



**Court of Magistrates (Malta)
As A Court of Criminal Judicature**

Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

**The Police
(Inspector Matthew Grech)**

-vs-

Omissis

Case Number 9999/2025

Today the 24th June, 2025

The Court

Having seen that the defendant company **Omissis** was summoned before this Court for having:

Between the twenty-first (21st) June, 2022 and the twenty-eight (28th) June, 2022 in the Maltese Islands:

1. Acted in contravention of an attachment order.

The Court was requested that in case of a finding of guilt, in addition to the punishment it deems fit, to order Omissis to deposit in a bank the amount of moneys or the value of other movable property paid or delivered in contravention of the Court order as provided in Article 4(10) of Chapter 373 of the Laws of Malta.

The court was also requested that in a case of a finding of guilt, to sentence the person convicted to the payment of the costs incurred in connection with the employment in the proceedings of any experts as provided in Article 533(1) of Chapter 9 of the Laws of Malta.

Having heard witnesses.

Having seen all the acts and documents exhibited.

Having heard the prosecution and defence counsel make their final submissions.

Considers,

Inspector Matthew Grech explained the investigations which he had conducted following the receipt of information that an Attachment Order, which had been issued and communicated to the defendants' Money Laundering Reporting Officer, had been breached.¹ In October, 2022 he was informed that the funds pertaining to the subject of the Order had been released in his favour on the 21st June 2022.

Dr. Silvan Pulis, explained that whilst occupying the role of a police officer, PS1226, he had been informed by the defendant company that on the 21st June 2022, the funds pertaining to Ser Souza had been released in his favour by the same company.²

Assistant Registrar Stefania Calafato Testa exhibited the acts of an Attachment Order³ issued on the 15th June, 2022 by the Criminal Court against a certain Omissis 1.

Claudia Diacono, from the Malta Business Registry, presented the Memorandum and Articles of Association of, and other Registered Documents relating to, the defendant company, from which it results that in the time-frame

¹ Fol.52-54

² Fol.42 et seq

³ **Dok.AO** a fol.51

within which the breach occurred imputed Omissis 2 and Omissis 3 held representative roles within the said company.⁴

Dr. Zachary Sciberras, representing the Malta Gaming Authority, testified⁵ that the defendant was in possession of a corporate group gaming service licence⁶ which had been issued in 2018 and which was valid until 2028. Omissis 4 held the key function certificate.⁷ The witness confirmed that there had been no disputes or issues with the defendant company.

Considers,

The offence with which the defendant company stands charged is that provided for through Article 4(10) of the Money Laundering Act:

(10) Any person who acts in contravention of an attachment order shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment

Learned defence counsel raised the plea that the Act does not provide for corporate criminal liability with respect to the said offence.

The Court of Criminal Appeal (Superior Jurisdiction) distinguished between corporate, vicarious and personal liability in its decision on preliminary pleas in the proceedings **Ir-Repubblika ta' Malta vs Carina Louise Azzopardi** wherein it held:⁸

11. Illi llum il-Kodiċi Kriminali fil-każ ta' certu reati, jipprevedi ir-responsabbiltà kriminali diretta lejn il-korp magħqud u dan meta bl-Att III ta' l-2002 kien introdott il kunċett ta' corporate liability li fl-artikolu 121D jipprovdi testwalment:

“Meta reat ... ġie mwettaq minn persuna li dak iż-żmien tal-msemmi reat tkun id-direttur, il-manager, is-segretarju jew xi uffiċjal prinċipali ieħor ta' korp magħqud jew tkun persuna li jkollha s-setgħat ta' rappreżentanza ta' dak il korp jew li jkollha l-awtorità li tiegħu deċiżjonijiet f'isem dak il-korp jew ikollha awtorità li teżerċita kontroll fi ħdan dak il-korp u r-reat imsemmi li dwaru tkun instabet haġja dik il-persuna, jkun kollu jew f'parti minnu, sar għall-benefiċċju ta' dak il-korp magħqud, dik il-persuna għandha għall-għanijiet ta' dan it-titolu titqies bħala li tkun vestita bir-rappreżentanza legali tal-istess korp magħqud li jista' jeħel il-ħlas ta' multa ta' mhux inqas minn għoxrin elf euro (€20,000) u mhux aktar minn żewġ miljun euro (€2,000,000), liema multa tista' tiġi rkuprata 1B'referenza għal-

⁴ Fol.6 et seq

⁵ Fol.29-30.

⁶ Fol.32-38

⁷ Fol.39-41

⁸ Per His Hon. The Chief Justice Mark Chetcuti, The Hon. Judge Edwina Grima, The Hon. Judge Giovanni Grixti. Sitting of the 4th December, 2024. Bill of Indictment No: 34/2023

artikolu 248E(4A) tal-Kodiċi Kriminali 6 bħala dejn ċivili u s-sentenza tal-Qorti tkun tikkostitwixxi titolu eżekuttiv għall-finijiet u l-effetti kollha tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili."

Dan il-kunċett huwa reż applikabbli ukoll fil-każ tar-reat ta' traffikar tal-persuni kif hemm maħsub fl-artikolu 248E(3) tal-Kodiċi Kriminali li jikkontempla s-sanzjonijiet ravviżati fl-artikolu 248E(4A).

12. Illi dan ifisser illi, kuntrarjament għal dik ir-responsabbiltà vikaġja imqiegħda fuq spallejn id-direttur ta' korp magħqud, li titkellem dwarha l-artikolu 13 tal-Att dwar l-Interpretazzjoni⁹, fejn allura f'każ ta' sejbien ta' htija u imposizzjoni ta' piena din tigi inflitta fuqu u għandha tkun skontata minnu personalment, anke f'każ ta' piena pekunjarja, il-kunċett legali ntrodott permezz ta' din id-disposizzjoni tal-liġi issa titkellem dwar il-corporate liability, fejn għalkemm ir-responsabbiltà penali titqiegħed fuq spallejn persuna fiżika, madanakollu l-piena pekunjarja hija imputabbli lil-korp magħqud, liema penali hija meqjusa bħala dejn ċivili u titolu eżekuttiv fil-konfront ta' dak il-korp magħqud. Jikkonsegwi għalhekk illi huwa biss il-korp magħqud illi jista' jkun ikkundannat għal piena indikata fid-disposizzjonijiet tal-liġi li jikkellmu dwar ir-responsabbiltà penali tal-korp magħqud.

13. Illi l-Avukat Ġenerali fl-Att ta' l-Akkuża minnu redatt jindika fl-okkju biss lil Carina Louise Azzopardi, għalkemm, imbagħad, fil-parti akkużatorja jindika li din qed tkun mixlija fisimha personali u fil-kapaċità tagħha ta' segretarja u rappreżentanti legali u uffiċjali tal-kumpaniji JF Security Services, JF Group, JF Services Cleaning Ltd, JF Staffing Ltd, JF Security and Consultancy Services Limited, JF Logistics Ltd, JF Services Ltd, JF Investments Ltd. Meta jasal biex jindika liema hija il-piena li tista' tkun erogata fil-konfront ta' l-appellanti, iżda, jittlob li din tkun ikkundannata personalment fit-termini ta' l-artikolu 121D u 248E tal-Kodiċi Kriminali, fejn ma jindikax id-dispożizzjonijiet ta' l-artikolu 13 tal-Kapitolu 249. Issa huwa evidenti minn qari ta' dawn iż-żewġ dispożizzjonijiet tal-liġi illi l-appellanti qua akkużata ma tista' qatt tkun ikkundannata tali piena billi l-liġi hija ċara li huwa biss il-korp magħqud illi jista' jehel din il-piena.

14. Illi għalkemm il-kunċett tal-corporate liability issa ilu introdott fil-liġi tagħna għal fuq minn għoxrin sena, huwa minnu illi dan il-kunċett mhux dejjem huwa faċilment applikat. Dan għaliex billi r-reita' fil-kamp penali tinneċċesita kemm l-att materjali kif ukoll l-att formali huwa allura kważi impossibbli li jkun ikkonċepit kif il-persuna legali, u mhux fiżika, tista' qatt tiffirma xi intenzjoni biex tikkometti xi reat minn dawk li għalihom japplika dan il-kunċett tal-corporate criminal liability. Fil-fatt, anke il-piena li tigi inflitta trid tkun waħda pekunjarja billi dik tal-priġunerija neċessarjament tinvolvi l-persuna fiżika. Il-liġi, madanakollu, timponi ċertu kondizzjonijiet qabel ma l-Qorti tkun tista' tgħaddi għal kundanna fil-konfront tal-korp magħqud billi jrid ikun ippruvat illi l-att materjali imwettaq neċessarjament mill-persuna fiżika vestita bir-rappreżentanza tal-kumpanija jkun sar għal benefiċċju uniku ta' dak il-korp magħqud. Illi imbagħad l-artikolu 248E tal-Kap. 9 iwessa' l-aġir inkriminatorju meta jindika illi s-sejbien ta' htija għar-reat ta' traffikar ta' persuni fil-konfront tal-korp magħqud jista' jseħh jekk ikun ippruvat illi dan kien kommess minn persuna impjegata jew xort'oħra fis-servizz ta' korp magħqud, r-reat sar għall-benefiċċju, f'parti jew għal kollox, ta' dak il-korp magħqud, u finalment jekk ir-reat seta' jsir minhabba n-nuqqas ta' sorveljanza jew kontroll ta' xi persuna li għaliha hemm riferenza fl-artikolu 121D. Jekk dan ikun ippruvat allura il-korp magħqud jehel il-piena tal-multa u ukoll s-sanzjonijiet ikkontemplati fis-sub-inċiż 4A tal-artikolu 248E, bil-liġi tispeċifika illi huwa il-korp ġuridiku li jkun soġġett għal dawk is-sanzjonijiet u

⁹ Meta xi reat taħt jew kontra xi dispożizzjoni li tinsab f'xi Att, li jkun għadda sew qabel jew wara dan l-Att, isir minn korp jew għaqda ta' persuni, sew jekk tkun persuna ġuridika jew le, kull persuna li, fil-ħin tal-għemil tar-reat, kienet direttur, manager, segretarju jew uffiċjal ieħor simili tal-korp jew għaqda, jew kienet tidher li qed tagħxi f'dik il-kariga, tkun haġja ta' dak ir-reat kemm il-darba ma tippruvax li r-reat ikun sar mingħajr it-tagħrif tagħha u li tkun eżerċitat id diliġenza kollha xierqa biex tevita l-għemil tar-reat

mhux il-persuna fiżika li tkun qed tidher għan-nom ta' dak il-korp ġuridiku. Mhux biss, iżda, meta l-persuna fiżika mixlija ma tkunx għadha vestita bir rappreżentanza legali, għall-finijiet tal-artikolu 121D, ir-rappreżentanza legali għandha tiġi vestita fil-persuna li tkun qed tokkupa l-kariga minflokha.

15. Illi, inoltre, kuntrarjament għal kundanna fit-termini ta' l-artikolu 13 tal-Kap.249, li trid issir neċessarjament kontra l-persuna fiżika, uffiċjal tal-korp magħqud, il-piena inflitta taqa' f'hogor dik il-persuna, fil-każ tar-responsabbilita' tal-korp magħqud, il piena tingħata fil-konfront tal-persuna legali u mhux dik fiżika, fejn l-uffiċjal allura ma jwegibx personalment għall-aġir inkriminatorju. Ukoll, meta l-persuna fiżika tkun akkużata fil-vesti vikarja tagħha, hija tista' teżimi ruħha minn tali responsabbilita' billi turi, u dan fuq bażi ta' probabbilita, illi tkun eżerċitat id-diligenza meħtieġa għall-kariga minnha okkupata u tkun għamlet dik is-sorveljanza meħtieġa fil-qadi ta' dmirijietha sabiex tara illi ma jsir l-ebda att jew omissjoni doluż. Ma jidhirx, madanakollu illi bl-istess mod il-korp magħqud jista' isib il-konfort ta' din l-iskużanti taħt l-artikolu 121D, u jkun biżżejjed illi l-prosekuzzjoni tipprova illi r-reat ikun seħħ għal benefiċċju tal-kumpanija sabiex tiġi stabbilita r-reita' f'dak il-korp magħqud.

16. Mela, filwaqt illi fil-każ tar-responsabbilita' vikarja il-persuna mixlija bil-kummissjoni tar-reat fil-kapaċita' rappreżentattiva tagħha qed tkun misjuba ħatja għan-nom tal-kumpanija, fil-każ tar-responsabbilita' tal-korp magħqud, l-att materjali kostitwenti r-reat, li neċessarjament ikun mwettaq mill-persuna fiżika, jitqies illi sar mill-kumpanija. Ifisser għalhekk illi l-att inkriminatorju huwa attribwibbli direttament lill-kumpanija meta dak l-att ikun seħħ għal benefiċċju tagħha, dak li l-liġi brittanika tiddefinieh bħala the identification doctrine jew the alter ego theory. Din it-teorija rat it-twelid tagħha f' tlett pronunzjamenti ġudizzjarji li jirrisalu għas-snin erbghin spiss iċċitati DPP v Kent and Sussex Contractors Ltd.¹⁰, R v ICR Haulage Co Ltd.¹¹, u Moore v I Bresler Ltd.¹², fejn kien stabbilit illi l-mens rea fil-manager ta' kumpanija akkużat bil-kummissjoni tar-reat kien jikkostitwixxi l-element intenzjonali tal-kumpanija stess. U dan għaliex il-kumpanija tista' titkellem u taġixxi biss permezz tal-uffiċjali tagħha. Iżda kien hekk deċiż:

“It is not every responsible agent or high executive or agent acting on behalf of a company who can by his actions make the company criminally responsible. It is necessary to establish whether the natural person or persons in question have the status and authority which in law make their acts in the matter under consideration the acts of the company, so that the natural person is to be treated as the company itself. It is necessary for the judge to invite the jury to consider whether or not there are established those facts which the judge decides, as a matter of law, are necessary to identify the person concerned with the company.”¹³

17. Illi allura, għalkemm kif sewwa stqarret il-Qorti Kriminali huwa biss matul il-kors taċ-ċelebrazzjoni tal-ġuri li ser ikun possibbli jiġi stabbilit jekk l-att materjali u l-element formali meħtieġ għal kummissjoni tar-reat sarx mill-appellanti bħala uffiċjal awtorizzat tal-kumpanija, u dan għal benefiċċju tal-kumpanija sabiex b'hekk l-aġir inkriminatorji jista' jkun attribwit lil dik il-kumpanija, madanakollu finalment hija l-kumpanija li tkun ikkundannata għal piena ravviżzata fl-artikolu 121D u 248E(4A) tal-Kodiċi Kriminali u mhux l-appellanti, sabiex l-Avukat Ġenerali erronjament jimputa din il-piena lill-appellanti personalment. F'tali xenarju fejn hemm ix-xilja fit-termini ta' l-artikolu 121D tal-Kodiċi Kriminali, il-Prosekuzzjoni trid tidentifika min huma id-dirigenti tal-kumpanija billi jitressqu provi dwar il-kostituzzjoni tal-kumpanija tramite memoranda/artikoli

¹⁰ (1944) KB186, (1944) 1 All ER 199

¹¹ (1944) KB 551, 30 AC 31

¹² (1944) AC 153, 173

¹³ R. v Andrews Weatherfoil [1972] 56 C.App.R. 31 CA

ta' assoċjazzjoni, responsabbiltajiet tad-diretturi u uffiċjali oħra fil kumpanija fost oħrajn u dan bil-ghan illi lil dak il-korp ġuridiku jkun imputat il kummissjoni tar-reat.

It is very clear from the wording of the charge that the defendant in these proceedings is solely the company Omissis and thus the charge is not one attaching vicarious liability to its representatives, namely Omissis 1 and Omissis 2.

Likewise Article 4(10) of the Act is patent in ascribing criminal liability only to a physical person and not a legal person since it provides for a term of imprisonment, a punishment evidently and exclusively reserved for a physical person. In fact when the Act sought to criminalise corporate responsibility it did so in no unclear terms as Article 3(2) demonstrates. Consequently in observance of the legal maxim *nullum crimen sine lege, nulla poena sine lege*, Omissis can never be held liable for the breach of an Attachment Order.

In view of the foregoing the Court is acquitting the defendant company from the charge brought against it.

Finally, in view of the considerations made, this judgement is to be communicated to the Honourable Minister for Justice and the Attorney General.

Dr. Donatella M. Frendo Dimech
Magistrate