



COURT OF CRIMINAL APPEAL

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

Sitting of the 5th December, 2012

Criminal Appeal Number. 486/2011

The Police

Vs

Kai Jochimsen

The Court

Having heard the Prosecution' submissions

(a) about whether Mr Kai Jochimsen could appear as a lawyer in the Maltese Courts; and
(b) that section 419 (3) of Chapter 9 of the Laws of Malta requires the signature of a lawyer on the application of an appeal from the Court of Magistrates as a Court of Criminal Judicature

And having heard the submissions by way of reply made by Mr Kai Jachimsen which were:

(i) that he was relying on regulations 3 and 7 of LN 273/2002 and Directives 77/249/EEC and 98/5/EC;

(ii) that the requirement of a lawyer's signature in accordance with Article 419((3) may be in conflict with Article 6(3)(c) of Chapter 319

Has considered

The relevant legal provisions

A) Regulation 3 of LN 273/2002 which states as follows:

‘Any legal professional shall be entitled to pursue on a permanent or temporary basis in Malta under his home-country professional title, the activities specified in regulation 7;

B) Regulation 7 of LN 273/2002 which states

(1) A legal professional practising under his home-country professional title carries on the same professional activities as a legal professional practising under the relevant professional title used in Malta and may, inter alia, give advice on the law of his home Agreement State, or international law and on the law in Malta. **He shall in any event comply with the rules of procedure applicable in the Maltese courts.**

(2) Omissis

(3) For the pursuit of activities relating to the representation or defence of a client in legal proceedings and insofar as the law in Malta reserves such activities to legal professionals practising under the relevant professional title, **the designated authority shall require legal professionals practising under their home country professional titles to work in conjunction with legal professionals who practise before the Maltese Courts and who would, where necessary be answerable to such courts.**’

C) Regulation 2 of LN 273/2002

According to regulation 2 the term 'designated authority' shall have the meaning assigned to it under the Mutual Recognition of Qualifications Act, 2002, and in regard to the legal profession, refers to the President of Malta.

D) Regulation 6(1) of LN 273/2002

A legal professional practising under his home-country professional title in Malta may, at any time, apply to have his degree recognised in accordance with Part One of the Mutual Recognition of Professional Education and Training Regulations, 2002 with a view to gaining admission to the legal profession in Malta and practising it under the professional title corresponding to the profession in Malta and shall not start so to practise before he has obtained such recognition.

E) Section 81 of Chapter 12 of the Laws of Malta (The Code of Organization and Civil Procedure), in particular:

No person shall be entitled to obtain the warrant referred to in article 79 (warrant to exercise the profession of advocate)¹ unless

(b) he is a citizen of Malta or a Member State or is otherwise permitted to work in Malta under any law;

(c) he has obtained the academic degree of a Doctor of Law (LL.D.) in accordance with the provisions of the Statute of the University of Malta, or a comparable degree from such other competent authority in accordance with the principles of mutual recognition of qualifications, after having studied law in Malta or in a Member State.

After examining all the above provisions the Court has reached the following conclusions:

¹ '79. No person shall exercise the profession of advocate without the authority of the President of Malta granted by warrant under the Public Seal of Malta.'

(i) That one can only practise the profession of a lawyer in a Court of Law in Malta if he or she has a warrant issued in accordance with section 79 of Chapter 12.

(ii) Regulation 6 of LN 273 of 2002 has to be complied with.

(iii) **As to proceedings in Court**, legal professionals practising under their home country professional titles have to work in conjunction with legal professionals who practise before the Maltese Courts and who would, where necessary, be answerable to such courts. (Vide regulation 7(3) of LN 273/2002 above. This Legal Notice is distinguishing between the functions which an office lawyer can carry out and those of a court lawyer.

Hence, as the present case is connected with criminal appeal proceedings in a court of law, **the appellant had to follow regulations 6 and 7(3) of Legal Notice 273/2002 and work with legal professionals who practise before the Maltese Courts.**

Appellant's second submission

Appellant submits that the requirement of subsection (3) of section 419 of Chapter 9 to have the signature of a lawyer runs counter to section 6 of Chapter 319.

According to the Laws of Malta, the Criminal Court of Appeal does **not** have the competence to decide such questions. Hence this Court is refraining from giving any decision about the validity or otherwise of such a provision.

It can only decide the substance of this submission in accordance with the provisions of the Criminal Code.

As the lawyer appearing in this case happens to be the accused, he can in accordance with section 39(6)(c) of the Constitution of Malta and in

accordance with section 6 (c) of the European Convention on Human Rights (Chapter 319 of the Laws of Malta) defend himself in person.

< Final Judgement >

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