

# **The Court of Magistrates (Malta)**

## **As a Court of Court of Criminal Judicature**

*Magistrate Dr Aaron M. Bugeja M.A. Law, LL.D. (melit)*

**The Police**

**(Inspector Robert Said Sarreo)**

**vs**

**Yuliyen Borislavov Toskov**

The Court after seeing the charges in respect of **Yuliyen Borislavov Toskov**, holder of Bulgarian passport number 380610997 who was charged with having :

“1. On the 14<sup>th</sup> December 2014 at about 10:15am in Dun Tarcis Agius Square, Marsaskala, without the intent to kill, or to put a person’s life in manifest jeopardy, you caused harm of grievous nature to the body or health of Velichko Asenov Dimov, or any other person as certified by Dr. Glen Micallef M.D. of Paola Health Clinic, as per articles 214 and 218 of Chapter 9 of the Laws of Malta.

2. Your are also being accused that on the same date, time, place and circumstances in any manner, wilfully disturbed the public good order or the public peace as per article 338(dd) of Chapter 9 of the Laws of Malta.

The Court is hereby being requested to issue a protection order as per article 412(C) of Chapter 9 of the Laws of Malta for Valechko Asenov Dimov, though out the hearing in the case and even together as part of the sentence the court deems fit, if accused is found guilty.

The Court is also being requested to issue a personal surety for Velichko Asenov Dimov as per articles 383, 384 & 385 of of Chapter 9 of the Laws of Malta.

The Court is also being requested to order the accused to pay for any expenses suffered by the Court with regards to any experts which where appointed by the Court for this case, if the accused is found guilty, as per article 533 of Chapter 9 of the Laws of Malta.”

Having seen that during the sitting of the 15th December 2014 this Court ordered that proceedings be carried out in the English language after that it ascertained that the accused is English speaking in terms of law and that during the same sitting the Prosecuting Officer confirmed the charges on oath and during the examination of the accused in terms of Article 392(1)(b) he pleaded not guilty to the same charges;

Having heard the witnesses produced;

Having seen the documents submitted;

Having seen the formal accusatory document issued by the Attorney General on the 2nd February 2015, wherein the Attorney General found that from the preliminary investigation in this case there might result an offence or offences under the provisions of :

- a. Articles 214, 215 and 218 of the Criminal Code, Chapter 9 of the Laws of Malta;
- b. Article 338(dd) of the Criminal Code, Chapter 9 of the Laws of Malta;
- c. Articles 383, 384, 385, 386, 387 and 412C of the Criminal Code, Chapter 9 of the Laws of Malta;
- d. Articles 17, 31, and 532A of the Criminal Code, Chapter 9 of the Laws of Malta;

And decided in terms of Articles 370(3)(a) of the Criminal Code to send the accused for trial by this Court subject to no objection being made by the accused in accordance with Article 370(3)(b)(c)(e) of the Criminal Code;

Having seen that during the sitting held on the 23rd March 2015 the Prosecution declared that it was resting its case and on the same sitting in terms of Article 370(3)(b) of the Criminal Code, the Court, after reading out the contents of the formal accusatory document to the accused, requested the accused whether he found any objection to his

case being dealt with summarily. After giving the accused a reasonable time within which to reply, and after consulting his Legal Counsel, he declared that he had no objection to his case being dealt with summarily. The Court therefore took note of this declaration in writing in the records of these proceedings in terms of Article 370(3)(c) of the Criminal Code;

Having seen that after that the accused tendered evidence he further declared that he did not have any further witnesses to produce and Defence Counsel declared that it was resting its case;

Having seen that on the sitting of the 6th May 2015 the defence requested the Court to order a social enquiry report in relation to the accused in order to have a better picture as to his character which request was opposed by the parte civile;

Having seen the report confirmed on oath by Probation Officer Charisse Boffa during the sitting of the 8th June 2015;

Having heard the final oral submissions of the Prosecuting Officer and of the Legal Counsel to the accused following which the Court adjourned this case for judgment in terms of Article 377 of the Criminal Code.

*This Court considered that :-*

The Court is convinced beyond a reasonable doubt that the accused committed the offences with which he stands charged. In point of fact he does not deny or contest the fact that he did hit the parte civile twice. So much so that at fol 114 he apologized for his actions. However he claims that he acted in this manner after that in previous incidents that happened some weeks before, he was threatened, reviled and humiliated by the parte civile and other fellow Bulgarians. On the day of the incident, the accused states that he simply tried to ask the parte civile the reasons for his negative attitude towards him when, at one stage, the parte civile lifted his arms (in what the Court understood – and the accused seemed to concede during his testimony – to be a defensive stance) and there the accused said that he tried to pre-empt the parte civile by delivering the two blows to the parte civile.

On the otherhand, the parte civile's version of events speaks of an unjustified, uncalled for and sudden aggression on the part of the accused – with no apparent reason or history leading thereto.

In the case, the Court is convinced beyond a reasonable doubt, that both the accused and the parte civile are not saying the whole story behind this incident. Despite the questions posed by the Court and by the Lawyers for both parties, not to mention the Prosecuting Officer, the

*dramatis personae* to this case failed to give the full picture of what really gave rise to this incident.

Despite this lacuna it is clear that the accused committed the offence, and he did so intentionally.

As for the grievous nature of the bodily harm caused, according to Consultant Dental Surgeon Alex Cassar, the *parte civile* suffered from a fracture of the left body of the mandible and there were also teeth in the line of fracture. The *parte civile* was operated on a week later under local anesthesia. Following a checkup said Surgeon confirmed that the *parte civile* was healing uneventfully. He stated that the fracture took between six weeks and six months to fully remodel. However he could not state whether the effect on the nerve that was hit was temporary or permanent. There was no disfigurement in the structure of the mandible only because surgery was done. The injury also hastened the demise of two teeth that had to be extracted as they were in the line of fracture. In the circumstances however, in the light of the explanation given by Surgeon Cassar, this Court cannot consider the bodily harm committed on the person of the *parte civile* as falling under the provisions of Article 218 but rather under the provisions of Article 216 of the Criminal Code, which is deemed to be minor but comprised and involved in Article 218 of the Criminal Code quoted by the Attorney General.

### **Decide :-**

Consequently, this Court, declares the accused guilty of the charges brought against him and after having seen the Articles of the Law quoted by the Attorney General, that is to say Articles 17, 31, 214, 215, 216(1)(a)(ii)(iii)(b)(d), 338(dd), 383, 384, 385, 386, 387, 412C and 532A of the Criminal Code, Chapter 9 of the Laws of Malta condemns him to twelve months imprisonment; however after having seen his criminal record sheet and the social enquiry report, and also the provisions of Article 28A of the Criminal Code it orders that the said sentence shall not take effect unless, during a period of two years from the date of this order, the offender commits another offence punishable with imprisonment and thereafter the competent court so orders under Article 28B of the Criminal Code that the original sentence shall take effect.

In terms of Article 28A(4) of the Criminal Code, the Court declares that it explained to the accused, in ordinary and simple language, his liability in terms of Article 28B of the Criminal Code if he commits an offence punishable with imprisonment during the operational period.

In addition to the suspended sentence abovementioned, and after having seen Article 28G(1)(2) of the Criminal Code, the Court is also

making also a suspended sentence supervision order (hereinafter referred to as "a supervision order") placing the offender under the supervision of a supervising officer for a period of two years.

The Court has explained to the accused in clear and simple language the effects of a supervision order as well as of the conditions that are listed in the decrees annexed to this judgment and that form an integral part thereof; in particular it explained to him the consequences that trigger off should he fail to strictly adhere to the terms and conditions therein contained or should he commit another offence punishable with imprisonment during the operative period of the suspended sentence.

The Court orders that a copy of this judgment and the relative supervision order be delivered to the Director of Probation and Parole in order for an Officer to be appointed for the supervision of the accused.

This Officer shall be obliged to submit a written report every six months detailing the progress registered by the accused.

Furthermore in order to provide for the protection of the parte civile and his family, the Court is making an order under Article 412C of the Criminal Code whereby it is prohibiting from approaching, contacting,



or molesting parte civile and his family for a period of two years from the date of this judgment.

The Court explained in simple and clear language to the accused the consequences of this protection order.

Given that no experts have been appointed in this case, the Court is abstaining from taking further cognisance of the request of the Prosecution to condemn the accused for the payment of the relative expenses.

**Delivered today the 30th September 2015 at the Courts of Justice in Valletta, Malta.**

*Aaron M. Bugeja*