



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

Magistrate Dr. Jean Paul Grech B.A., LL.D
M.Juris (Int. Law), Adv. Trib. Eccl. Melit

JUDGEMENT

Given today, the twenty-fourth (24th) May 2024

Case Number 1908/2024

The Police
(Inspector Rachel Aquilina)

Vs

Ani Kunjryan

The Court,

Having seen the charge brought against **Ani Kunjryan** born in Armenia on the thirty-first (31st) July 1993 and residing at Alexander, Flat 6, Triq il-Qalb Imqaddsa, San Ġiljan holder of Maltese identity card number 228325(A) for having on the eighteenth (18th) February 2023 at about thirty-six minutes past nine in the evening (21:36hrs) in Triq Sant' Indrija, Naxxar, Malta driven vehicle number MNA 111 when it was not

licenced by the Authority for Transport in Malta to be used on the road (Vehicle licence not renewed) and this in breach of article 15(1)(a) of Chapter 65.

The Prosecution requested that the mentioned person be disqualified from all his driving licences for a period of time of not less than twelve (12) months.

Having seen the sworn declarations and the documents which were filed;

Having heard submissions by the parties;

Considers:

The facts of the case are as follows: on the eighteenth (18th) of February 2023 at around thirty-six minutes past nine in the evening (21:36hrs), Transport Malta officials were carrying out a routine inspection in San Andrija Street, Naxxar. The officers noted a vehicle bearing registration number plates MNA 111 passing by which had a windscreen expired license disc attached. This vehicle was stopped and the driver driving the vehicle was identified as Ani Kunjuryan holder of identity card number 228325(A). Verifications were carried out with the Transport Malta Control Room and it was established that the vehicle licence had

not been renewed. Proceedings were subsequently filed in connection with this infringement.

Considered:

The charge which is being brought against the accused refers to the fact that allegedly he **was driving** a vehicle when this was not duly licensed by Transport Malta to be used on the road and this in breach of article 15(1)(a) of Chapter 65. From the evidence submitted, the following points can be noted:

(a) the licence of vehicle MNA 111 expired on the thirty-first (31st) January 2023. This was renewed on the 20th February 2023, that is two (2) days after that the vehicle had been stopped by Transport Malta officials;¹

(b) on the eighteenth (18th) February 2023, vehicle MNA 111 was not parked but was being driven by the accused when this was stopped by EO 319 Christian Pace together with other Transport Malta officials. This was confirmed by EO 319 Christian Pace himself in his sworn declaration. Furthermore, the identity of the driver was confirmed on the spot by the same official.²

¹ Vide sworn declaration of Stephen Cachia exhibited as Document B during the sitting of the 12th April 2024.

² Vide sworn declaration of Christian Pace exhibited as Document C during the sitting of the 12th April 2024.

In its final submissions to this case, the defence claimed that although the accused was charged as having breached article 15(1)(a) of Chapter 65, the facts of the case indicate that he should have been charged with breaching regulation 13(2) of Subsidiary Legislation 368.02. This because the defence claimed that the alleged criminal conduct is not covered by article 15(1)(a) of Chapter 65.

In order to give further credence to its arguments, the defence quoted a judgement given on the 9th April 2024 by the Court of Criminal Appeal in the names ***The Police vs Pietro Pecchioni***. The defence pleaded that the facts in the Pecchioni case were identical to the case at hand and that consequently this Court should adopt the same reasoning as that adopted by the Court of Criminal Appeal in the sense that the accused should have been charged with breaching regulation 13(2) of Subsidiary Legislation 368.02 rather than article 15(1)(a) of Chapter 65.

The Prosecution rebutted the defence's argument and in a note filed on the eighth (8th) of May 2024, it quoted a judgement in the names ***Pulizija vs Darren Bonnici*** given by the same Court of Criminal Appeal on the same day as the Pecchioni case wherein the Court of Appeal confirmed a finding of guilt under article 15(1)(a) of Chapter 65 because the offender had driven a vehicle when this was not duly licenced by the competent authority. Notwithstanding that the Court ordered that a copy of this note be notified to the defence and the Court granted the

defence a time-window to file further submissions, no submissions were received.

Considered;

The resolution of the case at hand requires an in-depth analysis of article 15(1)(a) of Chapter 65 as well as of regulation 13(2) of Subsidiary Legislation 368.02.

Article 15(1)(a) of Chapter 65 specifies that:

“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.”

On the other hand, Regulation 13(2) of Subsidiary Legislation 368.02 provides that:

“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.”

After having examined in the detail these two (2) provisions of law, the Court notes the following:

- (a) whereas in article 15(1)(a) of Chapter 65 the legislator is using the word *“drives”*, this word does not feature in regulation 13(2) of Subsidiary Legislation 368.02. In fact, in regulation 13(2) the legislator has refrained from using the word *“drives”* or a derivative of the same; the legislator only uses the words *“parked”* and *“in use”*. For this Court this difference in wording already suggests that the two (2) offences are distinct from one another. This Court considers that for a finding of guilt under article 15(1)(a) of Chapter 65, driving is an essential element. The driving element is however not required for a finding of guilt under regulation 13(2) of Subsidiary Legislation 368.02.

It is true that Regulation 13(2) of Subsidiary Legislation 368.02 is referring to a vehicle *“in use”*. However, the Court **does not consider this as being a direct and specific reference to driving a**

vehicle: had the legislator wanted to refer specifically to driving he could have done so in clear and unequivocal terms. By including the words “*in use*”, the Court believes that the legislator wanted to include under the purview of this regulation those vehicles which although stationary, its drivers would be making use of them to carry out work or some other commercial activity (for example cranes, delivery trucks etc). Parking normally imparts the idea that the driver is leaving the vehicle unattended. Hence the legislator wanted to ensure that these vehicles which would be stationary and attended are also licenced by Transport Malta.

(b) secondly Subsidiary Legislation 368.02 was enacted by virtue of Legal Notice 198 of 2009. Article 15(1)(a) had been promulgated much before and this as evidenced by the various amendments done to this same article over the years. There was definitely no need, nor would it have made sense to include another article of law which criminalises an act (driving a vehicle not licenced by the Authority) when this conduct had already been criminalised by virtue of an Act promulgated before;

(c) thirdly it is to be noted that a breach of article 15(1)(a) of Chapter 65 is triable before the Court of Magistrates. On the other hand, the offence of having a vehicle without a valid circulation licence (as long as this vehicle is stationary or parked) is triable before

the competent Local Tribunal presided by a Commissioner for Justice. The competence of Local Tribunals to try this offence emerges from a reading of articles 14(3) and 21(1) of Subsidiary Legislation 368.02. These regulations are quoted in the schedule of Chapter 291, the Commissioner for Justices Act, which specifies which offences are to be tried before the Local Tribunal presided by a Commissioner for Justice.

Therefore, it is clear that article 15(1)(a) of Chapter 65 is criminalising those instances where an unlicensed vehicle is being driven on the road. On the other hand, regulation 13(2) of Subsidiary Legislation 368.02 caters for those instances where a person either parks or makes use of a stationary unlicensed vehicle on the road. The latter offence is triable before the competent Local Tribunal as opposed to that under Chapter 65 which is triable before the Court of Magistrates.

In its final submissions as already referred to above, the defence quoted the judgement given by the Court of Criminal Appeal in the names of *The Police vs Pietro Pecchioni*. However, it is to be noted that on the same day another judgment in the names *Il-Pulizija vs Darren Bonnici* (Appeal Number 405/2023) was given by the same Court of Appeal wherein the same Court confirmed a finding of guilt under article 15(1)(a) of Chapter 65 because the offender had driven a vehicle without a valid circulation licence. The facts of the Bonnici case were identical to the facts of this case. It is clear therefore that article 15(1)(a)

of Chapter 65 is criminalising the driving of a vehicle without a valid circulation licence; otherwise the Court of Criminal Appeal would not have confirmed the finding of guilt under this same article.

- **Decide**

Therefore, for the reasons expounded above the Court after having seen articles 15(1)(a) and 15(3) of Chapter 65 is finding the accused guilty of the charge brought against him and is condemning him to a fine (*multa*) of one hundred and fifty euros (€ 150). Furthermore, the Court is disqualifying the accused from obtaining or holding a driving licence for a period of eight (8) days from today.

Dr. Jean Paul Grech

Magistrate