



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

**MAGISTRATE  
DOREEN CLARKE**

Sitting of the 24 th May, 2010

Number. 1249/2008

**The Police  
(Inspector Ramon Cassar)  
(Inspector Kevin Farrugia)**

**vs**

**Dmitriy Makhmoudov  
Vladislav sive Lado Mironich**

Case Number: 1249/2008

The Court,

Having seen the charges brought against

Dmitriy Makhmoudov, 22 years of age, son of Salmir and Alexandra nee Uggalova born in Uzbekistan on the 17<sup>th</sup> August 1986 and resident in Naxxar holder of Uzbekistan passport number CA1795697; and

Vladislav sive Lado Mironich, 28 years of age, son of Albert and Magdalena nee Mirinich, born in Georgia on the 5<sup>th</sup> July 1980 and resident at Sliema holder of Georgian passport number 0776227.

For having on the 13<sup>th</sup> December 2008 at about 10.00pm in Bahar ic-Caghaq and in other places in the Maltese Islands

1. committed theft of property (laptop and two mobile phones) to the detriment of Nurislav Derbishev, Alexander Shibalyo, Frey Farruh and/or other persons, which theft is aggravated with violence, amount, place and time; and
2. without lawful order from the competent authorities, and saving the cases where the law authorizes private individuals and thus Nurislav Derbishev, Alexander Shibalyo, and Frey Farruh, to apprehend offenders, arrested, detained or confined any person against the will of the same, or provided a place for carrying out such arrest, detention or confinement where the individual arrested, detained or confined, was subjected to any bodily harm, or was threatened with death, or where the crime was committed with the object of extorting money or effects, or of compelling any other person to agree to any transfer of property belonging to such person;
3. with intent to extort money or any other thing, or to make any gain, or with intent to induce Nurislav Derbishev, Alexander Shibalyo, Frey Farruh to execute, destroy, alter, or change any will, or written obligation, title or security, or to do or omit from doing any thing, threatened to accuse or to make a complaint against, or to defame that or an other person;
4. uttered insults or threats to Nurislav Derbishev, Alexander Shibalyo, Frey Farruh not otherwise provided for in Chapter 9 or being provoked carried their insult beyond the limit warranted by the provocation;

Vladislav sive Lado Mironich alone with having:

5. in the same time, place and circumstances been in possession of a sharp pointed weapon (knife) without the license of the Commissioner of Police;

6. on these islands on the 20<sup>th</sup> December 2008 and on the previous days knowingly received or purchased any property which had been stolen, misapplied or obtained by means of any offence, whether committed in Malta or abroad, or knowingly taken part, in any manner whatsoever, in the sale or disposal of the same which property had been obtained by theft aggravated by violence, amount not exceeding €2329.37 place and time;

Dmitriy Mahkmoudov alone with having:

7. relapsed in terms of sections 49 50 and 280(2) of Chapter 9 of the Laws of Malta in terms of a judgement delivered on the 4<sup>th</sup> February 2005 by the Court of Appeal which judgement is definitive and cannot be altered.

Having seen sections 49, 50, 86, 87(1)(c)(e), 250(1), 261(a)(c)(d)(e), 262, 267, 268, 270, 289, 334 and 339(1)(e) of Chapter 9 of the Laws of Malta and section 6 of Chapter 480 of the Laws of Malta.

Having seen the consent given by the Attorney General for the case to be tried summarily and that the defendants had no objection to the case being so tried.

Having heard the evidence.

Having heard the oral submissions made by the parties.

Having seen the acts of the proceedings.

Having considered

That this case revolves round an incident that took place on the 13<sup>th</sup> December 2008. On that day the two defendants together with two other foreigners: Frey Farruh and a certain Vahob, and a Maltese person: Keith Balzan, met near the Luxol grounds in Pembroke. The purpose of this meeting was for Frey Farruh to settle a debt he had with defendant Lado Mironich. After some time defendant Dmitriy Mahkmoudov and Keith Balzan left Pembroke to go to meet Nurislam (known as Ruslan)

Derbishev at St Julians. Mahkmoudov and Balzan met Ruslan and eventually also Alexander (know as Sasha) Shibalyo and these four persons went together in a car to the Luxol grounds where the three others were waiting. After a short time all seven went to Bahar ic-Caghaq in the area behind the Splash and Fun complex where Ruslan's laptop and Sasha's mobile phone were taken from them. Ruslan and Sasha claim that the laptop and the mobile phone were taken forcibly and that through this episode not only were they intimidated but physical force was used against them. Furthermore they claim that while they initially went with Dmitriy and Keith voluntarily they were kept against their will and that Sasha in particular asked to leave before they proceeded to Bahar ic-Caghaq from Luxol grounds but he was not allowed.

That it must be pointed out at the outset that in this case not only were contrasting versions given by the various persons who gave their testimony but some of theses persons each gave different versions or at least retracted some details given in previous depositions. This in itself does not necessarily mean that the Court is to disregard all oral evidence given; the Court is duty bound to examine all the depositions given and, in the light of all other evidence brought forward and with the benefit of having heard and seen all these persons testify, decide whether there is any testimony (in whole or in part) which is to be given credibility. In this regard the Court considers it necessary to make some observations. Frey Farruh gave his version of facts a number of times: to the investigating officers, to the court expert, and five times before this Court. Not only did he repeatedly change versions but he also contradicted himself various times; in view of this, and in view of his demeanour whilst giving evidence, the Court is of the opinion that nothing he says can be given credibility. The position regarding the two other alleged victims, Sasha and Ruslan, is different. When they gave their testimony before the Court appointed expert in the course of the inquiry they were not assisted by an interpreter and this may easily account for the differences that emerge from the testimony they gave to the court expert and the testimony they gave in Court

assisted by an interpreter. It must also be noted that when Ruslan was called for further cross-examination (again assisted by an interpreter) he confirmed what he had stated in his prior testimony. These were the main witnesses together with Keith Balzan and the two defendants. Each of these last three mentioned persons also gave a version of events which differs (in varying degrees) from that given by Sasha and Ruslan but the Court after having considered all the relevant factors feels that it can give credibility to the version of facts given by Sasha and Ruslan.

The first charge brought against both defendants is that of theft aggravated by violence, amount, place and time.

This charge refers to the theft of a laptop computer and a mobile phone seized by the police from defendant Lado Mironich and a mobile phone (communicator) seized from defendant Dmitriy Mahkmoudov. These items have been identified by the Sascha and Ruslan; the laptop and mobile phone seized from Lado Mironich belonged to Ruslan and Frey respectively; the mobile phone seized from Dmitriy Mahkmoudov belonged to Sasha. It must be pointed out that although the defence attempted to create some doubts as to the ownership of the laptop, after a detailed examination of the various testimonies given the Court has no doubt whatsoever that the laptop belonged to Ruslan. From the various depositions given by Frey Farruh it cannot be established whether his mobile phone was taken against his will or whether it was he himself who gave it voluntarily. The same cannot be said of the two other items in fact the Court has no doubt that the Ruslan's laptop and Sasha's mobile phone were taken against their will and that all the constitutive elements of the crime of theft have been shown to exist with regard to these two items.

The events which led to these charges took place in Bahar ic-Caghaq behind the Splash and Fun complex (an uninhabited area) on the 13<sup>th</sup> December 2008 at about 10.00pm consequently the aggravating circumstances of place and time have been proved. The value of these two

items stolen is more than €232.94 but less than €2,329.37 consequently the aggravating circumstance of amount has also been proved.

It must be said that from the testimonies given it appears that it was Dmitry who physically took the laptop from Ruslan (this was eventually seized by the police from Lado) and Vahob who physically took Sasha's mobile phone (which was eventually seized from Dmitry). However the three persons concerned (Lado, Dmitry and Vahob) were acting together and were all present when all of these events took place consequently the Court is also convinced that both defendants should be held responsible for the theft of both these items. Since the theft was committed by more than two persons the aggravating circumstance of violence is also proved.

The second charge brought against both defendants is that of the illegal arrest of Nurislav Derbishev, Alexander Shibalyo and Frey Farruh. From the acts it appears that initially the three persons mentioned went with the defendants voluntarily. In so far as Sasha is concerned it clearly emerges from the acts that he was convinced to go to the Luxol grounds under false pretences and he was retained there and taken to Bahar ic-Caghaq against his will. It also appears that Ruslan first accepted to go to the Luxol grounds under false pretences but it does not appear that, even on realising what was actually happening, he at any time made any attempt to leave and was kept against his will. In so far as Frey is concerned, the Court already pointed out that it cannot give credibility to any part of his deposition and in the absence of any other evidence which can corroborate his allegations there isn't sufficient proof to show that he was illegally arrested by the defendants. The Court is consequently satisfied that this second charge is sufficiently proved in so far as it refers to Alexander Shibalyo (Sasha).

In view of the fact that it has been shown that in the course of the events that took place Sasha was illegally arrested the first charge of theft is aggravated by violence not only because it was committed by more than two

persons but also because it was accompanied by the illegal arrest of Alexander Shibalyo.

The third charge brought against the two defendants is that of blackmail. In other words the defendants are being charged with having threatened to accuse or to make a complaint against, or to defame Nurislav Derbishev, Alexander Shibalyo and Frey Farruh with the intent to extort money or make any other gain. From the evidence brought forward there are no facts that can in any way be said to constitute the elements required for this offence. This third charge has consequently not been proved.

The fourth charge brought against both defendants is that they threatened Nurislav Derbishev, Alexander Shibalyo and Frey Farruh. It clearly emerges from the testimony given by both Sasha and Ruslan that these two persons were threatened and that they were warned not to report the matter to the police; this fourth charge is consequently sufficiently proved.

There are two other charges brought against defendant Vladislav Lado Mironich: that he was in possession of a pointed instrument without the necessary license and that he received stolen goods. In view of the fact that both Nurislav Derbishev and Alexander Shibalyo immediately retracted the allegation that Mironich physically threatened them with a knife it cannot be said that the first of these two charges was sufficiently proved. The second of these two charges (knowingly receiving stolen goods) may be considered as alternate to the first charge (that of theft) of which defendant Mironich is being found guilty; the Court will therefore abstain from taking further cognisance of this last charge.

Defendant Dmitriy Mahkmoudov has also been charged with having relapsed. It has been shown that on the 21<sup>st</sup> of January 2005 Mahkmoudov had been found guilty of theft and this judgement was confirmed by the Court of Criminal Appeal on the 4<sup>th</sup> February 2005 (in that the appeal filed by Mahkmoudov was declared null). The offences of which Mahkmoudov is being presently found

guilty took place in December 2008, consequently he is to be considered as having relapsed for purposes of articles 49, 50 and 289 of Chapter 9 of the Laws of Malta.

With regards to the penalty to be meted out there are a number of facts to be taken into consideration. The penalty established for theft accompanied with violence and other aggravating circumstances is that of imprisonment for a term of not less than one year and not more than four years; this term cannot be imposed in its minimum. The other offence of which the two defendants are being found guilty is a contravention. In view of the nature of the offences of which each of the defendants is being found guilty and the particular circumstances of this case the Court is of the opinion that an effective prison term should be imposed but in view of defendants' criminal record this should be closer to the minimum allowed in terms of the relevant provisions. With regard to defendant Mahkmoudov the Court must also bear in mind that he has relapsed and that consequently the penalty to be meted out in his regard should be greater than that to be meted out in relation to defendant Mironich.

For these reasons the Court

Whilst finding defendant **Dmitry Mahkmoudov** not guilty of the third charge brought against him, after having seen sections 49, 50, 86, 87(1)(c)(e), 261(a)(c)(d)(e), 262, 267, 268, 270, 289 and 339(1)(e) of Chapter 9 of the Laws of Malta, finds him guilty of all the other charges brought against him and condemns him to fourteen months imprisonment.

Whilst finding defendant **Vladislav sive Lado Mironich** not guilty of the third and fifth charges brought against him, and whilst abstaining from taking further cognisance of the sixth charge brought against him, after having seen sections 86, 87(1)(c)(e), 261(a)(c)(d)(e), 262, 267, 268, 270 and 339(1)(e) of Chapter 9 of the Laws of Malta, finds him guilty of all the other charges brought against him and condemns him to thirteen months imprisonment.



Informal Copy of Judgement

**< Final Judgement >**

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