



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

THE POLICE (INSPECTOR RACHEL AQUILINA) V DORDE MARKOVIC (ID. 230830A)

MAGISTRATE: DR. VICTOR G. AXIAK

10/12/2024

THE COURTS,

Having seen the charges proffered against the person charged:

To. Dorde Markovic

ID: 230830A

Born : Unknown D.O.B 23/03/1995

Residing : PEARL COURT, FL 4, TRIQ IL-MAKKU, SAN PAWL IL-BAHAR

As you have been charged that on the 21/11/2023 at around 12:48hrs at Triq Sqaq Lourdes, San Giljan and other places in the Maltese Islands while you were using the vehicle DCI968

1. Driven vehicle No. **DCI968** when it was not licenced by the Authority for Transport in Malta to be used on the road. (Vehicle licence not renewed). (**Sec.15(1)(a)(3) Chap.65**).
2. Used or parked a motor vehicle without a circulation license issued by the Authority and failed to renew it annually (**Reg. 13(2) L.S. 368.02**)
3. Untruthfully gave the Police Officer or local warden in the exercise of their duty, your name, surname, identity card number, address and other particulars and, or document that may be lawfully required (**Sec. 124(2), L.S. 65.11**)
4. You disobeyed the lawful orders of any authority or of any person entrusted with a public service, hindered or obstructed such person or otherwise unduly interferes with the exercise of such duties, either by preventing or undoing what has been lawfully done during the exercise of such duties (**Sec. 338(EE), Chap.9**)

Having heard the witnesses summoned before it and having considered the testimony that was produced, that is, the testimony of PS 1436 (affidavit), FO 861, CO 882 and Stephen Cachia on behalf of Transport Malta (affidavit);

Having seen all the acts of the case;

Having read the written submissions made by the Prosecution (Inspector Rachel Aquilina) and the Defence (Dr. Ana Thomas);

Gives the following

Judgement

With regard to charges number 3 and 4 the Court considers these charges to be barred by the lapse of the applicable period of prescription.

With regard to the first two charges, counsel for the defense contends that the offence under Article 15(1)(a) of Chapter 65 of the Laws of Malta is identical to that under Regulation 13(2) of Subsidiary Legislation 368.02 and given that the latter carries a lesser penalty, the Court ought to apply it rather than the more onerous penalty (and additional penalty of disqualification of the driving license) that applies for the first charge.

In support of her arguments, counsel for the defense quotes the Court of Criminal Appeal (Inferior)'s judgement dated 9th April 2024 in the names: **The Police v. Pietro Pecchioni** (Appeal Number 376/2023 per Hon. Judge Consuelo P. Scerri Herrera). In that case the Court held *inter alia* that the appellant (the person convicted) had been erroneously accused with the wrong provision of the law (i.e. Art. 15(1)(a) of Chapter 65) and should have been charged under Regulation 13(2) of Subsidiary Legislation 368.02. The charge in question was worded as follows: *"On 29 May 2022 at about 09.25 am in Triq Tul il-Kosta, Naxxar, he drove a vehicle with registration number ... when it was not licensed by the Authority for Transport in Malta to be used on the road (Vehicle licence not renewed)."*

On the part of the Prosecution, reference was made to another judgement given by the same Court on the same day in the names **Il-Pulizija v. Darren Bonnici** (Appeal Number 405/2023 per Hon. Judge Consuelo P. Scerri Herrera) where the Court *inter alia* rejected the appellant's appeal from his conviction of the charge that read as follows: *"Drove vehicle number that was not licensed to be driven on the road"*. This charge was issued under Article 15(1)(a) of Chapter 65. The Prosecution's argument therefore is that at the very least there is a contradiction between these two judgements given by the same court on the same day and that the Court should only consider that article of the law that is cited by the Prosecution in the charge sheet, i.e. in this case **both** Article 15(1)(a) of Chapter 65 (first charge) and Reg. 13(2) of Subsidiary Legislation 368.02 (second charge) and impose the higher penalty.

The Court considered both judgements quoted by the respective parties. The Court also took cognisance of the judgement dated 24th May 2024 given by this Court presided by Magistrate Jean Paul Grech (Case Number 1908/2024) in the names **The Police v. Ani Kunjuryan**. In the latter case the Court also referred to the same judgements cited by the parties in the present case. The defendant had been charged with *“driving vehicle number ... when it was not licensed 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 Court *inter alia* refuted the defense’ argument that the defendant ought to have been charged under the “lesser” offence contemplated under Regulation 13(2) of Subsidiary Legislation 368.02 as it in its view the articles of the law in question are not identical:

“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...

... 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.”

The Court agrees with the reasoning of the Court in the latter judgement in that the offences under Article 15(1)(a) of Chapter 65– in connection with driving an unlicensed vehicle – and Regulation 13(2) of Subsidiary Legislation 368.02 are not identical:

Ch. 65 Art. 15(1)(a)

“Any person who - (a) drives a motor vehicle or other vehicle without a licence or an unlicensed motor ...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.”

Reg. 13(2) of Subsidiary Legislation 368.02

“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 Court notes that due to the haphazard manner in which the legislator drafted this subsidiary legislation, the specific provision that should be taken into consideration under such

legislation is not Regulation 13(2) but that under Regulation 44(7)(a) which is the only one that provides for a penalty:

Reg. 44(7)(a) of Subsidiary Legislation 368.02

“Fines for other offences under these regulations shall be the following:

(a) driving a motor vehicle without being covered by a valid vehicle licence..... not exceeding €235 or imprisonment for a term not exceeding three months”

In the present case, the defendant is being charged separately with: (i) having driven vehicle no. DCI 968 when it was not licensed by Transport Malta to be used on the road (as it was expired), as per Article 15(1)(a) of Chapter 65), (ii) having used or parked the motor vehicle in question without a circulation license issued by Transport Malta and failed to renew it annually, as per Regulation 13(2) of Subsidiary Legislation 368.02.

While taken into isolation both charges are not identical (as rightly said by this Court in the last mentioned case), in the present case both charges were issued due to the fact that **the accused allegedly drove (and therefore used) the vehicle in question with an expired road/circulation license**. It is therefore evident that there are two separate laws that provide a penalty for the same offence under consideration. One of them (Chapter 65, Art. 15(1)(a)) is cited by the Prosecution under the first charge. The other one (Regulation 44(7)(a) of Subsidiary Legislation 368.02) was not cited by the Prosecution, who instead cited Regulation 13(2) under the second charge. As it is well established, a court of criminal jurisdiction is not bound by the articles of the law cited in the charge sheet. Therefore if the Court finds that the charges as laid down in the charge sheet do not correspond to the articles cited in the same charges, the Court is free to apply the correct articles of the law. The same applies if the Prosecution, as in this case, does not cite the article of the law that establishes a penalty for the charge in question.

As already stated, there are two separate laws that provide a penalty for the same offence under consideration. Under Article 15(1)(a) of Chapter 65 the penalty is a fine (multa) not exceeding €1,200 or imprisonment not exceeding one year (together with the additional penalty of a suspension of the driving license for a minimum period of eight days as per Article 15(3)). Under Regulation 44(7)(a) the penalty for the exact same offence is a fine not exceeding €235 or imprisonment for a term not exceeding three months. Clearly therefore the latter

penalty is more lenient and more favorable to the accused which is why the defendant expects the Court to impose such penalty rather than the one that is cited under the first charge.

In today's legal framework, interpreting legislative intent is a central task for the judiciary, which operates alongside the legislature in ensuring justice. Judges often face challenges in applying laws because statutes are designed to address broad scenarios, making it impossible for lawmakers to anticipate every situation that might arise after their enactment.

To address these challenges, courts in common-law jurisdictions (such as England and Wales) have established interpretive principles, including the so called **rule of lenity**. This mandates that ambiguities in criminal law be resolved in favor of the defendant. The rule is applied only when a law can reasonably be interpreted in multiple ways, and the court's decision significantly impacts the defendant. In such cases, it directs courts to choose the interpretation that is most favorable—or least harmful—to the defendant. By analogy this rule can also be applied where multiple provisions apply to the same offence but one imposes a lesser penalty. Such rule mandates that in any such case and in the absence of any logical interpretation of the legislator's intention, the court may apply the provision with the lesser penalty.

Given the haphazard and seemingly thoughtless manner in which Subsidiary Legislation 368.02 was drafted¹, the Court is more than certain that when enacting Legal Notice 198 of 2009 (that brought into force the said subsidiary legislation) the legislator **did not intend** to introduce another penalty by way of an alternative to the one provided under Article 15(1)(a) of Chapter 65 of the Laws of Malta (that has been in force for a number of decades). This notwithstanding, given that two penalties exist that cater for the same offence without any legal justification, the Court feels that it is duty bound to resolve this ambiguity by applying the penalty that it more favourable to the accused.

¹ Suffice to say that, with the exception of Reg 44(1)-(5), a number of offences listed in the main body of the regulations (including driving/using a vehicle that is not registered with Transport Malta, failing to give notice to Transport Malta of a vehicle's transfer and having a parked vehicle that is not covered by a valid circulation license) do not carry a penalty as the pecuniary provisions under Reg 44(7) do not correspond to the facts that make up such offences. Furthermore, the Court of Criminal Appeal (Inferior) has on a number of occasions declared that the fines listed under Reg. 44(7) of S.L. 368.02 are unenforceable since the legislator did not specify whether the offences listed therein are crimes or contraventions.

An added complication that arises is that the Court of Criminal Appeal (Inferior) has on a number of occasions declared that the **finer** listed under Reg. 44(7) of S.L. 368.02 are unenforceable since the legislator did not specify whether the offences listed therein are crimes or contraventions.² Given that Regulation 44(7)(a) imposes a pecuniary sanction and, by way of an alternative, a custodial sanction, the Court can only therefore apply the custodial sanction. However the Court considers that it would be incredibly harsh, in the circumstances, to impose such a sanction on the accused and therefore it will opt to issue a conditional discharge in accordance with Article 22 of the Probation Act.

Decision

For these reasons, the Court acquits the accused of charges 3 and 4 as they are barred by prescription, but finds the accused guilty of charges number 1 and 2 (Chap. 65, Art. 15(1)(a), Regulation 13(2) and 44(7)(a) of Subsidiary Legislation 368.02). The Court is of opinion that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is inexpedient to inflict punishment and therefore discharges the offender subject to the condition that he commits no offence within one (1) year from today.

The Court orders that a copy of this judgement is sent to the Minister for Justice and Reform of the Construction Sector for his consideration in view of the urgent need for the necessary amendments to be enacted to address the shortcomings under Subsidiary Legislation 368.02.

**V.G. Axiak
Magistrate**

**Y.M. Pace
Dep. Registrar**

² **Police v. Carmelo Sammut** (App Krim 85/2015 GG, 30/10/2017), **Police v. James Zammit** (App Krim 66/2021 GG, 29/11/2021)