



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

THE POLICE (INSPECTOR RACHEL AQUILINA) V VERZINJA ZAFIROVA (ID. 80882A)

MAGISTRATE: DR. VICTOR G. AXIAK

08.07.2025

THE COURTS,

Having seen the charges proffered against the person charged (hereinafter also referred to as “the accused”):

To. Verzhinja Zafirova

ID: 80882A

Born: 27/01/1994 Bulgaria

Residing: 66, Chris, Flat 3, Triq Antonio Sciortino, Msida

As you have been charged that on the 23/12/2022 at around 11:35 hrs in Triq ix-Xatt, Sliema you drove vehicle no. ECH 219;

- 1. Drove a motor vehicle or any other vehicle without a vehicle licence
Sec. 15(1)(a)(3), Chap. 65**
- 2. Drove or had charge of a motor vehicle, you willfully or negligently, prevented, hindered or interrupted the free passage to any person, vehicle, horse or cattle
Sec. 77, L.S. 65.11**

Having heard the testimony of EO 358 and EO 356 given during the sitting of 11th July 2023 and having read the transcript of their testimonies.

Having seen that in the sitting dated 4th March 2025, counsel for the defence raised the preliminary plea *ne bis in idem* on account of a ticket that had been purportedly handed over to the offender by Transport Malta officials.

Having heard the accused testify on this plea and having read the transcript of her testimony.

Having seen the oral submissions made during the said sitting:

- by the Prosecution, represented by Inspector Rachel Aquilina
- by the Defence, represented by Dr. Dominic Micallef.

Gives the following

Decree

1. In her testimony of 4th March 2025 the accused testified *inter alia* that on the date and time in question she parked her vehicle in front of Zara on the unloading spot and she crossed the road temporarily as she was waiting for her children. When she went back she found a ticket affixed to the windscreen. When she started driving, there were “seven guys” who stopped her “with shouting and ... screaming” and eventually the vehicle was confiscated.
2. The accused exhibited the ticket in question that appears to have been issued by Transport Malta Enforcement Officials number 358 and 356. The ticket shows the infringements that were allegedly committed by the accused (named personally and as “the owner”) under the Traffic Regulation Ordinance (Chapter 65 of the Laws of Malta), that is, “license not affixed”, “license not renewed”, “license expired May 22” and “Obstruction/unloading”.
3. The accused also testified that when she went to collect the vehicle from Transport Malta, she “went to pay for everything with Transport Malta ... pay the fines as well and I renewed the license of the car and everything was fine”. She submitted a number of documents in this regard issued by Transport Malta, that is Dok VZ2 dated 25-Jan-23, Dok VZ3 dated 26-Jan-23 and Dok VZ4 dated 26-Jan-23. The last two documents show that the accused paid the compound fees (€ 745) and the vehicle license and late payment fees (€ 285). Dok VZ2 shows that as of 25th January

2023 there were pending fines amounting to € 5,712. No proof whatsoever was brought as to what such fines consisted of, or whether this amount was paid.

4. The plea of *ne bis in idem* must be analysed in light of the relevant provisions of the law, that is, Art. 527 of the Criminal Code, Art. 39(9) of the Constitution of Malta, Article 4(1),(2) of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) as well as jurisprudence on the matter.
5. Article 527 of the Criminal Code states that:

‘527. Where in a trial, judgment is given acquitting the person charged or accused, it shall not be lawful to subject such person to another trial for the same fact.’

6. Article 39(9) of the Constitution of Malta is wider as it makes reference to both acquittals and convictions against the person charged:

‘ 39(9) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal or review proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence ...’

7. Article 4(1) and (2) of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) state as follows:

‘4. (1) No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

(2) The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case’

8. In the case decided on 3rd August 2022 “**The Police v. Mario Debono**” (Court of Magistrates presided by Mag. Dr. Elaine Mercieca), this Court made reference to a number of local judgements as well as judgements given by the European Court of Human Rights. The Court first quoted the judgement given by the European Court of Human Rights in **Mihalache and others v. Romania** (Application No. 63417/16 and others, 12/01/2023) where the ECHR held as follows:

“The Court reiterates that the aim of Article 4 of Protocol No. 7 is to prohibit the repetition of criminal proceedings that have been concluded by a final decision ... The Court observes that the wording of the first paragraph of Article 4 of Protocol No. 7 sets out the three components of the ne bis in idem principle: the two sets of proceedings must be “criminal” in nature (1); they must concern the same facts (2); and there must be duplication of the proceedings (3).”

Ne bis in idem: two sets of criminal proceedings

9. It is immediately clear that the defence’s plea falls at the very first hurdle given that no evidence whatsoever was submitted of any other criminal proceedings taken against the accused on the basis of the infringements listed in the notice affixed to her vehicle’s windscreen, of which she was convicted or acquitted, including proceedings before a Commissioner for Justice. Nor was any evidence brought showing that the accused paid any fines of a penal nature in relation to said infringements. The accused understood that she had paid “everything” when she paid the compound fees, the vehicle license and the late payment fee, including any fines due for the alleged violation of the relevant provisions under the Traffic Regulation Ordinance. However it is clear that any fees that were paid were by way of settlement of administrative fees and fines that were due and payable on account of her failure to renew the vehicle’s license (as per Art. 21(5) of Chapter 368) and on account of the storage of the vehicle at Transport Malta’s compound.
10. Moreover it is pertinent to note that in accordance with S.L. 499.51 (“Transport Enforcement Officers Regulations”), Enforcement Officers appointed by Transport Malta under Article 3, have the authority under Article 7(4) to issue and hand over to the driver of, or affix to the windscreen of any vehicle which in their opinion was used in the commission of an offence or contravention against the regulations listed in the Schedule, a notice containing a general description of the offence or contravention and the applicable penalty and any other requirements as the

Authority may prescribe. Such ticket is in no way tantamount to a summons and certainly does not by itself amount to proceedings of a criminal nature.

- 11. For these reasons the Court rejects the plea of *ne bis in idem* raised by the defence.**

V.G. Axiak
Magistrate

Y.M. Pace
Dep. Registrar