

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

MAGISTRATE DR. JOSETTE DEMICOLI LL.D

**The Police
(Inspector Edel Mary Camilleri)**

(Inspector Robert Vella)

vs

Nicholas Obaseki

Case Nr 719/2015

Today 21st January 2019

The Court,

Having seen the charges brought against Nicholas Obaseki, holder of Italian residence permit AV 2131858:

Being charged with having on the 23rd August 2015 and before and after previous dates, in Marsa and other whereabouts on these islands, forged any currency notes or uttered any forged currency notes knowing the same to be forged. This in violation of article 45 of Chapter 204 of the Laws of Malta;

And also on the same date, under the same circumstances, without lawful authority or lawful or reasonable excuse, have purchased or received from any person, or had in your custody or possession, forged currency notes knowing the same to be forged. This in violation of article 46 of Chapter 204 of the Laws of Malta.

And also on the same date, under the same circumstances, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made gain of one hundred euro (€100) to the prejudice of Judith Bakoush (ID 33691 M). And this in violation of articles 308, 309, 310(1)(c) of chapter 9 of the Laws of Malta.

And also on the same date under the same circumstances, were found to be in possession or was under your control any article for use in the course of or in connection with any fraud. And this in violation of article 310BA (1) of chapter 9 of the Laws of Malta.

Having seen the note of renvoi sent by the Attorney General dated 27th June 2016 so that the accused be tried summarily and the relevant articles of the law mentioned in same and having heard the accused declare that he has no objection that his case be tried summarily.

Having heard witnesses.

Having heard final submissions.

Having seen all the acts and documents of this case.

Considers:

Inspector Edel Mary Camilleri¹ testified that on the 24th August 2015, Judith Bakoush filed a police report indicating that on the previous night a foreigner had given her counterfeit money while she was at Paul & Rocco's Petrol Station in Marsa. She proceeded at the Marsa Police Station with two alleged counterfeit 50 euro notes. Ms Bakoush explained that at about 21:30hrs she was near the petrol station and a Nigerian national approached her and asked her to exchange money for her. He presented the amount of €100. She accepted and he gave her 2 fifty euro notes and she gave him 4 €20 notes and 2 €10 notes. She indicated that the Nigerian national is a certain Nicholas and she knew him for the fact that he frequented the area and she gave his mobile number to the police. Thus, the inspector seized the notes and then the accused was requested to present himself at the police station and he was arrested upon the inspector's instructions. A search was carried out by Ps 11 at the accused's home and vehicle but no illegalities were found. He then released a statement.

Ps 11 Daniel Zammit² testified on the same lines on what was stated by Inspector Camilleri.

Judith Bakoush testified³ that she had lodged a report at the Marsa Police Station because when she was near Paul & Rocco petrol station she had met the accused (whom she knew beforehand) and he asked her to exchange money for him. She accepted and he got out 2 fifty euro notes. She stated that he had a wallet full of 50 euro notes. She gave him 4 €20 notes and 2 €10 notes. That was all the money she had in her wallet. She put the 2 fifty euro notes in her wallet and went home. Upon arrival she realized that the notes were counterfeit because they had a red mark on one side. Thus, in the morning she took the notes to the Marsa Police station. She recognized the accused as being the person who gave her the notes. She also recognized the 2 fifty euro notes⁴ because there is a like a kind of circle on them and recognized her signature on Dok EMC4.

Mr Adrian Bonello, a Court-appointed expert, concluded that the 2 fifty euro notes are definitely counterfeit⁵. In fact in his report he concluded:

"The results of the analysis made by the expert are as follows:

¹ Sitting on the 24th February 2016

² Sitting on the 24th February 2016

³ Sitting on the 16th March 2016

⁴ Dok EMC 5

⁵ Sitting on the 21st April 2016, Dok AB

All the documents marked as DOC. EMC 5, i.e. the 2 Euro banknotes of €50 denomination, do not exhibit the security features found normally on the genuine Euro banknotes. The paper used for the documents marked DOC EMC 5 is not the same as that used on genuine banknotes; the print is not the same as genuine banknotes; and the other security features such as the watermark, the security thread, the hologram, and the colour-shifting ink are not the same as those found on the genuine banknote. Furthermore, there is also the issue of the serial number which is unique for every banknote, while not reproduced on the documents marked DOC EMC 5.

The exponent therefore declares that the documents in DOC EMC 5 are all counterfeits”.

The accused testified⁶ and he categorically denied the charges. He stated that when the police demanded that a search be carried out at his home he had no problems about that. The result was in the negative. When the Inspector mentioned to him Judith Bakoush at first he stated that he did not know her but then upon being shown her photo he remembered that he had met her once when he was with his ex-girlfriend. He could not give a reason why Judith Bakoush reported him and said “*Maybe she might be mad to me I do not really know*”.

Considers:

First of all, on the basis of recent jurisprudence namely **II-Pulizija vs Aldo Pistella**⁷ and **II-Pulizija vs Claire Farrugia**⁸, the statement released by the accused will not be taken into consideration.

Ist and 2nd Charges

The Court notes that with regards to the first two charges reference has been made in the note of renvoi to articles 45 and 46 of Chapter 204 of the Laws of Malta, which articles have been deleted by means of Act XLIX of 2006. However, the same Act transferred these offences to the Criminal Code.

Reference is hereby being made to the judgment in the names of **II-Pulizija vs Bessam Abdulhamid**⁹

Illi r-reat li l-prosekuzzjoni qed tirreferi ghalih huwa dak ravnizat bl-artikolu 188C tal-Kodici Kriminali li gie introdott bl-Att XLIX tal-2016, liema strument legislattiv trasferixxa ghadd ta' reati, inkluz dak ai termini tal-artikolu 46, mill-Att dwar il-Bank Centrali ghal Kodici Kriminali. Illi minn imkien ma jirrizulta li l-legislatur f'dawn it-tibdiliet li saru b'dak l-Att ipprovdha ghal transitory provision. Madanakollu l-Qorti tal-Appell Kriminali (Sede Superjuri) ikkunsidrat vertenza simili ghal dik mressqa mill-

⁶ On the 4th June 2018

⁷ Constitutional Court, decided on the 14th December 2018

⁸ Court of Criminal Appeal decided on the 20th November 2018

⁹ Court of Magistrates (Malta) as a Court of Criminal Judicature decided on the 3rd December, 2018

abbli difiza f'kaz fejn ukoll ma kien hemm l-ebda transitory provision sabiex toffri aktar certezza legali, kwezit indispensabbli li janima is-saltna tad-dritt¹⁰:

22. As appellant points out, Legal Notice 463/2004 was repealed by Legal Notice 149/2007, and the latter Legal Notice contains no transitory provision. However, the Interpretation Act (Chapter 249 of the Laws of Malta) provides in article 12:

“(2) Where an Act, whether passed before or after the commencement of this Act, amends any other Act passed either before or after the commencement of this Act, or any provision of any such other Act, the Act or provision so amended, as well as anything done thereunder or by virtue thereof, shall, unless the contrary intention appears, continue to have full effect, and shall so continue to have effect as amended, and subject to the changes made, by the amending Act.

“(3) For the purposes of subarticle (2) ‘amendment’ means and includes any amendment, modification, change, alteration, addition or deletion, in whatsoever form or manner it is made and howsoever expressed, and includes also a provision whereby an Act or a provision thereof is substituted or replaced, or repealed and substituted, or repealed and a different provision made in place thereof.”

23. Moreover, article 2 of the Interpretation Act defines “Act” as “an Act of Parliament and any other Act passed by the Legislature of Malta and includes any code, ordinance, proclamation, order, rule, regulation, bye-law, notice or other instrument having the force of law in Malta other than an instrument to which the Act of the Parliament of the United Kingdom of Great Britain and Northern Ireland entitled the Interpretation Act, 1889, applies”.

24. On examining Legal Notice 463/2004 and Legal Notice 149/2007, it would appear that the substance of these two Legal Notices is the same. Both carry an obligation on any person to declare to the Comptroller of Customs on entering or leaving Malta (and in the case of L.N. 149/2007 even in transiting Malta) any sum of money exceeding, in the case of L.N. 463/2004 Lm5000, and in the case of L.N. 149/2007 Lm4,293. Both carry the obligation to make such declaration on the apposite form indicated in the Schedule to the regulations. Both carry the same punishments for a false declaration or the failure to declare.....

25. Although, therefore, the recipient of the information provided by the Comptroller of Customs has changed, the obligation to declare has remained unchanged, the crimes established by both Legal Notices have remained unchanged and so too the consequent penalties. Consequently, although Legal Notice 463/2004 was repealed, the provisions of Legal Notice 149/2007 clearly show that there was no intention to repeal its effect. Both the making of a false declaration and the failure to declare are crimes now as much as they were when Legal Notice 463/2004 was in force..... Appellant’s second grievance is thus also dismissed. [emfazi tal-Qorti]

*Issir riferenza ghal dak pronuncjat mill-Qorti Kriminali fid-decizjoni fuq eccezzjonijiet preliminari fl-ismijiet **II-Pulizija vs Daniel Felice**¹¹:*

¹⁰ Per The Hon. Mr. Justice Dr. David Scicluna (Acting President), The Hon. Mdme. Justice Dr. Abigail Lofaro and The Hon. Mr. Justice Dr. Joseph Zammit Mc Keon; *The Republic of Malta v. Morgan Ehi Egbomon*, Number 16/2009; Deciz 31ta’ Lulju, 2014.

¹¹ Per Onor. Imhalled Dr. Edwina Grima; Deciza 22 ta’ Settembru, 2016

Illi l-principju tad-dritt penali iccitat mill-akkuzat ta' nullum crimen sine lege necessarjament ifisser illi ebda persuna ma tista' tigi akkuzata b'att jew omissjoni li ma kienx jikkostitwixxi reat fiz-zmien meta sehħ u dan għaliex hija permezz tal-ligi biss li jista' jigi mfassal dak li jikkostitwixxi reat u il-piena għal kummissjoni ta' l-istess. Illi saħansitra l-artikolu 11 tal-UDHR (Universal Declaration of Human Rights) iġhid hekk:

"No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed".

Issa fil-kaz in dizamina huwa indubitat illi l-att li wassal sabiex l-Avukat Generali fassal it-Tieni Kap tal-att ta' l-akkuza kien jikkostitwixxi reat fiz-zmien meta sehħ. Dan huwa fatt inkontestat. Illi l-artikolu 24(2) tal-Kapitolu 33 tal-Ligijiet ta' Malta qabel ma gie abrogat permezz ta' l-Att XX tal-2012, kien iwassal sabiex kull persuna li minghajr licenzja tal-pulizija jispara arma tan-nar f'post abitat jew fit-triq pubblika jiffaccja prosekuzzjoni penali għal dan l-att. Illi allura f'dan il-kaz huwa dak dispost fil-Kapitolu 249 tal-Ligijiet ta' Malta li għandu isib applikazzjoni u mhux il-principju ta' dritt iccitat mill-akkuzat. L-artikolu 12 ta' l-Att dwar l-Interpretazzjoni jaqra:

(1) Meta xi Att mgħoddi wara l-bidu fis-seħħ ta' dan l-Att iħassar xi ligi oħra, kemm-il darba ma jidhirx ħsieb kuntrarju, t-tħassir m'għandux:

d) jolqot xi penali, konfiska jew piena li wieħed seta' jeħel dwar xi reat li jkun sar kontra xi ligi hekk imħassra, jew xi responsabbiltà għal xi penali, konfiska jew piena bħal dawk

e) jolqot kull sħarriġ, proċedimenti legali, jew rimedju dwar xi dritt, privileġġ, obligazzjoni, responsabbiltà, penali, konfiska, jew piena kif intqal qabel, u kull sħarriġ, proċedimenti legali, jew rimedju bħal dawk jistgħu jinbdew, jitkomplew, jew jiġu nforzati, u kull penali, konfiska jew piena bħal dawk jistgħu jiġu posti, bħallikieku l-Att li jħassar ma jkunx għadda.

Illi fid-decizzjoni il-Pulizija vs Benny u Anna Zaffarese, il-Qorti ta' l-Appelli Kriminali saħħqet illi anke fejn il-ligi il-gdida ma tagħmilx ebda riserva meta b'xi emenda jigi imħassar xi reat, għandu japplika l-artikolu 12(1) ta' l-Att dwar l-interpretazzjoni, kif hawn fuq iccitat.¹²

Dan dejjem għandu isir taht is-salvawardja kostituzzjonali, li jirriproduci d-dritt internazzjonali għal harsien tal-jeddijiet tal-bniedem hawn fuq iccitat, fejn fl-artikolu 39(8) tal-Kostituzzjoni hemm espressament dispost illi:

"Ħadd ma għandu jitqies li jkun ħati ta' reat kriminali minħabba f'xi att jew omissjoni li, fil-ħin meta jkun sar, ma jkunx jikkostitwixxi reat bħal dak, u ebda piena ma għandha

¹² Ara ukoll Il-Pulizija vs George Debono – 20/01/

tigi mposta għal xi reat kriminali li tkun aktar severa fi grad jew xorta mill-ogħla piena li setgħet tigi mposta għal dak ir-reat fiz-żmien meta jkun gie magħmul.”

Dak li huwa imhares fil-Kostituzzjoni allura huwa l-jedd ta' kull persuna akkuzata b'reat illi ma tigix imposta fuqu ebda piena aktar harxa mill-ogħla piena li setgħet tigi imposta fuqu fiz-żmien meta ikun gie kommess dak ir-reat. Dan necessarjament ifisser allura li ghalkemm l-akkuzat jista' jigi ipprocessat għall-att jew omissjoni li kien jikkostitwixxi reat meta sehh, ghalkemm illum dak l-att jew omissjoni ma ghadux meqjuz bhala reat kriminali, madanakollu huwa ma jistax jigi iprocessat u jehel piena aktar harxa minn dik li kienet tapplika għalih fiz-żmien li sehh dak ir-reat ghalkemm dik il-piena tkun sussegwentment saret iktar harxa b'emendi fil-ligi li jigu affetwati wara l-kummissjoni ta'-istess. Fuq kollox ghandu jinghad illi il-pussess u il-garr ta' arma tan-nar barra minn xi fond u allura l-uzu ta'-istess minghajr licenzja tal-Kummissarju tal-Pulizija jikkostitwixxi reat taht l-Att Dwar l-Armi u kwindi l-akkuzat ma jistax jikkontendi illi l-att magħmul minnu illum ma huwiex reat billi illum huwa regolat minn ligi ad hoc li tirregola l-uzu u l-pussess ta'-l-armi tan-nar. [sottolinejar tal-Qorti]

Issir riferenza għas-sentenza tal-Qorti tal-Appell Kriminali **II-Pulizija vs Martin Cassano**¹³:

Illi fir-rigward tat-tieni akkuza li hija imfassla fuq l-artikolu 97(f)(i) tal-Kapitolu 10 tal-Ligijiet ta' Malta, ghandu jinghad illi din id-disposizzjoni tal-ligi giet imhassra permezz tar-regolament 42 ta'-Avviz Legali 376 ta'-2012. Illi allura ghalkemm l-att vjolatatur kien jikkostitwixxi reat meta sehh, dan madanakollu ma baqax jigi hekk ikkunsidrat ftit xhur wara l-akkuza. Illi in linja mad-decizjonijiet mogħtija mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem il-qorti għalhekk hija tal-fehma illi fir-rigward tat-tieni akkuza ebda piena ma ghandha tigi imposta fuq l-appellanti u l-Qorti għaldaqstant ser tghaddi biex tastjeni milli tiehu konjizzjoni ta' dina l-akkuza u tirrevoka konsegwentement is-sejbien ta' htija li wasslet għaliha l-Ewwel Qorti: “The Court notes that the obligation to apply, from among several criminal laws, the one whose provisions are the most favourable to the accused is a clarification of the rules on the succession of criminal laws, which is in accord with another essential element of Article 7, namely the foreseeability of penalties The Court affirms that Article 7 § 1 of the Convention guarantees not only the principle of non-retrospectiveness of more stringent criminal laws but also, and implicitly, the principle of retrospectiveness of the more lenient criminal law. That principle is embodied in the rule that where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant.”¹⁴

Illi l-Qorti Ewropeja kompliet tirraferma din il-posizzjoni fid-decizjonijiet li segwew bhal Öcalan v. Turkey deciza fit-18 ta' Marzu, 2014 fejn gie ritenut: “The court notes that

¹³ Per Onor. Imhallef Dr. Edwina Grima; Appell Nru: 497/2016, Deciz 28 ta' Settembru,

¹⁴ Scoppola vs Italy App.No.12049/03 – 17/09/2009 (Grand Chamber)

the principle of retrospectiveness of the more lenient criminal law, considered by the court in Scoppola (no. 2), as guaranteed by Article 7, is embodied in the rule that where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant.¹⁵

Sahansitra il-Professur Mamo fin-noti tieghu ghad-dritt penali kien tal-fehma illi: "In fact, in the hypothesis under discussion, though the liability was contracted while the former law was still in force, the prosecution and sentence would be carried on and pronounced after such law has been repealed. So that, if such law were to be applied to such prosecution and sentence, it would be given an effect beyond its legal limit of operation. It is thus not by way of an equitable retrospective application of the new law but rather on the grounds that the operation of the old law cannot extend beyond its repeal (divieto di ultra-attivita') that, in this hypothesis, the criminal proceedings cannot be maintained in respect of the act which, at the time of the trial, has ceased to constitute a criminal offence.¹⁶" B'hekk illum ghalkemm il-prosekuzzjoni tar-reat abrogat fil-mori tal-proceduri jista' jitkomplu u dan fiddawl ta' dak li jipprovdli l-Att dwar l-Interpretazzjoni, madanakollu l-istess qieghed jitqies illi huwa leziv tal-artikolu 7 tal-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem. Dan ghaliex il-ligijiet u r-regolamenti sanitarji gew imfassla f'ligi gdida permezz ta' l-imsemmi avviz legali li biddel b'mod drastiku il-ligi sanitarja u dan sabiex jigu implimentati d-direttivi tal-Unjoni Ewropeja firrigward biex b'hekk gew fis-sehh ir-Regolamenti dwar ir-Rendiment ta' l-Energija fl-Uzu tal-Bini. [sottolinejar tal-Qortij]

Fil-kaz in dezamina l-kondotta tal-imputat baqghet tikkostitwixxi reat, izda dak li sehh kien biss li minflok baqa' reat taht l-Att dwar il-Bank Centrali ta' Malta, dan tnehha minn dan l-Att w minflok iddahhal taht il-Kodici Kriminali. Ghalhekk imiss jigi kkunsidrat jekk bl-emendi kif introdotti bl-Att XLIX tal-2016,¹⁷ kienx hemm tibdiliet fis-sustanza tar-reat li aggravaw ir-reat originali jew il-piena li kien igorr dak ir-reat. Jinghad mill-ewwel li l-piena baqghet l-istess u cioe` r-reat baqa' punibbli bi prigunerija ta' bejn tlettax-il xahar u hames snin.

Illi bl-Att XLIX tal-2016 giet trasposta fil-ligi Maltija Id-Direttiva 2014/62/UE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Mejju 2014 dwar il-protezzjoni tal-euro u muniti oħra kontra l-iffalsifikar permezz tal-ligi kriminali, u li tissostitwixxi d-Decizjoni Kwadru tal-Kunsill 2000/383/ĠAI.

Fit-Tieni Qari tal-Abozz ta' Ligi li Jemenda l-Att Dwar il-Bank Centrali ta' Malta (Emenda Nru.2), l-Onor. Ministru tal-Finanzi ddeskriva r-ratio legis ghat-tibdiliet li sussegwentement gew introdotti bl-Att XLIX tal-2016¹⁸:

¹⁵ Ara ukoll Ruban vs Ukraine – 12/07/2016 u Koprivnikar vs Slovenia

¹⁶ Informazzjoni miksuba minn artikolu minn The Times of Malta data 27 ta' Frar 2017 "The more lenient criminal law" miktub mill-Prof. Kevin Aquilina.

¹⁷ Dawn l-emendi gew proposti bl- Abbozz ta' Ligi li jkompli jemenda l-Att dwar il-Bank Ċentrali ta' Malta (Emenda Nru 2), Abbozz Nru. 171 tal-2016 (f'dak li jirrigwarda l-Ewwel Parti li thassar disposizzjonijiet that il-Kap.204) kif ukoll fi stadju ta' Kumitat permezz ta' Klawzoli Nru.6 u 7 fis-Seduta Nru. 429 tad-19 t'Ottubru, 2016.

¹⁸ Seduta Nru 429, L-Erbgħa, 19 ta' Ottubru, 2016

“...illum qed inressaq quddiem il-Kamra tar-Rappreżentanti l-Abbozz ta’ Liġi msejjaħ “Att biex ikompli jemenda l-Att dwar il-Bank Ċentrali ta’ Malta, Kap. 204”, però qabel ma niġi biex nispjega l-emendi li qed nipproponi, nixtieq nagħmel riferenza qasira għad-Direttiva tal-Unjoni Ewropea li minnha qed jirriżultaw dawn l-emendi u li eventwalment se jiġu riflessi kemm fl-Att dwar il-Bank Ċentrali ta’ Malta kif ukoll fil-Kodiċi Ċivili.

Id-Direttiva tal-Unjoni Ewropea tal-2014 tiffoka fuq il-protezzjoni tal-ewro u muniti oħrajn kontra l-falsifikazzjoni permezz ta’ liġi kriminali. L-oġġettivi ta’ din id-Direttiva huma ntiżi biex jiġu stabbiliti regoli, kemm f’dawk li jikkostitwixxu offiżi kriminali kif ukoll sanzjonijiet rigward il-falsifikazzjoni tal-ewro u ta’ muniti oħra, biex jiġu introdotti dispożizzjonijiet komuni bil-għan li tissaħħaħ il-ġlieda kontra offiżi marbutin mal-istess falsifikazzjoni tal-flus, biex jiġu mtejba l-investigazzjonijiet li għandhom isiru mill-awtoritajiet f’dan il-qasam kriminali kif ukoll biex tiġi żgurata koperazzjoni kontinwa u aħjar bejn l-awtoritajiet rilevanti tal-istati membri kollha tal-Unjoni Ewropea.

L-għan tal-Abbozz ta’ Liġi li għandna quddiemna illum hu li jitneħħew mill-Att dwar il-Bank Ċentrali ta’ Malta dispożizzjonijiet li jirrigwardaw il-falsifikazzjoni u t-tqegħid ta’ flejjes fiċ-ċirkolazzjoni għax id-dispożizzjonijiet li hemm bħalissa huma relatati direttament mal-investigazzjoni u mal-amministrazzjoni tal-ġustizzja, u għaldaqstant huma aktar f’posthom fil-Kodiċi Kriminali. Wieħed mill-artikli li se jiġu trasferiti mill-Att dwar il-Bank Ċentrali ta’ Malta għall-Kodiċi Kriminali hu artiklu 45, li jirrigwarda sanzjonijiet dwar falsifikazzjoni u tqegħid ta’ flejjes fiċ-ċirkolazzjoni, u dan l-artiklu jipprovdi għal tliet livelli ta’ sanzjonijiet. L-ewwel nett għandna priġunerija ta’ bejn sentejn u disa’ snin għal min jinqabad jiffalsifika jew imexxi flus foloz b’mod konxju. Imbagħad ikun hemm ukoll priġunerija ta’ bejn xahrejn u tliet snin għal min jinqabad imexxi flus foloz imma li jipprova li fiż-żmien li ġew il-flus f’idejha ma kienx jaf li tali flus kienu foloz. Imbagħad hemm priġunerija ta’ bejn sentejn u għaxar snin għal min jinqabad juża b’mod konxju xi faċilitajiet jew materjal biex jimmanifattura xi flus foloz.

Artiklu 46, li wkoll se jiġi trasferit mill-Att dwar il-Bank Ċentrali ta’ Malta għall-Kodiċi Kriminali, jirrigwarda sanzjonijiet fuq il-pussess ta’ biljetti ta’ flus iffalsifikati. Dan l-artiklu jipprovdi priġunerija ta’ bejn 13-il xahar u ħames snin għal min, mingħajr awtorità legali jew inkella mingħajr skuża legittima jew raġonevoli, jixtri jew jirċievi mingħand xi persuna flus iffalsifikati u b’hekk ikollu l-pussess tagħhom.”

Illu minkejja din l-affermazzjoni, u cioe` li l-artikolu 46 kien ser jiġi trasferit biss mingħajr ma ssemma’ li kien ser ikun hemm xi bdil fiddispożizzjoni relattiva meta kien ser issib postu fil-Kodiċi Kriminali, meta gie promulgat bil-Klawzola 7 fis-Seduta Nru.429 tad-19 t’Ottubru, 2016, l-artikolu 188C tal-Kodiċi Kriminali - li jittrasponi l-artikolu 3.1.c. tad-Direttiva¹⁹ - l-artikolu l-gdid ma baqax jirrispekkja in toto l-artikolu

¹⁹ Artikolu 3 - Reati

1 L-Istati Membri għandhom jieħdu l-miżuri meħtieġa sabiex jiżguraw li l-aġir li ġej, meta jsir intenzjonalment, ikun punibbli bħala reat kriminali: (a) kull fabrikazzjoni jew alterazzjoni frawdulenti ta’ munita, ikun x’ikun ilmezz li jintuża; (b) it-tqegħid fiċ-ċirkolazzjoni b’mod frawdulenti ta’ munita falza; (c) l-importazzjoni, l-esportazzjoni, it-trasport, li tirċievi jew tikseb munita falza bl-iskop li titqiegħed fiċ-ċirkolazzjoni u bl-għarfien tal-kontraffazzjoni tagħha.

46 tal-Kapitolu 204 tal-Ligijiet ta' Malta. Fid-disposizzjoni għida thalliet barra l-frazi "jew inkella mingħajr skuza legittima jew raġonevoli". Dan meta mhemmx dubbju li l-element intenzjonali jippervadi ddisposizzjoni tal-Artiolu 3.1.c. tad-Direttiva.

Fil-fatt l-artikolu 188C jghid biss:

Kull min mingħajr awtorità legali jimporta, jesporta, jittrasporta, jixtri, jirċievi, jikseb jew ikollu taħt il-kustodja jew pussess tiegħu flus falsifikati li jkun jaf li l-istess ikunu falsifikati jehel,,

meta l-artikolu 46 tal-Att dwar il-Bank Centrali ta' Malta kien jipprovdi:

Kull min mingħajr awtorita legali jew mingħajr skuza legittima jew raġonevoli (liema prova tkun fuq l-akkuzat) jixtri jew jircevi mingħand xi persuna jew ikollu fil-kustodja jew pussess tiegħu biljett tal-flus falsifikat, li jkun jaf li l-istess ikun falsifikat, jehel meta jinsab hati

Għalkemm l-artikolu għid 188A, li hu korollarju għall-artikolu 188C, hu msejjes fuq l-element intenzjonali u cioe` li l-pussessur, importatur, esportatur etc. tal-flus ffalsifikati, jkun konxxju tal-fatt li l-flus ikunu ta' valuta legali u mahsuba għac-cirkolazzjoni meta jirrikjedi li "flus" hija referenza għall-karti tal-flus euro.... maħsub jew hi maħsuba għac-cirkolazzjoni bħala valuta legali", il-fatt li mid-disposizzjoni l-għida tnehhiet id-difiza ta' skuza legittima jew raġonevoli, jirrendi l-artikolu 46 tal-Kapitolu 204 tal-Ligijiet ta' Malta bħala d-disposizzjoni aktar favorevoli għallakkuzat. Fid-dawl tas-sentenzi citati l-eccezzjoni tad-difiza mhux qed tintlaqa' filwaqt li qed jigi deciz li għandha tibqa' tapplika d-disposizzjoni tal-artikolu 46 tal-Kapitolu 204 tal-Ligijiet ta' Malta. Għalhekk il-Qorti ser tghaddi biex tevalwa l-provi migjuba in sostenn tal-ewwel imputazzjoni.

In the present case, the accused has been charged with both articles 45 and 46 of Chapter 204 of the Laws of Malta. The corresponding articles found in the Criminal Code are articles 188B and 188C. As has been stated in the case which has been just mentioned the charges which are being adduced to the accused still constitute an offence and so the same conclusion will be reached by this Court.

Having said all this, from the acts of the case it has resulted that the accused undoubtedly had in his possession 2 fifty euro notes which were counterfeit and that he gave them to Judith Bakoush. The Court deems that Judith Bakoush's testimony is truthful particularly because she has been consistent; whilst the version given by the accused is not quite convincing particularly when he states that maybe Judith Bakoush has reported him because she is mad at him. If he said that he had only met her once, were this version to be true, what reason could there be for her to be mad at him?

The issue which remains to be decided is whether the accused had the knowledge that such notes were forged. The Court is convinced that the accused had such knowledge: (I) it is immediately evident upon looking at the notes exhibited in the case that they are counterfeit, particularly because there is a red circle on both of them and even their feel is different. The accused must have been fully aware that

they were counterfeit; (ii) the accused approached Judith Bakoush, whom he had met beforehand, and asked her to exchange money for him.

3rd Charge

By means of this charge the accused is being accused of defrauding Judith Bakoush.

On the basis of the proof which has been produced the Court deems that this charge has been sufficiently proven. Infact it has resulted that the accused fully aware that the notes he had in his possession were forged, asked Judith Bakoush to exchange money for him which she did.

4th Charge

No evidence was brought forward to prove such charge and thus the accused will be acquitted from same.

Punishment

The Court is taking into consideration the circumstances of the case, the clean criminal record of the accused and the nature of the offences. Deems that in the circumstances the accused should be condemned to a suspended prison sentence.

Decide

For the above mentioned reasons, the Court after having seen articles 45(1) and 46 of Chapter 204 of the Laws of Malta, which provisions today are contained in articles 188B and 188C of Chapter 9 of the Laws of Malta and articles 308 and 310(1)(c) of Chapter 9 of the Laws of Malta finds the accused guilty of the first, second and third charges brought against him and condemns him to two (2) years imprisonment which by application of article 28A of Chapter 9 of the Laws of Malta are being suspended for a period of three (3) years. The accused is not being found guilty of the fourth charge brought against him and thus he is acquitted from same.

By application of article 533 of Chapter 9 of the Laws of Malta, Nicholas Obaseki is being ordered to pay the expenses related to the appointment of Mr Adrian Bonello as expert in these proceedings, upon receipt from the Registrar of the Criminal Court and Tribunals.

The Court orders forfeiture of the notes exhibited and furthermore orders that the notes which have been exhibited in the acts of this case (Dok ECM 5) shall be consigned by the Registrar of the Court to a person appointed for such a purpose by the Central Bank of Malta, so that same Bank may destroy or otherwise dispose of in such a manner and under such conditions as it may determine in accordance with article 50(2)(3) of Chapter 204 of the Laws of Malta

The Court has explained to the accused the consequences if he commits an offence within the operative period of this judgment.

Dr Josette Demicoli LL.D
Magistrate