



## **CRIMINAL COURT**

**THE HON. MR. JUSTICE  
LAWRENCE QUINTANO**

Sitting of the 4 th October, 2011

Number 51/2010

**Republic of Malta  
Versus  
Adele-Marianna Creta.**

The Court

Has considered the following:

### **The application of the accused**

1. The accused Adele-Marianna Creta filed an application on the 5<sup>th</sup> July 2011 stating that when she was served with the Bill of Indictment (in English) she did not understand her rights with regard to time limits for filing any preliminary pleas because her language is Rumanian and not the English Language.

2. According to the accused, the proceedings in the Court of Magistrates as a Court of Criminal Inquiry were conducted in the English language. The applicant went on to say:

The proceedings in her case had to be conducted in the Maltese Language

*'notwithstanding that from the written statement she had made to the Executive Police it was clear that English was not her language since she had made such statement with the help of an interpreter. In actual fact, during these proceedings applicant was provided with an interpreter to translate from English into Rumanian.'*

3. The applicant submitted that these proceedings, including the Bill of Indictment, were in English. This runs counter to section 516(1) of the Criminal Code which 'contains a provision of public policy'. Hence, according to the applicant, the proceedings against her are illegal.

4. As she did not understand what was required of her when she was served with the bill of indictment she had failed to file any preliminary pleas and / or indicate witnesses in her defence.

5. The applicant added that she cannot be considered an English speaking person in accordance with the definition of section 7(b) of the Judicial Proceedings (Use of English Language) Act (Chapter 189 of the Laws of Malta.' The fact that she was provided with an interpreter to translate for her the proceedings from English to Rumanian shows that her knowledge of English was limited.

6. The applicant also refers to constant jurisprudence in this regard.

7. Finally the applicant invoked section 449(5) of Chapter 9 asking for the declaration of the proceedings as null and void as the proceedings were conducted in violation of section 516(1) of Chapter 9 and section 7(b) of Chapter 189.

### **The reply by the Attorney General**

8. The Attorney General replied that section 438(2) sets a definite time limit of fifteen working days from the date of service of the Bill of Indictment to raise any preliminary plea. Moreover, the Court of Magistrates had ordered that all the proceedings be conducted in the English Language and neither the accused nor the defending lawyer had objected to this decree. Articles 3(d) and 4 of Chapter 189 state that a court of criminal jurisdiction can order that proceedings to be conducted in the English Language. Therefore the proceedings are **not null**.

Has considered.

9. That article 449(5) referred to by the applicant states as follows:

*'The want of jurisdiction of the court and the nullity of the indictment may be raised by the court 'ex officio' either before the accused answers to the charge, or after the verdict of the jury.'*

After this subsection (5) of Article 449 there is a proviso which is irrelevant to the present application.

10. References to case law have already been made in the previous application, submissions, and the decree of the 20<sup>th</sup> June 2011. Barring one case, the judgments of the Court of Appeal (Inferior) have always dealt with the language used in the appeal application and have decided whether the language used in the application was in line with the decree given by the Court of Magistrates about the language to be used in the proceedings. But **this application deals with the nullity of the proceedings as a whole**.

11. The Court is examining the most recent decision, that of the 10<sup>th</sup> September 2009 (Il-Pulizija versus Pashkov) decided by His Honour the Chief Justice in the Court of Criminal Appeal (Inferior) because this particular judgement deals with a submission which is very close to the request made in the application being examined. This

judgment dealt with an extradition case where appellant had submitted that the Language of the Court was Maltese but the proceedings had been conducted in the English language barring what was written down in the records of the case. The defendant appeared to have a sound knowledge of the English language when he was making a statement to the Police but once he appeared in Court he declared that he knew neither Maltese nor the English Language. The Court apparently did not have an interpreter who could translate from Maltese into Ukrainian and appointed an interpreter to translate from Ukrainian into English and vice versa.

12. The Court decided that the procedure adopted by the Court of Magistrates did not lead to any nullity of the proceedings or to the inadmissibility of any testimony given before the First Court.

13. It appears from the above judgement that the Court of Criminal Appeal (Inferior) is adopting a more pragmatic approach in submissions about the use of language during the proceedings even if the decree of the Court of Magistrates does not follow the provisions of Chapter 9 or of Chapter 189. If one reads the rest of the judgment, one realises that the Court laid great stress on the fact that the person whose extradition was being sought could understand the language of the proceedings and dismissed the plea about the hybrid nature of the proceedings though such hybridisation is not in conformity with our system.

14. In her submissions the applicant stresses the 'public order' characteristic of section 516(1) of Chapter 9. The defence lawyer also referred to the language question and to the historic moment when Maltese substituted the Italian language as the language of the Court.

15. The Court has examined this submission in the light of the above judgment and also after carefully analysing paragraphs (b) and (c) of section 3 of Chapter 189 which read as follows:

(b) where of two or more persons charged together one or more is or are Maltese-speaking and one or more is or are English-speaking and all the Maltese-speaking persons so charged make a declaration in the records of the court consenting to the proceedings being conducted in the English language, or where none of the parties is either a Maltese-speaking person or an English-speaking person, the court may order that the proceedings be conducted in the English language;

(c) where of two or more persons charged together one or more is or are English-speaking and none of the others is Maltese-speaking, the court shall order that the proceedings be conducted in the English language;

16. A close reading of paragraph (b) reveals that if Maltese speaking persons make a declaration that English may be used where other persons who are charged with them are English-speaking, then the Court may decree that proceedings should be conducted in English.

17. Paragraph (c) is even more telling. One would expect the legislator to lay down that the Maltese language should be used in the context where some of the persons charged are neither English speaking nor Maltese speaking while some are English speaking. Instead, the legislator opted for the use of the English Language.

18. The Court concludes that by 1965, when Chapter 189 was enacted, less than one year when Malta became independent, the Legislator was already being flexible to avoid protracted proceedings and interpretation fees. In fact, a simple declaration by the Maltese-speaking accused that they do not object to the use of the English language was considered enough by the Legislator for the Court to order that the proceedings should be in the English Language. So it is difficult for this Court to accept the plea of public order when the law expressis verbis is taking a more practical approach to the resolution of the problem. Chapter 189 is a special law and was enacted

after section 516 of the Criminal Code. Hence it should prevail. The aim of Chapter 189 is to make the life of English speaking persons easier and not to create nullities. In fact, the word 'nullity' does not appear in any article of this law.

**19. So, after considering the case 'Il-Pulizija versus Pashkov' and the language of the above two paragraphs from Chapter 189, the Court is considering that there is no basis for the public order submission made by the accused.**

Further considers

20. Furthermore the Court notes that when, in her first appearance in Court, the Accused was answering the questions about her identity she answered in English according to the records of the case. Moreover, she was assisted by a lawyer on that day and who raised no objection to the proceedings being held in English. Had he done so there would have been a record of such objection either on the day of the first hearing or subsequently.

21. The Court also refers to the last paragraph of its **previous** decree where it stated:

*'However, the Court has noted the way the applicant has reacted whenever the English Language was being used by the Court. Her intonation, her sentence structure and her eye movements revealed that she has a sound knowledge of the English Language and that she can follow all proceedings in English without any linguistic problems.'*

22. If the accused's knowledge falls short of the level required by section 7(b) of Chapter 189, this does not mean that the proceedings are null. It only means that an interpreter should be available at all times to assist her. This right emanates from section 39 of the Constitution and section 6 of the European Convention on Human

Rights and nobody has denied or is going to deny the applicant this right.

23. The applicant complains that when she was served with the Bill of Indictment she did not understand what she had to do. Now the Bill of indictment was in English. What would she have done had the Bill of Indictment been in Maltese? The applicant definitely realised that the document she was served with was a court document and hence all she had to do was to consult a lawyer of her choice or the one who had been appointed by the Court of Magistrates. Either of these would have advised her about her right to file preliminary pleas and / or a list of witnesses. After all, any person receiving a Court document is put on the alert to take legal advice.

24. If the accused failed to contact her lawyer within the time span set out in section 438(2) of Chapter 9, and this is a considerable one, she cannot now indirectly extend this peremptory time limit by alleging a nullity of the proceedings on linguistic grounds.

25. Hence, the Court is dismissing the accused's request.

**< Decree >**

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