



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

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

Sitting of the 16 th July, 2009

Number 315/2009

The Police
Inspector Edel Mary Camilleri
Inspector Nezren Grixti
V

ALI REZA FARZKENARI

The Court

Having seen that the accused **ALI REZA FARZKENARI**, aged 34, son of Hussien and Parvin, born in Bandaralzani, Iran on the 22nd February 1975, residing in 1434 Woods Dr, North Vancouver BC V7R1A7, Canada and Holland, holder of passports number NPCBFPC54 issued in Holland and Canadian residence permit 5257-3663, Iranian passport number A12249551 unknown address, was arraigned before her accused with having in March 2009 and the months previous and months later, in Malta and outside Malta, having knowingly promoted, constituted, organized or financed an organization of two

or more persons with a view to commit criminal offences/s in violation of section 83A of Chapter 9 of the Laws of Malta.

Under the same circumstances, having conspired with one or more persons in Malta for the purpose of committing any crime in Malta (offence in terms of section 337A of Chapter 9) and this in violation of section 48A of Chapter 9 of the Laws of Malta.

Under the same circumstances with the intent to make any gain whatsoever aided, assisted, counselled, or procured any person to enter or to attempt to enter or to leave or attempt to leave or to transit or attempt to transit across Malta in contravention of the laws thereof or who in Malta or outside Malta, conspired to that effect with any other person in violation of section 337A of Chapter 9 of the Laws of Malta. This offence is aggravated by the number of persons aided, assisted, counseled or procured or the object of the conspiracy.

Having seen all the documents exhibited in the acts of these proceedings by the Prosecution in particular the two passports and two identity cards of the accused and the statement released by the same accused on the 30th March 2009.

Having seen the relevant sections at law as sent by the Attorney General on the 13th June 2009.

Having heard the accused declare during the sitting of the 8th July 2009, that he has no objection for his case to be heard summarily and that he is not going to give evidence in this case.

Having heard the accused declare he is not going to bring forward any other evidence in defense.

Having heard both parties make their oral submissions.

Having considered:

That on the 31st March 2009 **Inspector Nezren Grixti** (fol. 14) gave evidence wherein he stated that on the 29th March 2009 he was informed by the Immigration Police together with Inspector Edel Mary Camilleri that a number of people, about thirty two in all, were stopped from a flight which came from Tunis, flight number UG1300. He stated that from preliminary investigations that were carried out, it transpired that all subjects were making use of false passports allegedly issued with a Shenghen visa. He particularly stated that not the passports were false, but the visas, and so it appeared that there were counterfeit rubber stamps on their passports. He stated that these same subjects were all stopped for further investigations and same subjects were subsequently arraigned in Court on the 30th March 2009 and upon their admission they were all found guilty.

That on the 31st March 2009 **Majid Keshavrz** (fol. 16) gave evidence wherein, asked by the Court, if he knew the accused present in Court, he replied he did not know him and that he had never seen him before. He stated that the first time he met the accused was on the way to the airport while he was staying in Tunis, on the bus. He stated that he had come over to Malta on a holiday via Tunis. He stated that at present they were celebrating New Year in Iran and that he had come to Malta on holiday with his wife and daughter, which holiday was in fact planned two months before.

He stated that subsequently he had given some money to a person by the name of Hamid who was organising this holiday to Malta, which person had in fact a tour agency. He stated that the agency in fact did not belong to this Hamid, but he had connections with it. He stated that they had no problems whilst they were in Tunis and had three good days as a holiday. In fact, he stated that they never thought that they would encounter these problems whilst in Malta.

He explained that some of the people, who were on the same flight as him, were through the channels normally

and the police did not stop them. In fact, he went on to say, both his wife and him had left the departures and the police came out to call them back in and they immediately asked the police what was wrong and why they were treating them like that and the police replied that they had to investigate further their documents.

He stated that they were kept in the airport by immigration police for about two or three hours and then they were taken over to the police headquarters. He stated that their wives and children were kept aside from the rest of the group and that there was no possible communication between them.

He stated that the accused was coming to Malta too with his family and the accused speaks better English than them so when they were faced with language problems, the accused would offer his help. He denied having given the 3000 dollars suggested by the prosecution to the accused. However, Hamid had told him that he should give the balance of the amount due to the accused once we are in Malta. Asked by the Court if whilst they were in Iran or Tunisia, the accused took care of any forms or any passports or any visas, he replied in the negative. Asked who chose the hotel in Malta, he replied it was Hamid. Asked who gave me him reservation documents of the hotel, he replied it was the accused who held the documents that were given to him by Hamid.

He stated that when he was held at the Immigration Police in Malta, he had asked the accused and Ali Reza gave him his reservation form which he handed over to the police. Asked by the Court what is the relationship between Hamid and the accused, he replied he did not know since he only met the accused before the flight from Tunis to Malta and insisted that in Tunis, he did not spend any time with the accused. He stated that they did not come from Iran to Tunis with the accused and once again stated that they met the accused in Tunis, before the flight, on the bus.

He stated that it was Hamid who gave him his passport before he flew to Tunis. Asked what is different in his passport, he replied he did not know, he did not care to notice, and that he never saw such things. He stated that he did not realise that there was anything different in his passport when he gave it to Hamid and Hamid gave it back to him. Asked by the Court to examine his passport he said that the visa issued by the Republic of Tunis on the 24th March 2009 was not there before and that the Tunisian visa was done in Iran. He stated that it could be that the Shenghen visa was done in Tunis but he was not too sure of this either. He went on to say that they were all given their tickets and passports on the bus by Hamid. He stated that while they were in Tunis, Hamid was going to fix them the ticket to come to Malta and it was Hamid who took over their passports and it was Hamid who gave them back their passports too. He denied ever giving their passports to the accused.

Asked by the prosecution if he remembered what the accused told him with regards to another EU country, he replied he did not recollect and that he did not speak to the accused about what was in his passport, but spoke to him about the holiday. He stated that this was the first time he had left the country and had no idea that Hamid was going to do this to them. He stated that Hamid had told them that should they be stopped by the police in Malta, they were to say that they were in Sweden before and that that is why they had a Swedish stamp on their passport.

He stated that from then on, he had suspected wrongly in Hamid and when he had asked Hamid why they had to say this to the police, he had replied that this was done to be more secure. He stated that he did not have Hamid's cell phone number here in Malta and that the agency in Iran is called Holiday Agency.

That on the 31st March 2009 **Tabatabaei Seyedashkan** (fol. 20) gave evidence wherein he stated that he decided to leave Iran because he wanted to go and live in another country. He stated that he had found a person at the

travel agency in Iran, a certain Shayan and he gave him 3000 euros to arrange for this holiday. He stated that he was told that the moment he arrived in Europe, since that was the flight that was going to be booked for him, he was to tear his passport and should go to the police and tell them that he had lost his documentation. He stated that he was together with his wife and son. He went on to say that however the flight which was meant to carry him to Europe, was cancelled and subsequently he was told that he was going to catch a flight to Tunis and then catch another from Tunis to Malta. He stated that he had no connection with the other members of the group who arrived in Malta. He stated that he was told that to travel into Europe, he had to pay the rest himself.

Asked by the Court if he knew the accused, he replied he only got to know him when he was on the bus from the hotel to the airport in Tunis and that he had never seen him before this trip. Asked if he spoke to the accused on the bus, the witness replied he did not speak to him and that he spoke to the accused while he was in Tunis passing through the immigration police because the accused speaks better English than him and he was helping him.

He stated that the accused in fact is a relative of other people who were in their group, and that is why he was helping them all and also they came from the same country and they were helping each other. He stated that the accused was travelling alone and as far as he knew, he was travelling alone from Tunis to Malta. He denied ever giving the accused any money and that the accused never gave him any documentation or papers or visa, anything to do with this trip. He stated that it was Hamid who gave him the documentation while he was in Tunis. He stated that he did not know if there was any connection between the accused and Hamid. He stated that Ali was at the back of the bus when Hamid gave them their documents. He went on to say that he was on the bus next to Majid and Hamid was talking to Majid while the accused was on his own, speaking to nobody.

Asked who gave him the documentation of the hotel reservation in Malta, he replied it was Hamid since their tickets and passports were in Hamid's hand. Asked who had made their contact here in Malta, he replied that they had a small paper with a number on it and once here in Malta, they had to call that number to make their contact. Asked where this paper was, he stated he did not know if that number was local or foreign but he had that piece of paper at the airport with his belongings. He stated that he knew that he was going to stay for one night and then he had to pay for an extra night himself. He stated that he did not know the name of the hotel and that he had to get this, through his contact on that paper.

He stated that he got to know that the accused had relatives in the group, from other people in the group who said that they were relatives. Asked if he knew about the stamp of Sweden he had on his passport, he replied that Hamid told him that should he be stopped at the airport in Malta, he had to tell them that he was in Sweden before. He stated that the accused never told him anything of this sort and that the accused in fact did not speak to him at all. In fact, he went on to say, when he spoke to the accused about this trip, the accused was not interested at all and was reluctant to cooperate. He stated that he never lied in his life. He stated that Majid is not the guy who gave evidence in Court, but he is another person whom he had met in Tunisia. Asked if he had any contact number of this Majid, he replied he had but that it was at the airport.

The witness showed the Court the paper and the court authorised him to keep this paper which was given to him by Majid. He stated that the number on it is 0021621972447.

That on the 31st March 2009 **Marjan Riyahi** (fol. 23) gave evidence wherein she stated that she is the wife of the person who had already given evidence in Court by the name of Majid Keshavrz. She stated that her husband had taken care of this holiday. Asked if she ever met Hamid while she was in Iran, she said she did not and that

she had met him for the first time in Tunis. She stated that in fact it was Hamid who met them in Tunis, took them to the hotel, took all their passports and subsequently gave them back to them when they were going to come to Malta. She stated that she had met the accused for the first time in Tunis at the airport, but never spoke to him. She stated that the accused never gave them any papers, documentations, reservations etc.

Asked if she knew anything about the Swedish stamp that is shown in her passport, she replied she knew nothing about it. She stated that Hamid had told them that should the police ask them questions in Malta, they were to say what Hamid told them, in other words that they had gone to Sweden before. Asked if she met Hamid in Tunis or whether he travelled with them, she replied in the negative. She stated that they arrived prior to Hamid and that Hamid arrived in Tunis the day after. She stated that the accused did not travel with them from Iran to Tunis and that she met Ali in Tunis. She stated that the first time she saw the accused was on the bus at the airport. Asked if there was anybody from Teheran to Tunis she replied there was. She stated that she could not remember his name and that he did not come with them to Malta. She stated that this guy came with them but he did not hold their passports. She stated that they gave their passports to Hamid when they were in Tunis. She stated that she did not know the name of the hotel in Malta but her husband did, or perhaps the accused did.

That on the 31st March 2009 **Azadeh Akbari** (fol. 25) gave evidence wherein she stated that she is the wife of Seyadashkan Tabatabaei who gave evidence in Court. She stated that they came to Malta on holiday and because of her husband's job, they had to leave Iran for sure. She stated that she knew that they were coming to Malta when they left Iran. She stated that she had given money to somebody by the name of Shayan while in Iran. She stated that she saw the accused the first time on the bus going towards the airport but she never gave the accused any money. She stated that the accused never gave her any passports or visa or tickets or reservations

and that she never spoke to him either. She stated that she came from Iran with a person by the name of Majid, who however, he did not come to Malta. She stated that she did not know where she was going to stay in Malta and neither the name of the hotel. She went on to say that they were told that when they were to be in Malta, they were to phone a number and they will be provided with their reservations.

That on the 2nd April 2009 **Inspector Edel Mary Camilleri** (fol. 30) gave evidence wherein she stated that on the 29th March 2009 she was informed by PS 1145 Dunstan Sammut from the Police Immigration Department in Luqa Airport, that he was encountering a problem with a group of nationals, twenty two in number, who were coming from Tunis on board flight number UG 1300. She stated that this was approximately 2.00pm on the same day when this group of people approached the Immigration office and PS 1145 Dunstan Sammut, had spoken to them and from the preliminary investigations he wanted to verify whether the Shenghen visa which was on their passport was a valid one according to law or not. She stated that she was informed that the police constable tried to make contact with the Tuniter Flight Desk which is the national agency airline of Tunisia in order to send back all these Iranians to Tunis.

She also stated that the police constable had informed her that amongst the Iranian nationals there was a person with a Dutch passport who could be involved in some shady dealings. She then informed Inspector Nezen Grixti about all this and together went on to arrest the accused.

She then informed the accused of the reasons of his arrest, in particular that he might be involved in the conspiracy of getting into Malta illegal immigrants. She stated that at the same time, she also informed two Norwegian nationals of the same reason of their arrest. However, she went on to say that it transpired that the Norwegian nationals had to be released in the following six hours, because it transpired, that they had no

connection with the case. She recalled giving the accused the necessary caution. She stated that the other nationals who were with the accused were brought to Court and they all pleaded guilty to possessing false documentation and thus entering Malta without the relative documents and hence were subsequently deported.

She stated that they spoke to all the other Iranian nationals and subsequently they also seized the items which they thought might be necessary to carry out their investigations, including the mobile phone of the accused, together with three sim cards, one issued in Holland, one issued in Iran and another one. All three were sim cards were held by the police and passed to the Court expert for further examination. She also recalled that the accused had released a statement, which statement is exhibited in these proceedings at fol. 8 et seq on which document she recognised her signature, that of Inspector Nezren Grixti and that of the accused. She stated that the accused decided to sign the statement in her presence and in the presence of the interpreter Mohammadpour Ebrahim.

That on the 2nd April 2009 **PS 1145 Dunstan Sammut** (fol. 33) gave evidence wherein he stated that on the 29th March 2009 he was duty at the Luqa International airport which duty started at 1.00pm, when he received a telephone call from an Immigration Officer who was stamping the passports, which querying stamps he had encountered on a number of passports. He stated that his query was based on the departure stamp to the Shenghen area. He was querying whether the Shenghen stamp should have corners which are rounded. He stated that he had asked this Immigration Office why he was asking this question and he immediately answered that the stamp which was allegedly stamped in Sweden, had a round corner but should be square and those on the passports were not round as they should be.

The witness went on to say that he told him to bring the person in front of him with the passport so that he could examine the passport himself and on examination of it, it

transpired that the stamp had corners which were not square.

He stated that on a closer look at the passport, it transpired that the visa which is permitting entry in Malta was also suspicious and so he asked the Immigration officer if this person was travelling alone and he said that he was part of a group. He stated that the Immigration Officer also told him that the accused was assisting this group in particular in translations because the other subjects could not speak the English language. He stated that in possession of the accused, he found a folder which he exhibited as Doc. 'Z' in which folder there is the list of all the people in this group which numbered thirty seven, however those marked in blue were the people who actually arrived in Malta. He stated that there was also the passes of the hotel in this same copy for the accommodation of all the immigrants with the electronic ticket of the whole group. He stated that it also transpired that the accused travelled from Teheran to Amsterdam on the 7th August. He stated that he also found another ticket in the accused suitcase indicating that the accused was going back to Teheran via Saudi Arabia.

That on the 2nd April 2009 **PS 1145 Dunstan Sammut** (fol. 95) gave evidence again wherein on being shown Doc. FSL, he confirmed that these are the visas that he saw on the passports that were shown to him at the airport and there is also a photocopy of the passport issued in Iran.

That on the 2nd April 2009 **Dottor Stephen Farrugia Sacco** (fol. 37) gave evidence wherein he stated that he was nominated by this Court to examine three sim cards and the mobile phone which was handed over to him by the Court officials. He exhibited his report as Doc. SFS. He handed over a copy of this report to the prosecution as well as the defence. The witness pointed out a few things however which resulted with regards to the profiles, in the sense that the sim cards are all foreign, and consequently he would need the call profile from abroad. He stated that all he could do is request the services providers here in

Malta with regards to the profiles of these sim cards while they were roaming here in Malta. He stated that he also scanned the cards for deleted messages, however, due to lack of time, he only managed to do one of them. With regards to the phone calls missed, dialled and received which were on the phone itself, the witness stated that these were all deleted. He stated that although these phone lists were deleted, this does not mean that no contacts were being made because on the call timer it shows that telephone calls were made and received, however there is a command on the phone which deletes all the phone calls and that is what was done. The prosecution however did not insist on further evidence in this regard.

That on the 2nd April 2009 **PS 378 Silvan Bonello** (fol 76) gave evidence wherein he exhibited a report carried out by himself with regards to investigations carried out on a number of passports belonging to Iranian nationals whereby it transpired that the stamps found on these passports, were made in a fraudulent manner, which document was marked as Doc. FSL.

That on the 2nd April 2009 **Inspector Nezren Gixti** (fol. 97) gave evidence wherein, on being shown the statement which is exhibited in these proceedings a fol 8 et seq, he confirmed that this statement was released by the accused whom he recognised in Court, after the usual caution was given to him on the 30th March 2009. He confirmed the contents of the statement and recognised his signature, that of Inspector Edel Mary Camilleri and as well as that of the accused.

That on the 13th May 2009 **Mohammadpour Ebrahim** (fol. 103) gave evidence wherein, on being shown a statement made by the accused on the 30th March 2009 at fol. 8 et seq, he confirmed that he was present throughout the release of the statement and the accused voluntarily released the said statement.

Having further considered:-

The Court makes reference to the judgment given by the Court of Appeal on the 5th December 1997 in the names **Police vs Peter Ebejer** whereby the Court made reference to what type of evidence, must the prosecution bring forward and stated:

“Ta’ min ifakkar hawnhekk, li l-grad ta’ prova li trid tilhaq il-prosekuzzjoni, hu dak il-grad li ma jhalli ebda dubbju dettat mir-raguni u mhux xi grad ta’ prova li ma jhalli ebda dubbju dettat mir-raguni. Id-dubbji ombra ma jistghux jitqiesu bhala dubbji dettati mir-raguni. Fi kliem iehor dak li l-gudikant irid jasal ghalih hu li, wara li jqis c-cirkostanzi u l-provi kollha u b'applikazzjoni tal-buon sens tieghu, ikun moralment konvint minn dak il-fatt li trid tipprova l-Prosekuzzjoni”

In fact this Court went on to quote from the explanation given by **Lord Denning** in the case **Miller v Minister of Pensions** [1974] 2 All ER 372, of the expression ‘*proof beyond a reasonable doubt*’:

“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to detect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favor, which can be dismissed with the sentence ' of course it is possible but not in the least probable ', the case is proved beyond reasonable doubt but nothing short of that will suffice.”

This Court had the opportunity to have examine all the evidence, in that it heard the witnesses give evidence, it noted their demeanor and the interest in what they said when on the witness stand. It noted their demeanor and carried out this exercise in terms of section 637 of Chapter 9 of the Laws of Malta.

In appreciating the evidence brought forward by the prosecution, the Court had to take note of all the circumstantial evidence in its totality and not individually

and it was only after a through exercise of all the evidence, that the Court was able to pass judgment.

In this case, the prosecution is alleging that the accused should be found guilty of organizing or financing an organization to commit a crime (Section 83A of Chapter 9 of the Laws of Malta), conspired with one or more persons in Malta for the purpose of committing a crime (Section 337A and 48A of Chapter 9 of the Laws of Malta) and aided or abetted in the transportation of illegal immigrants in terms of Section 337A Chapter 9 of the Laws of Malta)

The Court heard all the witnesses brought forward by the prosecution and it resulted clearly from their evidence that the accused was not known to them prior to boarding of the bus in Tunis to go to the airport to come to Malta. They said that they arrived from Iran on a different plane, on a different day and they all were treated and looked after by a certain Hamid whilst they were still in Iran and subsequently also when in Tunis. They all said that they had given money to Hamid in Iran on behalf of a travel agency.

There was only one witness who mentioned the accused and said that he spoke to the accused. He said that the accused knew the English language more than them and when they found themselves in difficulty, he would step in to help them get along. This fact was also confirmed by the immigration police who had stopped them at the airport.

Asked if it was the accused who made the arrangements, the witnesses all answered negatively, if it was the accused who made their hotel booking, they also answered in the negative. They all said that it was Hamid who told them how to answer should the executive police of Malta stop them.

The accused did not give evidence in this case but released a statement voluntarily on the 30th May 2009 (fol. 8). Asked why he had a Dutch Passport, he explained that he had obtained refugee status in Holland

and that subsequently married an Iranian woman in Canada who had Canadian citizenship. He says that he had a residence in Canada and earned about 45,000 dollars a month from it.

Asked if it is true that he had returned to Iran to get his family to Europe, he replied positively and said that he had gone to Iran and went to Tunis with the idea of coming to Malta. He said that arrangements were made in Iran for him and his family by the agency Holiday Travel. He however denied having made contact with the Company to check if all was in order prior to them leaving Iran.

However, he said that when he was in Tunis he met Hamid and he told him to look after the group of Iranians because he spoke better English than them. So he did help the group when the group when it found itself in difficulty.

However, he confirmed that he had met Hamid at the Hotel in Tunis, prior to leaving for the airport to come to Malta. He had no idea that the Iranian nationals were carrying false documentation. Asked if he was in charge of obtaining the false Schengen visas, the accused categorically denied this allegation and stated that if the group was not arrested, he would not have known anything.

Thus, from examination of the above, it transpires that the accused was not part and parcel of this illegal organization that brought these Iranian nationals to Malta.

The Court finds the statement released by the accused a tempo vergine of the investigation as credible especially in the light of the collaboration of the witnesses that the prosecution brought forward.

Consequently the Court, having seen the relevant sections at law in particular sections 18, 83A(1), 48A, 337A, 17, 23, 31, and 533 of Chapter 9 of the Laws of

Informal Copy of Judgement

Malta, declares she finds ALI REZA FARZKENARI not guilty of the charges brought forward against him and decides to acquit him accordingly.

< Final Judgement >

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