



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
MICHAEL MALLIA**

Sitting of the 12 th November, 2010

Criminal Appeal Number. 113/2010

**The Police
(Insp. Raymond Aquilina)
Vs
Svetlana Georgievna Podgorska**

The Court,

Having seen the charge brought against the defendant Svetlana Georgievna Podgorska before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on these islands in her own personal capacity and in the capacity as the Director, Shareholder, Legal Representative and Company Secretary of the company Viva Vegas Ltd and the lesser and/or administrator of Level 1-2 Park Towers Mall, Gorg Borg Olivier Street, St. Julians, or part thereof, on the 27th day of May of the year 2009, and previous months, in St. Julians and/or in these Islands :

1. Operated, promoted or sold or in any way aided or abetted the operation, promotion or sale of a game in contravention of article 5;
2. on the same place, date, time and circumstances, placed on the market, manufactured, maintained or supplied any relevant gaming device, or any part or parts thereof, without having a valid licence issued by the Authority or unless exempted from such licensing requirement in respect of such relevant gaming device in terms of regulations made under this Act;
3. on the same place, date, time and circumstances, knowingly permitted the use of any place for the purpose of the operation, promotion, sale or playing of any game in contravention of any provision of this Act or of regulations made there-under or in breach of any conditions attached to a licence issued under this Act or in breach of any directive issued by the Authority in terms of this Act or of regulations made there-under or for the purpose of storage of a relevant gaming device imported, manufactured or supplied in contravention of the provisions of article 7 or in breach of the conditions attached to a licence issued in terms of the said article 7 or for the purpose of manufacturing or carrying out maintenance of a relevant gaming device in contravention of the provisions of article 7 or in breach of the conditions attached to a licence in terms of the said article 7.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 25th February, 2010, by which, the Court did not hold that the prosecution proved its case according to law and therefore, did not find the defendant guilty as charged and ordered her to be set free.

Having seen the application of appeal filed by appellant Attorney General on the 15th March, 2010, wherein requested this Court to revoke the appealed judgement and requested also this Court to find the said Svetlana Goergieвна Podgorska guilty of all the charges preferred against her and to mete out in her respect all the punishments and consequences prescribed by law.

Informal Copy of Judgement

Having seen the records of the case.

Now duly considers.

That by a note verbal of the 16th July 2010 (fol. 115) the defence raised the issue of the nullity of the appeal by the Attorney General in view of the fact that offences in relation to Chapter 438 Lotteries and other Games Act are tried by the Magistrates Courts in their original jurisdiction in which case the amendments of Article 413 of Chapter 9 do not apply as these allow an appeal by the Attorney General as points of law only.

That this argument was better brought forward by the Note filed by Georgievna Podgorska on the 24th of August 2010 highlighting the fact that the appeal was based on “....wrong and unreasonable interpretation of the evidence brought before it”. Strengthening the defences’s argument that this appeal was not based on any point of law. The defence also argued the amendment to the unlimited right to appeal was introduced by Act XXII of 2009 which came into force on the 18th December, 2009, months after the date of the alleged offences.

That the Attorney General replied that being a procedural issue, the law to be applied is always that in force at the time of the trial and not at the time of the commission of the offence.

Considers :

That as far as the chronology is concerned, these offences were allegedly committed on the 27th May 2009 and judgement delivered on the 25th February, 2010. The Attorney General filed his appeal within the specified legal time limit on the 15th March, 2010, well after the coming into force of the amendment to article 74(5) of Chapter 438 (18th December 2009) authorising the Attorney General to “always have a right of appeal from any judgement given by the Courts of Magistrates, in its criminal jurisdiction, in respect of proceedings for any

offence against this Act or any regulations made thereunder". This wide ranging amendment would therefore also include points of fact.

Now there is no doubt that the appeal was filed after the coming into force of the above mentioned article 74 (5) of Chapter 438 and there is also no doubt that the amendment involves a procedural issue and not a substantive one in which former case it can be applied retrospectively.

Apart from the judgements referred to by the Attorney General in his reply, this Court refers to the case "The Police vs Lawrence Cuschieri" decided by the Constitutional Court on the 8th of January 1992 where it held that under the Constitution only those criminal law provisions which created a new offence or punishment could not be applied retrospectively. This means therefore that a procedural issue, not being a new offence or punishment, can be applied retrospectively "irrespective of whether such former law was more or less favourable to the accused" (The Republic of Malta vs Rovi Ramani as quoted by the Attorney General in his reply).

This Court therefore is of the opinion that once the Attorney General filed his appeal within the specified time limit and after the coming into force of Article 74 (5) of Act 438 his appeal should stand for the reasons above mentioned.

The Court therefore dismisses the objection raised by the defence by means of the note verbal of the 16th July 2010, declares the appeal filed by the Attorney General as legal and valid and orders that the case be proceeded with the hearing of the evidence on the merits.

< Final Judgement >

-----END-----