



MALTA

CRIMINAL COURT

**HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 13 th March, 2006

Number 13/2005

The Republic of Malta
Vs
Lin Yi

The Court,

Having seen the bill of indictment no. 13/2005 against the accused Lin Yi wherein he was charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that the accused Lin Yi arrived in Malta during the month of August of the year 2004. He was granted permission, by the Immigration Authorities, to stay in the Maltese Islands for one month. This permission was extended on more than one occasion and, on the 30th March of the year 2005, the accused was granted permission to stay in these Islands until the 6th April of the same year. Some time after his arrival, the accused decided to commence the highly profitable and

illegal business of trafficking in human beings. Whilst in Malta, he carefully planned, together with other persons, to help a number of foreign nationals, mostly Chinese, to get to Italy. These foreign nationals paid large sums of money for these dangerous and illegal trips. Lin Yi received a percentage of the amount paid by each and every person leaving the Maltese Islands in this illegal manner. The accused, in pursuance of the same design, helped to organise a number of these trips, two of which took place in September, one in November and one in December of the year 2004. On this latter occasion six persons were taken to Italy. The accused persisted in the carrying out of this illegal business until March of the year 2005.

That by his actions the aforementioned Lin Yi, with several acts, at different times, in violation of the same provision of law, committed in pursuance of the same design, did become guilty of, with the intent to make any gain whatsoever, having aided, assisted, counselled or procured other persons to enter or to attempt to enter or to leave or attempt to leave Malta in contravention of the laws thereof and, in Malta or outside Malta, conspired to that effect with other persons; and the persons aided, assisted, counselled or procured and the object of the conspiracy as aforesaid number more than three.

Therefore the Attorney General, in the name aforesaid, accused the aforementioned Lin Yi guilty of having, with several acts, at different times, in violation of the same provision of law, committed in pursuance of the same design, with the intent to make any gain whatsoever aided, assisted, counselled or procured other persons to enter or to attempt to enter or to leave or attempt to leave Malta in contravention of the laws thereof and, in Malta or outside Malta, conspired to that effect with other persons; and the persons aided, assisted, counselled or procured and the object of the conspiracy as aforesaid number more than three; demanded that the said accused be proceeded against according to law and that he be sentenced to the punishment of imprisonment from two years to thirty years and to a fine (multa) of ten thousand liri in accordance with the provisions of articles 18 and

337A of the Criminal Code or to such other punishment applicable according to the declaration of guilty of the said accused.

2) And after the Attorney General premised in the Second Count of the Bill of Indictment that the accused Lin Yi arrived in Malta during the month of August of the year 2004. He was granted permission, by the Immigration Authorities to stay in the Maltese Islands for one month. This permission was extended on more than one occasion and, on the 30th March of the year 2005, the accused was granted permission to stay in these Islands until the 6th April of the same year. However, Lin Yi had no intention of leaving by the said date and stayed on beyond his welcome. A few days after the 6th April, a friend of his persuaded him to go to Hong Kong. Knowing that he would have problems leaving these Islands in view of the fact that he had overstayed, some time after being granted the said extension, Lin Yi attempted to defy local Immigration Authorities by altering their stamp made on his passport. He thus erased the digit "0" before the digit "6" and replaced it with a digit "2". The stamp, which originally read "06.04.05", was thus made to read "26.04.05". On the 19th April of the year 2005 the accused Lin Yi attempted to leave Malta and go to Hong Kong via Frankfurt. The local authorities, who suspected that the stamp had been tampered with, stopped him at the Malta International Airport and handed him over to the Police.

That by his actions the aforementioned Lin Yi did become guilty of counterfeiting a seal, stamp, or other mark, used for sealing, stamping, marking, authenticating or certifying, in the name of the Government or of any of the authorities thereof, documents or effects, whether public or private property, or which are under the public guarantee.

Therefore the Attorney General, in the name aforesaid, accused the aforementioned Lin Yi guilty of counterfeiting a seal, stamp, or other mark, used for sealing, stamping, marking, authenticating or certifying, in the name of the Government or of any of the authorities thereof, documents or effects, whether public or private property,

or which are under the public guarantee; demanded that the said accused be proceeded against according to law and that he be sentenced to the punishment of imprisonment for a term from thirteen months to three years, with or without solitary confinement in accordance with the provisions of subarticle (1) of article 172 of the Criminal Code or to such other punishment applicable according to the declaration of guilty of the said accused.

3) And after the Attorney General premised in the Third Count of the Bill of Indictment that the accused Lin Yi arrived in Malta during the month of August of the year 2004. He was granted permission by the Immigration Authorities to stay in the Maltese Islands for one month. This permission was extended on more than one occasion and, on the 30th March of the year 2005, the accused was granted permission to stay in these Islands until the 6th April of the same year. However, Lin Yi had no intention of leaving by the said date and stayed on beyond his welcome. A few days after the 6th April, a friend of his persuaded him to go to Hong Kong. Knowing that he would have problems leaving these Islands in view of the fact that he had overstayed, the accused attempted to defy local Immigration Authorities in the manner explained in the second count of the bill of indictment. On the 19th April of the year 2005 the accused Lin Yi attempted to leave Malta and go to Hong Kong via Frankfurt. He presented his passport with the forged stamp to the local Immigration Authorities. However, these authorities noticed that the stamp in the passport had been tampered with and stopped him and handed him over to the Police.

That by his actions the aforementioned Lin Yi did become guilty of knowingly making use of a counterfeit seal, stamp, or other mark, used for sealing, stamping, marking, authenticating or certifying, in the name of the Government or of any of the authorities thereof, documents or effects, whether public or private property, or which are under the public guarantee, and knowingly and without lawful authority was in possession of the said objects.

Therefore the Attorney General, in the name aforesaid, accused the aforementioned Lin Yi guilty of knowingly making use of a counterfeit seal, stamp, or other mark, used for sealing, stamping, marking, authenticating or certifying, in the name of the Government or of any of the authorities thereof, documents or effects, whether public or private property, or which are under the public guarantee, and knowingly and without lawful authority was in possession according to law and that he be sentenced to the punishment of imprisonment for a term from thirteen months to three years, with or without solitary confinement, in accordance with the provisions of subarticle (2) of article 172 of the Criminal Code or to such other punishment applicable according to the declaration of guilty of the said accused.

4) And after the Attorney General premised in the Fourth Count of the Bill of Indictment that the accused Lin Yi arrived in Malta during the month of August of the year 2004. He was granted permission by the Immigration Authorities to stay in the Maltese Islands for one month. This permission was extended on more than one occasion and, on the 30th March of the year 2005, the accused was granted permission to stay in these Islands until the 6th April of the same year. However, Lin Yi had no intention of leaving by the said date and stayed on beyond his welcome. A few days after the 6th April, a friend of his persuaded him to go to Hong Kong. Knowing that he would have problems leaving these Islands in view of the fact that he had overstayed, some time after being granted the said extension, Lin Yi attempted to defy local Immigration Authorities by altering their stamp made on his passport. He thus erased the digit "0" before the digit "6" and replaced it with a digit "2". The stamp on his passport, which originally read "06.04.05", was thus made to read "26.04.05". On the 19th April of the year 2005 the accused Lin Yi attempted to leave Malta and go to Hong Kong via Frankfurt. Upon presentation of this forged passport, the local authorities, who suspected that the said passport had been tampered with, stopped him at the Malta International Airport and handed him over to the Police.

That by his actions the aforementioned Lin Yi did become guilty of forging, altering or tampering with a passport or using or having in his possession a passport which he knew to be forged, altered or tampered with.

Therefore the Attorney General, in the name aforesaid, accused the aforementioned Lin Yi guilty of forging, altering or tampering with a passport or using or having in his possession a passport which he knew to be forged, altered or tampered with; demanded that the said accused be proceeded against according to law and that he be sentenced to the punishment of imprisonment for a term from six months to two years in accordance with the provisions of article 5 of the Passports Ordinance (Cap. 61 of the Laws of Malta) or to such other punishment applicable according to the declaration of guilt of the said accused.

Having seen and examined all the record of the compilation of evidence against the accused;

Having seen the note filed by accused on the 27th. January, 2006, whereby he informed the Court, as he had already the opportunity to inform its Deputy Registrar, through his legal counsel, that in these proceedings there shall be no need to empanel a jury since the accused shall be filing a guilty plea to the charges remaining as at the date of the hearing and that accused was also discussing with the Attorney General the possibility of filing an application in terms of Section 453(A) of Chapter 9.

Having seen accused's note filed on the 10th. March, 2006, whereby he reaffirmed that he shall be pleading guilty to the accusations brought against him in the Bill of Indictment, without prejudice to the rules concerning the ideal and formal concurrence of offences and the rule mentioned in Section 17(h) of Chapter 9.

Having seen that in today's sitting, the accused pleaded guilty to all charges contained in the Bill of Indictment;

Having seen that this Court then warned the accused in the most solemn manner of the legal consequences of such statement and allowed him a short time to retract it, according to Section 453 (Chap. 9);

Having seen that the accused, being granted such a time, persisted in his statement of admission of guilt;

Declares the accused Lin Yi guilty of all four counts in the Bill of Indictment, namely of:

1. having in Malta, between the month of August of the year 2004 and the month of April, 2005 and in particular between September 2004 and March 2005, with several acts committed at different times, in violation of the same provision of the law and committed in pursuance of the same design, with the intent to make any gain whatsoever, aided, assisted, counselled or procured other persons to enter or to attempt to enter or to leave or attempt to leave Malta in contravention of the laws thereof and, in Malta or outside Malta, conspired to that effect with other persons; and the persons aided, assisted, counselled or procured and the object of the conspiracy as aforesaid numbered more than three, according to the First Count of the Bill of Indictment;

2. having in Malta, between the sixth (6th.) and nineteenth (19th.) of April, 2005, counterfeited a seal, stamp or other mark, used for sealing, stamping, marking, authenticating or certifying, in the name of the Government or of any of the authorities thereof, documents or effects, whether public or private property, or which are under the public guarantee, according to the the Second Count of the Bill of Indictment;

3. having in Malta, between the sixth (6th) and nineteenth (19th.) of April, 2005, knowingly made use of a counterfeit seal, stamp, or other mark, used for sealing, stamping, marking, authenticating or certifying, in the name of the Government or of any of the authorities thereof, documents or effects, whether public or private property, or which are under the

public guarantee and knowingly and without lawful authority was in possession of the said objects, according to the Third Count of the Bill of Indictment; and

4. having between the sixth (6th) and nineteenth (19th) day of April, 2005, forged, or tampered with a passport or used or had in his possession a passport which he knew to be forged, altered or tampered with, according to the fourth Count of the Bill of Indictment.

Having heard submissions of Defence Counsel and Prosecuting Counsel regarding the plea in mitigation of punishment;

Having considered ALL submissions made by defence counsel which are duly recorded and in particular – but not only – the following, namely that

1. the minimum punishment possible was one of seven (7) months imprisonment;

2. whereas the Attorney General was now requesting the Court to award a punishment of nine (9) years imprisonment, the defence was submitting that a punishment of six, to seven years imprisonment would be more fitting in this case;

3. that accused in this case was only acting as an intermediary and was not the person who was benefiting mostly financially from the trafficking operations;

4. that there was already another case decided by the Magistrates' Court, namely " The Police vs. Geng Yan" [14.4.2005] where the punishment was even slightly reduced by the Court of Criminal of Appeal on 13.7.2005 and the Attorney General had not filed any appeal from the punishment awarded by the Magistrates' Court in that case;

5. that accused had cooperated with Police interrogators right away and had filed an early plea of guilt.

Having considered the submissions of prosecuting counsel, namely :

1. that the circumstances of this case were different from that of the case quoted by Defence Counsel and in that case the Court of Criminal Appeal was bound by the judgement of the Magistrates Courts - which are not known for their undue harshness – and could not increase such punishment according to law. Therefore Defence Counsel’s reference to this case was irrelevant. He also referred to the judgement of the Court of Criminal Appeal in the case “The Police vs. Ferhat Guellouma” [20.7.2005] where the Criminal Court of Appeal confirmed a judgement of the Magistrates’ Courts;

2. Although the Attorney General in the plea bargaining exercise had proposed a term of imprisonment of 9 years in this case, once no agreement had been reached with the Defence, it was not bound to stick to that proposal;

3. Nevertheless, in this case, where the maximum punishment for the offences to which accused pleaded guilty was thirty one (31) years and six (6) months imprisonment, the Attorney General was still insisting on a punishment of nine (9) years which was less than one third of the maximum punishment, besides the fine (multa) requested in the bill of indictment;

4. That offences of the trafficking of illegal immigrants were being underestimated by some Courts of Law notwithstanding that they were destabilizing the nation;

5. That the Attorney General was requesting this greatly reduced term of punishment only in view of accused’s cooperation with the Police and his filing of an early plea of guilt.

Now considers that :-

Having seen that the prosecution and the defence agree that there exists the formal or ideal concurrence between the offences under the second and fourth counts of the Bill of Indictment and that both offences under the aforesaid second and fourth counts of the Bill of Indictment are, for purposes of

punishment, to be considered as having served as a means for the commission of the offence under the third count of the Bill of Indictment, for the purpose of and according to Section 17 (h) of Chapter 9 of the Laws of Malta.

Having considered that the maximum punishment laid down by law for the offences of which accused has been declared guilty, after taking into account of the fact that there exists a formal or ideal concurrence between the offence under the second count of the Bill of Indictment and that under the fourth count of said Bill of Indictment and also that both offences under the second and fourth count of the Bill of Indictment have served as a means for the commission of the offence in the third count of the Bill of Indictment, as provided in section 17 (h) of the Criminal Code, is imprisonment for thirty-one years and six months together with a fine multa of LM10000.

Having considered both local and foreign case law regarding the plea in mitigation of punishment when the accused person files an early plea of guilt and in particular **“Ir-Repubblika ta’ Malta vs. Nicholas Azzopardi”** [24.2.1997] (Criminal Court); **“Ir-Repubblika ta’ Malta vs. Mario Camilleri”** [5.7.2002] (Court of Criminal Appeal); **“Il-Pulizija vs. Emmanuel Testa”** [17.7.2002] (Court of Criminal Appeal) and others) as well as **BLACKSTONE’S CRIMINAL PRACTICE** (Blackstone Press Limited 2001 edit) ;

Having considered the serious and very grave consequences and implications of the ever-accelerating spate of organized trafficking of persons through the Maltese Islands towards the shores of Continental Europe from other continents and that those involved are reaping considerable profit therefrom, often by extorting considerable sums of money from illegal immigrants and often without any consideration or regard whatsoever for the safety of the persons trafficked. Having also considered the negative reputation which the country is acquiring overseas, due to this illegal activity which is also

carried out by foreigners who, like the accused have established their base in Malta, sometimes under false pretences either as *bona fide* tourists or students of the English language, thereby abusing in no small way of the hospitality extended to him by Maltese society as a visitor to this Island, by using his stay in Malta to further his criminal ends and to make a profit thereby.

Having considered that in the case of **Geng Yan** quoted by the Defence, the Court of Criminal Appeal had slightly reduced the punishment for a technical legal reason but, at the same time, had remarked euphemistically that the punishment awarded to appellant in that case by the Magistrates' Courts was certainly not exaggerated.

Having also considered that the Court of Criminal Appeal in the **Ferhat Guellouma** judgement above quoted had remarked that it is up to the Courts to convey a message which will act as a deterrent against the commission of this type of very serious crime by the application and awarding of adequate punishments.

Having seen that in the circumstances of the case the punishment being requested by the Attorney General of nine (9) years imprisonment and a fine (*multa*) is more than justified considering that it is less than one third of the maximum punishment prescribed by Law in this case and that it fully takes into account all mitigating circumstances in favour of accused.

Now therefore, having seen Sections 17(b)(h), 18, 172 (1)(2), 337(A) and 533 of Chapter 9 of the Laws of Malta and Section 5 of Chapter 61 of the Laws of Malta, condemns said Lin Yi to a term of imprisonment of nine (9) years and to a fine *multa* of ten thousand Maltese Liri (LM10,000), which fine shall be automatically converted into a further term of imprisonment of twelve (12) months according to law, if it is not paid within fifteen days from today and further orders that he should pay the sum of sixty Maltese Liri (LM60) being the court expenses incurred in this case according to Section 533 of Chapter 9 of the Laws of Malta within fifteen (15) days from today.

Informal Copy of Judgement

It further orders that any time spent by Lin Yi in preventive custody in connection only with the offences mentioned above shall be deducted from the above mentioned term of imprisonment.

< Final Judgement >

-----END-----