



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

MAGISTRATE DR. KEVAN AZZOPARDI B.A., LL.D.

Today, 24th June 2024

Case Number: 867/2015

The Police

Vs

Igor Biskupic

(Holder of a Maltese Identity Card bearing number 122914(A))

The Court,

Having seen the charges brought against the accused **Igor Biskupic**, a Croatian national, born in Cerna, Croatia on the 5th December 1968, residing at 216, Flat 4, Triq id-Dejqa, Valletta and/or Wickerhauserova, 12, Zagreb, 10000, Croatia and holder of a Maltese Identity Card bearing number 122914(A):

And so hereby charge him with having: In February 2014 and during the preceding months from this date, on these Islands, with several acts committed, even if at different times and which constitute violations of the same provisions of the law, and are committed in pursuance of the same design:

- 1. In order to gain any advantage or benefit for himself or others, had in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information.*

2. *Committed any other kind of forgery, or knowingly made use of any other forged document, not provided for in the preceding articles 188 of the Criminal Code.*

Having seen that on the sitting of the 17th January 2022, the Prosecuting Officer informed the Court that there was no further evidence to be produced in this case.

Having seen the assignment of cases done by the Honourable Chief Justice on the 9th March 2023 in terms of law and in terms of article 11 sub-article 3 of the Civil Code of Organisation and Procedure and article 520 of the Criminal Code, and that this case has been assigned to this Court as presided.

Having seen that, in view of the aforementioned assignment the parties exempted the Court as presided from hearing the evidence which had already been heard by the previous Magistrate afresh.

Having seen that on the sitting of the 12th January 2024, the defence declared that it had no further evidence to produce in this case.

Having seen the transcripts of the testimonies.

Having seen all the acts of this present case and the exhibited documents.

Having heard the final oral submissions.

Considers

A. Facts of the case

That in support of the charges brought against the accused, the prosecution presented the following witnesses and evidence:

1. **Inspector Raymond Aquilina** gave evidence on oath and exhibited a black arch file containing several documents which were marked as Dok RA 1 to RA 38 respectively.

The witness testified that back in 2015, he received an OLAF report which was transmitted through the Attorney General Office in which report it was recommended that criminal action be initiated against the accused Mr Igor Biskupic, a Croatian national who had been, at the time employed with the European Asylum Support Office.

From the OLAF report it resulted that an investigation was initially commenced by the European Court of Auditors whereby an audit was submitted. OLAF initiated their own investigation in particular with regards to the procedure and the recruitment in terms of the vacancy EASO/2013/TA/005 which concerned a call for an ICT coordinator. From their own investigation, it transpired that Mr Igor Biskupic had applied for this vacancy. In this particular call for applications, the eligibility criteria related to formal qualifications, as well as professional experience.

Mr Igor Biskupic was invited by the selection committee to provide certification in regards to the eligibility criteria, and he provided a certificate which was issued from Grafoprint back in 1988/1989, which was inserted in his personal file and also in the recruitment file.

From enquiries made by OLAF about the certificate with the Ministry of Interior of the Republic of Croatia and the Ministry of Infrastructure of the Republic of Croatia it transpired that it was not possible that this document was in circulation at the time it was issued, because at that time the company Grafoprint was not yet incorporated.

Mr Igor Biskupic was interviewed by OLAF and he provided a statement saying that he was trained at that company back in those days. He could not remember who signed that certificate or issued the certificate.

Following these investigations, OLAF recommended that the Maltese Authorities proceed against Mr Igor Biskupic, and his file was referred to the police.

The charges were issued in terms of the recommendations given by OLAF as well as an additional charge based on an article of the law following the advice from the Attorney General.

2. **Mary Vitsa** gave evidence on oath and exhibited a yellow document marked as Dok DC which document, forms part of the red arch file marked as Dok MV1, a red arch file marked as Dok MV 2 together with the recruitment file. Witness testified that she is employed with the EASO office in Malta and from July 2016 she was employed as an interim recruiter in the Human Resources. Witness testified that vacancy notice EASO/2013/TA/005 closed on the 13th July 2013 and Mr Igor Biskupic was chosen to fill the post indicated in the vacancy. Mr Igor Biskupic was employed as from the 1st November 2013.
3. **Kirsten Spiteri** gave evidence on oath and exhibited two notes marked respectively as Dok KS 1 and Dok KS 2, a document with a copy of the accused's Identity Card marked Dok KS 3 and a letter marked as Dok KS 4. Witness testified that she is the Director of Protocol within the Ministry for Foreign Affairs.
4. **Jose Carrera** gave evidence on oath and testified that he is the Executive Director of EASO since the 1st April 2016. Witness confirmed that he had waived the immunity of Mr Igor Biskupic.
5. **Agnieszka Bogumilia Kusza Jagielska** gave evidence on oath and also exhibited a file marked as Dok KJ 2. Witness testified that she is employed as an investigator in OLAF's European Anti Fraud Office in Unit A1 which deals with internal matters. She was in charge of investigation number 2013-13-10 together with Salvatore Randace. They identified the persons concerned basing themselves on the information received, and at that time they had only two suspected persons, namely Mr Ataide and Mr Symeonidis. These people at that time were not notified about this investigation and were notified later.

The investigators notified the institution EASO about the opening of this investigation and began to investigate. They carried out inspections and interviewed witnesses. They analysed the documentation collected at EASO. They analysed the file relative to the application submitted by Mr Biskupic and the recruitment file. It was at that time that the investigators became aware of the suspicious certificate. At that point in time, Mr Biskupic became the person of interest in the investigation.

The investigators notified Mr Biskupic about these investigations and interviewed him. They sent a letter to Mr Biskupic with a summary of the facts and gave him the opportunity to send them an email with his version of the facts. In fact, Mr Biskupic sent them an email.

From their investigation it emerged that the company who issued the certificate in question was established in 1993 while the certificate stated that the training received by Mr Biskupic was provided between October 1987 and October 1988. The Croatia authorities confirmed that the company was incorporated in 1993.

Mr Biskupic agreed to be interviewed without any hesitation. In his interview, Mr Biskupic argued that at the moment when he applied for the post, he was unaware that there were any issues regarding his eligibility, and together with his application he had signed a declaration confirming the veracity of the contents of his application. He said that he became aware of the eligibility issue sometime in December 2013 when he was called to a meeting with Mr Ataide and Human Resources officers, where he was informed of the issue with regards to his eligibility. He had stated that he had some documentation and was requested to bring it forward. He then produced a file from his home from which Mr Ataide found a certificate that he claimed was what was needed. Mr Biskupic argued that he didn't want that the certificate be added to his personal file and in fact he asked for this document to be given back to him.

The investigators also interviewed Mr Visser who declared that during the meeting that they had with Mr Biskupic at their Valletta office, they had asked him whether he had a certificate which could prove his eligibility. Mr Biskupic confirmed that he had a certificate and the following day, he proceeded to bring this certificate to Mr Visser's secretary in a sealed envelope, and the certificate was then inserted in the recruitment file.

6. **Salvatore Randace** testified that he is employed by the European Anti Fraud Office known as OLAF and he is an investigator in the internal investigations department, Unit A1. Regarding this case, the investigators first analysed the initial information and then they started taking some preliminary actions. First, they made a request to EASO and analysed the file. The investigators identified two individuals namely Mr Pedro Ataide and Mr Symeonidis because the investigators suspected that there was a collusion between these two individuals regarding several recruitment procedures.

The investigators carried out an on-site inspection at the offices of these two individuals and also performed forensic interventions including data collection from computers and IT equipment of the individuals concerned. The investigators interviewed these two individuals and several other witnesses. They also gathered recruitment and personnel files.

When the investigators accessed the personal file of Mr Biskupic, there was a document that appeared not being authentic. The investigators never saw the original document because the original document was presumably returned to Mr Biskupic.

The company that issued the document, apparently was not yet incorporated at the time that the document was allegedly issued.

7. **Mark Camilleri** testified that since 2012 he has been employed as a senior policy officer with the European Asylum Support Office. He worked with two executive directors. First with Robert Visser and currently with Jose Carrera.

The witness testified that OLAF interviewed him about this case because he formed part of the selection panel members. However, by mistake he didn't sign on the file when all the members had to sign. The members make a recommendation to the executive director, however it is the executive director that decides who should be awarded the post. He declared that he knows Mr Biskupic because he was the selected candidate and he was the ICT coordinator at EASO. The witness testified that as a panel member they are only provided with the curriculum vitae of the candidates and their application form. They are not provided with supporting documentation, because that is a process conducted separately by the Human Resources Department.

In his cross-examination, the witness testified that in his view there was nothing irregular in the selection process and there was no undue pressure or any undue influence upon him or anybody in the selection committee.

He recalls very clearly that Mr Biskupic, following interviews and the exam, was the highest ranking candidate, and was a cut above the rest. He performed very well and there was a unanimous agreement from the panel on his recommendation.

The witness confirmed that throughout his employment, Mr Biskupic performed very well and actually improved their ICT capabilities. He did quite a good job.

8. **Rogatory letters:**

A. **Ivan Puljic** testified that he is married to Anica Puljic. Ivan Puljic further testified that Igor Biskupic is married to his wife's sister. He declared that he was summoned before a Judge in the Vukovar Court in relation to the issuance of a certificate of Grafoprint business in Cerna, which certificate confirmed that Igor Biskupic had allegedly attended and completed training as a graphic artist. On that occasion, he stated before the Court that he had no knowledge of the drawing up of this certificate even though he owned the Grafoprint business, in which his wife Anica Puljic was an employee. They funded it under the name Otograf in 1989, then later in 1993, under the name Grafoprint.

The witness stated that neither Otograf nor Grafoprint organised or conducted any training related to computer and graphic design. The witness reiterated that the certificate presented to him as Annex "A" was not made or issued by Grafoprint. The witness stated that he didn't recognise whose signature was on the certificate. As regards the seal, it was possible that this was an original seal which Grafoprint has used in its business since 1993.

The witness stated that he was the sole legal representative authorised to represent the company Grafoprint, as well as to sign financial or other documents, and in this capacity he never issued or signed any training certificate in relation to Igor Biskupic.

B. **Anica Puljic** testified that Igor Biskupic is her sister's husband. She confirmed that she had personally prepared the certificate on the computer on the premises of the Grafoprint head office, and she had printed it out but she doesn't know how many copies were stamped by Grafoprint and signed. Witness stated that this certificate was "unofficially" created. She certainly had no idea that it would be retained or ever be used as a valid document. Grafoprint did not organise or conduct any training since it was not authorised to do so.

In consideration of the charges brought against the accused the defence carried out several cross-examinations of the witnesses summoned by the prosecution, and brought forward the following witnesses:

1. **The accused Igor Biskupic** testified that in 2014 he was employed as an IT manager in Malta. He stated that there was a vacancy for the job in Valletta and he decided to apply. They invited him for the interview and was awarded the post.

After three or four months, the administration of the EASO contacted him and informed him that they were having an internal audit and while checking the files of the employees, they realized that they needed to complete his file with some additional documents which they hadn't requested from him when he was hired. Igor Biskupic testified that he was requested to attend the meeting early in the morning on the same day and that he was to bring with him all the certificates in his possession. He therefore took with him a file that contained all the professional certificates that he had obtained in the 1990's.

The witness testified that when he decided to leave Croatia because of the war, and that besides the educational certificates, he took with him other certificates such as his marriage certificate, birth certificates of his children and his wife and other certificates.

At the meeting with the Head of the Administration and Human Resources and with another two or three colleagues, there was a general sense of panic because there was an audit coming up and they discovered that there was something missing as far as his employment is concerned. From all the certificates they chose that certificate.

Between 1990 and 1992 he was serving in the military and at the end of 1993 he went to Anica Puljic at Grafoprint and asked her for the certificate in connection with the training that he had done way back. Anica Puljic was one of the employees at the time when the witness was attending the training. The witness testified that Anica Puljic is the sister of his wife, and he met with his wife during his training.

The witness testified that he had not prepared the certificate himself. He insisted that he finished his secondary school on the 7th June and immediately went for the training in 1988. Anica Puljic issued the certificate in 1993. The witness also clarified that he had not requested a certificate, but a confirmation that he had attended the training. In fact, in the certificate there are mentioned the words Cerna 04 Lipostat 1988 which means the 4th October 1988. His understanding is that way back in 1993 or 1994 they included the word Grafoprint not because Grafoprint existed at that time, but simply to make it appear formal.

2. **Evica Biskupic** testified that she is the wife of Igor Biskupic and got married in 1990. Her sister's name is Anica, and is married to Ivan, and they own a printing company in Cerna since a long time. She recalled that around 1987 or 1988 the accused had visited this company almost every day for a couple of months.

The accused and the witness started dating when he was visiting this printing company. She used to visit them at the printing company. Whenever she visited her sister, she always saw her sister teaching the accused how to work in the printing company. She was educating him.

Before going abroad, her husband wanted to obtain all those certificates that he needed to go and work abroad such as marriage certificate, birth certificate, high school diplomas and he also asked her sister to give him a certificate attesting the training that he had done years before with her. Her sister gave him this certificate to confirm the training that he had received.

Considerations regarding guilt or otherwise

1. **Legal considerations in relation to the level of proof required**

That it is incumbent on the prosecution to present the best evidence to convince the Court about the veracity of the charges brought against the accused.

It is a basic principle applied by our Courts in criminal proceedings that in order for the accused to be found guilty, the charges brought against him have to be proven beyond any reasonable doubt, that is beyond any doubt dictated by reason.

This Court makes reference to the case decided by **The Court of Criminal Appeal** on the **7th September 1994** in the names **Il-Pulizija vs. Philip Zammit et** which states that *“pero’ mhux kull l-icken dubju huwa biżżejjed sabiex persuna akkużata tiġi ddikjarata liberata. Hemm bżonn li “dubju jkun dak dettat mir-raġuni”.*

In the case decided by **The Court of Criminal Appeal** on the **5th Diċembru 1997** in the names **Il-Pulizija vs. Peter Ebejer**, the Court declared that:

“Il-grad ta’ prova li trid tilhaq il-Prosekuzzjoni hu dak il-grad li ma jhalli ebda dubju dettat mir-raġuni u mhux xi grad ta’ prova li ma jhalli ebda ombra ta’ dubju. Id-dubji ombra ma jistgħux jitqiesu bħala dubji dettati mir-raġuni. Fi kliem iehor, dak li l-Ġudikant irid jasal għalih hu, li wara li jqis iċ-ċirkostanzi u l-provi kollha, u b’applikazzjoni tal-bon sens tiegħu, ikun moralment konvint minn dak il-fatt li trid tipprova l-Prosekuzzjoni.”

“Lord Denning fil-każ Miller vs. Minister of Pension - 1974 - 2 ALL ER 372 jagħti espressjoni lil “proof beyond a reasonable doubt”.

“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the case is proved beyond reasonable doubt, but nothing shall of that will suffice”.

2. **The First Charge:** *“In order to gain any advantage or benefit for himself or others, had in any document intended for any public authority, knowingly make a false declaration or statement, or give false information.”*

Article 188 of Chapter 9 of the Laws of Malta (Criminal Code) states:

“188. (1). Whosoever, in order to gain any advantage or benefit for himself or others, shall, in any document intended for any public authority, knowingly make a false declaration or statement, or give false information, shall, on conviction, be liable to the punishment of imprisonment for a term not exceeding two years or to a fine (multa): Provided that nothing in this article shall affect the applicability of any other law providing for a higher punishment.”

(2): Where the document referred to in sub-article (1) is not one intended for any public authority the punishment shall be that of imprisonment not exceeding one year or a fine (multa).”

In the case decided by **The Court of Magistrates (Malta) As a Court Criminal Judicature** on the **15th November 2002** in the names **Il-Pulizija vs. Raymond Cassar** the Court declared that:

*“L-artiklu 188 jghid: “Kul min, sabiex jikseb xi vantagg jew beneficcju ghalih innifsu jew ghal haddiehor, f’xi Dokument mahsub ghal xi awtorita’ pubblika, xjentement jaghmel dikjarazzjoni jew stqarrija falza, jew jaghti taghrif falz, jehel, meta jinsab hati, l-piena ta’ prigunerija ghal zmien ta’ mhux izjed minn sentejn jew multa”. L-artiklu 188 jitkellem dwar kull min xjentement jaghti taghrif falz f’xi Dokument mahsub ghal xi awtorita’ pubblika. Certament il-Perit Cassar meta ma ndikax il-kambjament fil-lokalita’ u l-kuntrattur ta’ taghrif falz. Pero’ hija l-opinjoni ta’ din il-Qorti li jekk dan sar xjentement tali punt certament ma giex pruvat. Min-naha l-oħra l-perit ghal aktar minn darba ammetta li dan sar bi zball min-naha tieghu, zball li hu attribwih ghal pressjoni ta’ xogħol li hu kellu f’dak izzmien. **Element iehor saljenti biex jigi kostitwit dan ir-reat huwa l-beneficcju jew vantagg ghalih (cioe ghal agent) jew ghal terz u li x-xjenza tal-falsita’ ghandha tkun determinata u voluta minhabba tali vantagg jew beneficcju. Pero’ kif irrizulta mill-provi, hawn ma rrizulta vantagg lil hadd.”***

In this case, on the 19th June 2013, a vacancy notice having reference EASO/2013/TA/005 for the role of an ICT coordinator was published. Accused Igor Biskopic applied for this post.

Accused Igor Biskopic, has not provided the alleged document with false information in his application: Accused Igor Biskopic was interviewed and

eventually awarded the job. In fact the accused officially started his employment with the European Asylum Support Office on the 1st November 2013.

In February 2014, the administration of the EASO contacted him and informed him that they were having an internal audit and having checked employees' files, realized that they needed to complete his file with some additional documents which they hadn't asked him for at the time when he was hired. It was an early morning when they called him for a meeting and requested him to attend the meeting bringing with him all the certificates in his possession. He took with him a file that contained all the professional certificates that he obtained in the 1990's.

At the meeting attended by the Head of the Administration and Human Resources and two or three other officials there was a general sense of panic because an audit was coming up and they had discovered that there was something missing as far as his employment was concerned. It was during that meeting with the Administration and Human Resources Department, that the alleged document with the alleged false declaration was included and added in his file. Therefore, it's clear that at the moment when the accused applied for the job he had not included this alleged document with false information in his application. It was only after the accused was awarded the job that he provided the alleged forged document to the Administration and Human Resources Department.

Therefore, the element that the accused gained any advantage or benefit for himself or others from this alleged forged document does not subsist and consequently the court is not going to find the accused guilty of this charge.

For this reason, this Court feels that the prosecution has not sufficiently satisfied the level of proof required at law and consequently will not find the accused guilty on the basis that the charge was not sufficiently proven.

3. **Second Charge:** *“Committed any other kind of forgery, or knowingly make use of any other forged document, not provided for in the preceding articles 188 of the Criminal Code.”*

Article 189 of Chapter 9 of the Laws of Malta (Criminal Code) states:

“189. Whosoever shall commit any other kind of forgery, or shall knowingly make use of any other forged document, not provided for in the preceding articles of this Title, shall be liable to imprisonment for a term not exceeding six months, and if he is a public officer or servant acting with abuse of his office or employment, he shall be punishable with imprisonment for a term from seven months to one year.”

In the acts of this case there's no evidence that the accused was a public officer or a servant. Therefore, if found guilty the accused shall be liable to imprisonment for a term not exceeding six months.

Article 688 of Chapter 9 of the Laws of Malta (Criminal Code) states:

“688. Save as otherwise provided by law, criminal action is barred-
(a) by the lapse of twenty years in respect of crimes liable to the punishment of imprisonment for a term of not less than twenty years;
(b) by the lapse of fifteen years in respect of crimes liable to imprisonment for a term of less than twenty but not less than nine years;
(c) by the lapse of ten years in respect of crimes liable to imprisonment for a term of less than nine but not less than four years;
(d) by the lapse of five years in respect of crimes liable to imprisonment for a term of less than four years but not less than one year;
(e) by the lapse of two years in respect of crimes liable to imprisonment for a term of less than one year, or to a fine (multa) or to the punishments established for contraventions;
(f) by the lapse of three months in respect of contraventions, or of verbal insults liable to the punishments established for contraventions.”

It was in February 2014 that the accused provided the Administration and Human Resources Department of the European Asylum Support Office with the alleged document with false information. Therefore, the accused had to be notified with the charge by not later than the 29th February 2016.

In the sitting of the 18th April 2016 the Court declared: *“Peress illi l-imputat ghadu mhux notifikat, il-kawza qed tigi differita ghal nhar l-Erbgha 25 ta' Mejju 2016, fl-10.30am”*.

Furthermore Inspector Raymond Aquilina testified that “...without knowing **on the 2nd May 2017**, Mr Igor Biskupic presented himself here in Malta and in fact he phoned me up and told me that he was here in Malta and he was ready to meet me and we have met and I have delivered the order of service to appear in Court...”

Therefore, it is clear that this charge is time barred, and consequently the court is not going to find the accused guilty of this charge.

B. Conclusion

For these reasons, the Court hereby finds the accused Igor Biskupic, holder of Maltese Identity Card Number 122914(A) not guilty of the charges brought against him and is hereby acquitting him therefrom.

**Dr Kevan Azzopardi
Magistrate**

**Josanne Gauci
Deputy Registrar**

< Final Judgement >

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