



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
ANTONIO MICALLEF TRIGONA**

Sitting of the 9th March, 2009

Number 1123/2005

**The Police
(Inspector Ian Joseph Abdilla and
Inspector Nadia Lanzon)**

VS

ZDRAVKO SVILENOV MILOUCHEV

The Court,

Having seen the charges brought against the accused, holder of identity card number 21883A with having:

A. on these Islands, on the 21st December, 2005 and in the preceding months, in various parts of Malta and outside Malta, by means of several acts committed by the accused, even if at different times, which acts constitute violations of the same provisions of the law;

1. for having, promoted, constituted, organized or financed an organisation of two or more persons with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more;

(This in breach of Sections 18 and 83A(1), (4) and (5) of Chapter 9 of the Laws of Malta)

2. for having, make part or belonged to an organisation referred to in Sub article (1) of Article 83A of Chapter 9 of the Laws of Malta;

3. for having, in Malta conspired with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment, not being a crime in Malta under the Press Act;

(This in breach of Sections 18 and 48A of Chapter 9 of the Laws of Malta)

B. on these islands, on the 21st December 2005 and in the preceding months, in Malta, by means of several acts committed by the accused, even at different times, which acts constitute violations of the same provisions of the law;

1. with having 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 any such agreement, disposition, obligation or discharge in by addition to or alteration of any clause, declaration or fact which such instruments or documents were intended to contain or prove;

(This in breach of Sections 18 and 183 of Chapter 9 of the Laws of Malta)

2. with having, knowingly made use of any of the false acts, writings, instruments or documents mentioned in Article 184 of Chapter 9 of the Laws of Malta;

(This in breach of Sections 18 and 184 of Chapter 9 of the Laws of Malta)

3. with having committed any other kind of forgery, or knowingly made use of any other forged document;
(This in breach of Sections 18 and 189 of Chapter 9 of the Laws of Malta)

4. with having, without lawful authority or lawful or reasonable excuse (the proof whereof shall lie on the person accused) purchased or received from any person, or had in his custody or possession, a forged currency note knowing the same to be forged;
(This in breach of Section 46 of Chapter 204 of the Laws of Malta)

5. with having received or purchased any property which has been stolen, misapplied or obtained by means of any offence, whether committed in Malta or abroad, or knowingly took part, in any manner whatsoever, in the sale or disposal of the same;
(This in breach of Section 46 of Chapter 204 of the Laws of Malta)

6. with having, in any case not otherwise provided for in Chapter 9 of the Laws of Malta, knowingly suppressed, or in any other manner destroyed or altered the traces of, or any circumstantial evidence relating to an offence;
(This in breach of Section 111(2) of Chapter 9 of the Laws of Malta)

The Court is requested, that in case of a conviction, to treat the accused Zdravko Svilenov MILOUCHEV as being a recidivist, in term of Section 49 u 50 of Chapter 9 of the Laws of Malta, by virtue of a judgement that was issued by the Court of Magistrate on the 8th November 2001, which judgment has become absolute.

The Court is also requested to apply mutatis mutandis the provisions of Article 5 of the Money Laundering Act, Chapter 373 of the Laws of Malta, as per Section 23A (2) of Chapter 9 of the Laws of Malta.

The Court is also requested that in case of a finding of guilt of the accused, apart from inflicting the punishment prescribed at Law, also orders the forfeiture of all the objects exhibited in these proceedings.

The Court is also requested that, in pronouncing judgment or in any subsequent order, sentence the person/s convicted, jointly or severally, to the payment, wholly or in part, to the Registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, within such period and in such amount as shall be determined in the judgement or order, as per Section 533 of Chapter 9 of the Laws of Malta.

Having seen the note of transmittal by the Attorney General to the Court together with the acts of the proceedings indicating to articles of law according to which it was deemed by the Attorney General that there might result an offence (or offences) against the accused;

Having heard the Attorney General declare that he had no further evidence to produce;

Having heard the accused state that he had no objection for the case to be heard and tried summarily;

Having examined all the evidence produced and heard the accused under oath;

Considers:

In terms of the note of transmittal to this Court by the Attorney General, accused is charged with the following offences, notably:

- a. with promoting, constituting, organising or financing an organisation of two or more persons to commit criminal offences;
- b. with forming part of such an organisation with a view to commit criminal offences;
- c. with forging public, commercial or private bank documents;

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- d. with the malicious use of such documents;
- e. with the generic crime of forgery and the conscious use of false documents;
- f. with receiving misapplied property or property obtained by means of an offence;
- g. with suppressing, destroying or altering evidence relating to a crime;
- h. with conspiracy to commit a crime.

All of the above relate to crimes under the Criminal Code, namely articles 83A(1)(2), 183, 184, 189, 334, 111(2) and 48A and are all conceived to be continuous offences under article 18.

Accused is also charged with possession of false currency under Article 46 of Chapter 204.

The facts can be summarised as follows: that in December 2005 the Drug Squad Unit in conjunction with the Economic Crime Unit and involving the Bulgarian police mounted an investigation into an alleged criminal activity involving drugs and card skimming. In the process of this investigation the accused was apprehended at his residence that was searched as was also the accused.

In the course of these proceedings the hereunder mentioned items seized from the accused have been exhibited. They are:

- a. six credit cards contained in document IA1 that were seized after accused was observed trying to dispose of them upon his arrest outside his residence;
- b. 1 five Maltese Lira note contained in document IA2 that is claimed to be counterfeit;
- c. cash money in different denominated currencies that aggregate: 2105 Euro, 171 USD, 1357 LM, 20 Austrian Shillings and 70 Belgian Levi which are contained in documents from IA3 to IA6 found and seized from the residence of the accused;
- d. five other cards also seized from his residence contained in document IA7;

e. 2 computers, 1 laptop, 3 floppy discs, 25 CDs and DVDs also seized from his residence to which document IA8 refers.

Significant at this stage is the fact that from the evidence submitted by the prosecution what started as a joint investigation involving the drug squad and economic crime unit has come across as an investigation involving economic crimes with no finding of any drug involvement. Besides from the above documents those referred to under letter 'f' have no value in these proceedings on account that the cards are genuine which is definitely not the case with the credit cards referred to under letter 'a'.

That from the evidence produced what transpires as a fact is that the above referred to documents have been seized from the accused and were in his possession even if not necessarily all his property. However, there is no gainsaying the fact that the six credit cards (item 'a' refers) and the one five Maltese Lira note are counterfeits.

With reference to the six credit cards (contained in document IA1) the court nominated technical expert found all six cards to be forgeries. So also is the Lm5 note exhibited as document IA2. As to whether the forged credit cards had been used the Court has identified five instances from documentation submitted by Patrick Galea responsible for HSBC's fraud section (folio 48 et seq refers) that would show that between November 30 and December 10, 2005, use was made of forged credit cards ending number 356 and 945 for a total value of Lm3200, consisting mainly in the purchase of jewellery, which, however, has not been traced to the accused as no such items were found and seized from the accused.

Moreover, it does not transpire from the evidence that the forgeries were done by the accused or that he had participated or associated or connived with third parties in their making although there is proof that would show (from docket IA12 folio 47) that the seized laptop contained information relating to card skimming in addition to strings

of information that had a resemblance with credit card details.

Accused on his part, and evidenced from his statement released to the police, admitted to possessing the forged credit cards and the counterfeit Lm5 note, but denied that he formed part of an organisation involved in credit card skimming or the production of counterfeit credit cards. In connection with the forged credit cards the accused version of how he had acquired the credit cards differs from that given to this court when he chose to take the witness stand. It stands as a fact, however, that the forged credit cards were in his possession; the uncertainty being whether actual use of such were effectively made by the accused – *in dubio pro reo*.

Accordingly, and on the strength of what has been said above, the Court finds accused not guilty of the first, second and third charge, paragraph 'A', in the charge sheet. Also acquits him of the first, second, third and sixth charge, paragraph B, in the charge sheet. Finds him guilty under paragraph 'B' of the charge sheet of the fourth and fifth charge, namely, with having in his custody or possession one forged currency note knowing the same to be forged and with having received or purchased any property misapplied or obtained by means of any offence, whether committed in Malta or abroad and knowingly having taken part, in any manner whatsoever, in its sale or disposal.

Having seen Article 334, 17(b) of Chapter 9 and 46 of Chapter 204 condemns him to imprisonment for a period of two years which the Court is suspending for a period of four years from today provided accused does not commit any offence punishable by imprisonment during the operative period of this suspended sentence.

The Court orders that the laptop / note book computer together with the floppy discs, the CDs and the DVDs be confiscated as also the forged credit card and the Lm5 forged note which note is to be transmitted to the Central

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Bank of Malta to be disposed of as the Bank deems proper.

Having seen Article 533 (1) of the Criminal Code condemns the accused to the payment of the costs incurred in the employment by the Court of the technical expert Mr. Martin Bajada.

< Final Judgement >

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