fil-konkluzjoni tagħha. Jekk, izda, din il-Qorti tasal għall-konkluzjoni li l-ewwel Qorti, fuq il-provi li kellha quddiemha, ma setgħetx ragjonevolment jew legalment tasal għall-konkluzjoni li tkun waslet għaliha, allura din tkun raguni valida, jekk mhux addirittura impellenti, sabiex din il-Qorti tiddisturba dik id-diskrezzjoni u konkluzjoni.'*

This is therefore a court of revision and not a court of retrial. In the ordinary course of its appellate functions, this Court analyses the evidence that would have been tendered before the Court of Magistrates as well as the arguments raised by the parties on the facts of the case and the pertinent applicable laws. **This Court, as a court of criminal appeal analyses whether the Court of Magistrates could, legally and reasonably, on the basis of the evidence and legal arguments submitted to it, arrive to its conclusions stated in its judgment. It is only in pursuit of this aim that this Court makes its detailed analysis of the evidence and arguments submitted. If this Court deems that the Court of Magistrates carried out a proper legal and reasonable appreciation of the evidence and legal arguments submitted to it, then this Court does not disturb the conclusions reached by that Court.**

However if this Court is convinced that the Court of Magistrates did not carry out a reasonable appreciation of the evidence or a correct legal analysis of the arguments submitted to it, such that this Court does not feel it safe and satisfactory to rely on the conclusions reached by the Court of Magistrates, then this Court has the power to

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1994; **Il-Pulizija vs Simon Paris**, 15 ta' Lulju 1996; **Il-Pulizija vs Carmel sive Chalmer Pace**, 31 ta' Mejju 1991; **Il-Pulizija vs Anthony Zammit**, 31 ta' Mejju 1991.

disturb the discretion exercised and decisions made by the Court of Magistrates and may substitute its conclusions with its own.

**Considers further,**

In her application, the Attorney General is alleging that the First Court made an incorrect assessment of the facts of the case and the evidence brought forward by the parties and, subsequently, cited the wrong law.

Therefore, given the grievance brought forward by the Attorney General, this Court deems it fit to evaluate the witnesses and evidence brought forward before the First Court.

EO 337<sup>2</sup> testified on the 23<sup>rd</sup> of September, 2023, whereby he stated that on the 29<sup>th</sup> May, 2022, they were doing a spot check at the Coast Road in Naxxar at around 9.25am, when they noticed a vehicle bearing registration number BCO 987, with an expired license. It resulted that it had a valid insurance policy but an expired vehicle licence. He recognised Mr Pecchioni before the First Court as being the driver who was driving the said vehicle on the day. He stated that his two colleagues were assisting him and managing the traffic.

Cross examined by the defence, EO 337 confirmed that his number is 337. Showed a ticket exhibited by the defence, he confirms that he issued the said ticket and that this ticket is related to the same incident he testified about. According to him the vehicle was not licenced. He said that they took the vehicle to the compound. He said that he gave Mr Pecchioni a ticket and told him that he will subsequently be summoned to Court.

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<sup>2</sup> Fol. 3 et seq of the acts of the proceedings.

Asked by the Court whether the ticket exhibited as Dok X was paid, the defence council replied in the affirmative. Mr Pecchioni went to Transport Malta and paid the ticket there.

**Stephen Cachia**<sup>3</sup> testified by means of an affidavit dated the 17<sup>th</sup> July, 2023 and stated that he is employed with Transport Malta. He said that he carried out a search and it resulted that on the 29<sup>th</sup> May 2022, the vehicle Peugeot bearing registration number BCO 987 was registered on Pietro Pecchioni. The vehicle had been registered on the latter since the 19<sup>th</sup> April, 2021 and the said licence expired on the 28<sup>th</sup> February, 2022 and was renewed again on the 2<sup>nd</sup> June, 2022.

The appellee was charged with the following charge:

*'You drove vehicle No BCO987 when it was not licenced by the Authority for Transport in Malta to be used on the road (Vehicle licence not renewed)'*

Therefore, according to the abovementioned wording, the appellee was charged with Article 15(1)(a)(3) of Chapter 65 of the Laws of Malta and not with Regulation 13(2) of Subsidiary Legislation 368.02. The latter regulation provides the following:

*'No motor vehicle may be on the road, whether parked or in use, without a valid circulation licence, or a circulation permit or a temporary licence disc, as applicable, issued by the Authority, unless the motor vehicle is an exempt vehicle under the provisions of the Act.'*

The First Court in its judgement stated that prosecution charged the accused with breaching regulation 13(2) of Subsidiary Legislation 368.02, however, this is incorrect. Mr Pecchioni was charged with breaching Article 15(1)(a)(3) of Chapter 65 of the Laws

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<sup>3</sup> Fol. 5 of the acts of the proceedings.

of Malta, but as it results from the facts of the case, he should have been accused of breaching regulation 13(2) of Subsidiary Legislation 368.02 instead.

Furthermore, the Attorney General is correct in stating that the First Court was incorrect when stating that Pecchioni was charged with breaching regulation 13(2) of Subsidiary Legislation 368.02 since in reality, as it has already been stated, he was charged with breaching Article 15(1)(a)(3) of Chapter 65 of the Laws of Malta. However, this Court cannot uphold the Attorney General's grievance to cancel, revoke and annul the judgment of the First Court and declare Pietro Pecchioni guilty since this Court believes that the latter was erroneously accused with the wrong provision of the law.

In view of the above, this Court is rejecting the grievance brought forward by the Attorney General. Nevertheless, this Court is acquitting the Pietro Pecchioni because the prosecution charged him with the wrong provision of the law and not for the reasons given by the First Court.

**Consuelo Scerri Herrera**

**Judge**