

Kopja Informali ta' Sentenza



**QORTI TAL-MAGISTRATI
(MALTA) BHALA QORTI TA' GUDIKATURA
KRIMINALI**

**MAGISTRAT DR.
CONSUELO-PILAR SCERRI HERRERA**

Seduta tad-29 ta' Jannar, 2003

Numru 976/2002

**Articles 183, 308, 309, 310, 261, 263, 267, 270, 278,
279, 280
of Chapter 9 of the Laws of Malta
Section 15 of Chapter 217 of the Laws of Malta**

**The Police
Inspector Angelo Caruana
Inspector Chris Pullicino
Inspector Neville Xuereb
V**

DYAKOV DIMO MIHAYLOV

Sitting held today 29th January, 2003

The Court,

Having seen that the accused **DYAKOV DIMO MIHAYLOV** aged thirty five, son of Mihail and Lubka nee Dimova born in Burgas Bulgaria on the 18th March, 1967 and presently residing at room 615, ast 115 The Strand, Gzira, holder of passport number 321359642 was brought forward against her and charged with having at different localities in these Islands between the period of the 13th and 23rd November, 2002 committed several acts even if at different times and which constitute violations of the same provision of the law, and have been committed in pursuance of the same design, that is :

1. at St. Julians on the 13th November, 2002 at about 21.00 hours, committed theft of a Bank of Valletta Credit Card from the Bank of Valletta Automated Teller Machine (ATM) located in St. Augustine Street, which theft is aggravated by means and time and was committed to the detriment of Wayne Douglas;

2. at St. Julians on the 13th November, 2002 at about 21.18 hours, by means of the above mentioned stolen credit card, committed theft of the sum of two hundred maltese liri from the Bank of Valletta Automated Teller Machine (ATM) located in St. George's Road, which theft is aggravated by means, amount and time and was committed to the detriment of Wayne Douglas;

3. at Sliema on the 14th November, 2002 at about 00.12 hours, by means of the above mentioned stolen credit card, committed theft of the sum of twenty maltese liri from the Bank of Valletta Automated Teller Machine (ATM) located in The Strand, which theft is aggravated by means and time and was committed to the detriment of Wayne Douglas;

4. at Sliema on the 12th November, 2002 at about 20.45 hours, committed theft of a Bank of Valletta Credit Card from the Bank of Valletta Automated Teller Machine (ATM) located in Main Street, which theft is aggravated by means and time and was committed to the detriment of Mark Tabone;

5. at Sliema on the 12th November, 2002 at about 21.02 hours, by means of the above mentioned

stolen credit card, committed theft of the sum of one hundred sixty maltese liri from the Bank of Valletta Automated Teller Machine (ATM) located in High Street, which theft is aggravated by means, amount and time and was committed to the detriment of Mark Tabone;

6. at Sliema on the 13th November, 2002 at about 00.08 hours, by means of the above mentioned stolen credit card, committed theft of the sum of two hundred maltese liri from the Bank of Valletta Automated Teller Machine (ATM) located in The Strand, which theft is aggravated by means and time and was committed to the detriment of Mark Tabone;

7. at St. Julians on the 16th November, 2002 at about 20.00 hours, committed theft of a Bank of Valletta Credit Card from the APS Automated Teller Machine (ATM) located in St. George's Road, which theft is aggravated by means and time and was committed to the detriment of James Demarco;

8. at Fleur de Lys on the 16th November, 2002 at about 13.15 hours, by means of the above mentioned stolen credit card, committed theft of the sum of ten maltese liri from the Bank of Valletta Automated Teller Machine (ATM) located in Fleur de Lys Road, which theft is aggravated by means and was committed to the detriment of James Demarco;

9. at San Gwann on the 16th November, 2002 at about 20.45 hours, by means of the above mentioned stolen credit card, committed theft of the sum of ninety five maltese liri from the Bank of Valletta Automated Teller Machine (ATM) located in Naxxar Road, which theft is aggravated by means and time and was committed to the detriment of James Demarco;

10. at Marsalforn in Gozo on the 16th November, 2002 at about 14.30 hours, committed theft of a Natwest Bank Credit Card from the Bank of Valletta Automated Teller Machine (ATM), which theft is aggravated by means and was committed to the detriment of Gerald WoodWard;

11. at Victoria in Gozo on the 16th November, 2002 at about 14.30 hours, committed theft of a Bank of Valletta Credit Card from the Bank of Valletta Automated Teller Machine (ATM), located in Republic

Street, which theft is aggravated by means and was committed to the detriment of Noel Farrugia;

12. at Victoria in Gozo on the 16th November, 2002 at about 14.51 hours, by means of the above mentioned stolen credit card, committed theft of the sum of two hundred maltese liri from the Bank of Valletta Automated Teller Machine (ATM), located at the Arcadia Shopping Centre, which theft is aggravated by means and amount and was committed to the detriment of Noel Farrugia;

13. at St. Julians on the 17th November, 2002 at about 00.15 hours, by means of the above mentioned credit card, committed theft of the sum of two hundred maltese liri from the APS Automated Teller Machine (ATM), located at St. George's Bay, which theft is aggravated by means, by time and amount and was committed to the detriment of Noel Farrugia;

14. at St. Julians on the 17th November, 2002 at about 22.45 hours, by means of the above mentioned stolen credit card, committed theft of the sum of two hundred maltese liri from the Bank of Valletta Automated Teller Machine (ATM), located at Balluta Bay, which theft is aggravated by means, by time and by amount and was committed to the detriment of Noel Farrugia;

15. at Hamrun on the 18th November, 2002 at about 00.08 hours, by means of the above mentioned stolen credit card, committed theft of the sum of two hundred maltese liri from the APS Automated Teller Machine (ATM), located at St. Joseph High Road, which theft is aggravated by means, by time and by amount and was committed to the detriment of Noel Farrugia;

16. at St. Julians on the 14th November, 2002 at about 16.30 hours, committed theft of a Euro Master Card issued by Comerčni Banka from the APS Automated Teller Machine (ATM), located in Main Street, which theft is aggravated by means, and was committed to the detriment of Kerol Kyncl;

17. at Bugibba on the 21st November, 2002 at about 15.00 hours, committed theft of a Bank of Valletta Credit Card from the Bank of Valletta Automated Teller Machine (ATM), located in Triq t-Trunciera, which theft is

aggravated by means, and was committed to the detriment of Kenneth Fenech;

18. at Bugibba on the 21st November, 2002 at about 15.18 hours, by means of the above mentioned stolen credit card, committed theft of the sum of one hundred maltese liri from the HSBC Automated Teller Machine (ATM), located in Islets Promenade, which theft is aggravated by means and amount, and was committed to the detriment of Kenneth Fenech;

19. at Bugibba on the 21st November, 2002 at about 15.59 hours, by means of the above mentioned stolen credit card, committed theft of the sum of one hundred maltese liri from the HSBC Automated Teller Machine (ATM), located in Islets Promenade, which theft is aggravated by means and by amount, and was committed to the detriment of Kenneth Fenech;

20. at Sliema on the 22nd November, 2002 at about 01.15 hours, by means of the above mentioned stolen credit card, committed theft of the sum of two hundred maltese liri from the Bank of Valletta Automated Teller Machine (ATM), located in The Strand, which theft is aggravated by means, by time and by amount and was committed to the detriment of Kenneth Fenech;

21. at Qawra on the 22nd November, 2002 at about 16.30 hours, committed theft of a Bank of Valletta Credit Card from the Bank of Valletta Automated Teller Machine (ATM), located in Triq il-Qawra, which theft is aggravated by means, and was committed to the detriment of Joseph Gregory;

22. at Qawra on the 22nd November, 2002 at about 17.24 hours, by means of the above mentioned stolen credit card, committed theft of the sum of one hundred eighty maltese liri from the HSBC Automated Teller Machine (ATM), located in Triq il-Qawra, which theft is aggravated by means and by amount, and was committed to the detriment of Joseph Gregory;

23. at Qawra on the 23rd November, 2002 at about 01.38 hours, by means of the above mentioned stolen credit card, committed theft of the sum of two hundred maltese liri from the APS Automated Teller Machine (ATM), located in Triq il-Gardjola, which theft is

aggravated by means, by time and by amount and was committed to the detriment of Joseph Gregory;

24. Dyakov Dimo Mihaylov was also charged with having on the dates, times and places above mentioned as well as on other different dates and from various other retail outlets and business premises in these Islands, committed forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation or discharge, or by the insertion of in any such agreement, disposition, obligation or discharge, in any of the instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instruments or documents were intended to contain or prove;

25. Dyakov Dimo Mihaylov was also charged with having on the dates, times and places above mentioned as well as on other different dates and from various other retail outlets and business premises in these Islands, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, devise of pretence, calculated to lead to believe in the existence of any fictitious enterprise of any imaginary power, influence or credit or to create the expectation or apprehension of any chimerical event which gain amounts to more than one thousand maltese liri and made to the prejudice of the above mentioned persons; and

26. Finally with at St. Julian's on the 13th November, 2002 at about 16.05 hours, with the intent to commit theft of Credit Card from the Bank of Valletta Automated Teller Machine (ATM), have manifested such intent by overt acts, that were followed by the commencement of the execution of the crime and was not completed in consequence of some accidental cause independent of his will, which attempted theft was aggravated by means and was committed to the detriment of Rittner Egbert Reinhard.

The Court was requested that besides awarding the punishment prescribed by law, to declare the mentioned

person as a prohibited immigrant and issues a removal order against him.

The Court saw the relevant sections at law in particular section 183, 308, 309, 310, 261, 263, 267, 270, 278, 279, 280 of Chapter 9 of the Laws of Malta and Section 15 of Chapter 217 of the Laws of Malta.

The Court heard the Prosecuting Officer confirm the charges on oath against the accused and this in the sitting of the 19th December 2002 and heard the accused plead guilty to all charges brought forward against him.

The Court explained to the accused the consequences of such admission and gave him chance to reconsider his plea however the accused insisted on registering a guilty plea and declared through the interpreter nominated by the Court he understood the nature of the charges brought forward against him.

The Court then went on to pass judgment according to section 392A of the Criminal Code and in line with the judgment given recently by the ***Court of Appeal on the 10th January, 2003***, in the names ***Police v Gary Grech***.

The Court was informed that the accused is suffering from a severe medical condition namely Hepatitis B. So it nominated Doctor Mario Cachia to examine the accused and relate to the Court on the severity or otherwise of such condition.

On the 23rd December 2002 Doctor Mario Cachia, Consultant at St. Luke Hospital, took the stand and confirmed on oath that the accused is suffering from Hepatitis B and is a great diabetic and dependent on insulin.

The Court also heard the Defense Lawyer state that the accused's family in Bulgaria had gone through great hardship in sending one to Malta the sum of LM1142.72 to make good for part of the damages suffered by the victims

of this case. It was in fact the mother of the accused who borrowed the money from a Bank and hypotecated her house to this effect.

The Court was also informed that the accused returned most of the *res furtiva* which in turn was exhibited in Court during the sitting of the 19th December 2002 and these items are exhibited and marked as documents CSH 4 to CSH 9.

The Prosecution also deposited the sum of three hundred maltese liri which were found in the possession of the accused. Thus in all, the Court has the sum of LM1442.72 which sum should be given to the victims *pro rata* as a form of compensation.

The Court noted that according to the document exhibited by the Prosecution which is marked as document AC in the record of proceedings, it transpires that the monetary damages suffered by the victims of this case, amounted to LM3922.50.

The Court also noted that the accused had no objection that the sum of money, which is in the possession of Dottor Joseph Giglio, be given to the victims of this case. According to the declaration released by Dottor Joseph Giglio, filed in the course of these proceedings on the 21st January 2003, he is ready to give out the money to the victims according to the directives given to him by the Court.

Thus the Court is hereby authorizing Dottor Joseph Giglio to withdraw the sum of three hundred maltese liri deposited in these acts and together with the sum of LM1142.72 sent to him by the accused family is to compensate the victims, to the percentage of 36.7%.

Thus the Court is ordering that compensation given to each victim as identified in the note exhibited by the Prosecution marked as document AC according to the above percentage and this in terms of Section 28H of Chapter 9 of the Laws of Malta.

The Court also noted that the accused has a clear conduct sheet and collaborated fully with the Prosecution all throughout the investigation and presently in Court and admitted a guilty plea at the very beginning of the court case and for the reason above given, the Court considers that there are special circumstances which warrant a suspended sentence in terms of Section 28H of Chapter 9 of the Laws of Malta.

The Court saw the relevant sections at law in particular section 183, 308, 309, 310, 261, 263, 267, 270, 278, 279, 280 of Chapter 9 of the Laws of Malta and Section 15 of Chapter 217 of the Laws of Malta and after declaring the accused DYAKOV DIMO MIHAYLOV guilty of all charges brought forward against him and condemns him to a period of imprisonment of two years which period is being suspended for a period of four years provided the accused does not commit another crime which is punishable with imprisonment during this period.

The Court also orders that the victims mentioned in document AC are compensated in terms of Section 28H of Chapter 9 to a percentage of 36.7% of their due amount.

The Court also orders that a deportation order is issued against the accused in terms of Section 15 of Chapter 217 of the Laws of Malta.

The Court explained the importance and significance of this judgment to the accused and the consequences if he failed to abide to it.

Finally the Court orders that a copy of this judgment be sent to the Attorney General within three (3) days in terms of Section 401(3) of the Criminal Code.

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