



**Court of Magistrates (Malta)
As A Court of Criminal Judicature**

Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

Today, the 28th day of January, 2019

**The Police
(Inspector Trevor Micallef)**

-vs-

**Vladimirs Puzanovs, holder of Latvian passport bearing number LV
4028089.**

Criminal Proceedings No. 653/2016

The Court,

Having seen the charges brought against the accused **Vladimirs Puzanovs**, who is being charged with having:

On the 16th December, 2016, at about four in the morning (04:00am) in St. Andrews Road, St. Julians, and/or in the vicinity, drove vehicle registration number FDK 679, make Hyundai:

1. Through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations, caused the death of **Luc Clous** (Article 225 Chapter 9).
2. On the same date, time, place and circumstances through imprudence, carelessness, unskillfulness in his art of profession, or non-observance of

regulations caused involuntary damages on vehicle registration number FDK 679, of make Hyundai, to the detriment of John Tabone and/or other persons and/or other entities (Article 328 (a) Chapter 9).

3. On the same date, time, place and circumstances drove vehicle registration number FDK 679, of make Hyundai, in a:
 - (a) dangerous manner, (b) reckless manner (c) negligent manner (Article 15 (1) (a), (2) (3) Chapter 65).
4. On the same date, time, place and circumstances after being involved in an accident where Luc Clous lost his life, did not stop, and if required did not give to the police officer, local warden or another person, who had a reasonable grounds for so requiring, his name and address, the details of the vehicle, and the details of the insurer of the vehicle.
5. On the same date, time, place and circumstances drove vehicle registration number FDK 679, of make Hyundai, in an excessive speed (Article 127 L.S 65.11)

The prosecution requested that said person be disqualified from holding or obtaining on a driving licence for a period that the Court deems appropriate.

Having Considered:

Whereas having heard the accused plead guilty to all charges brought against him notwithstanding the fact that the Court warned him in the most solemn manner of the legal consequences of his guilty plea, and after having given him sufficient time within which to reconsider and withdraw his guilty plea;

Having heard witnesses;

Having seen all the acts and documents exhibited;

Having heard the prosecution and defence counsel make their submissions;

Considers:

Having heard the guilty plea of the accused to the charges brought against him, the Court has no alternative but to declare the accused guilty of the said charges.

The court notes that with respect to the first three and fifth charges the principle of formal concurrence of offences finds application. In **II-Pulizija vs John Pace**, the Court of Criminal Appeal decided:¹

Illi dina l-ipotezi tal-konkors formali tar-reati giet imfissra fl-artikolu 78 tal-Kodici penali Taljan tal-1889:

“Colui che con un medesimo fatto viola diverse disposizioni di legge, e’ punito secondo la disposizione che stabilisce la pena piu’ grave.”

Dwar dan il-Professur Mamo fin-Noti tiegħu dawar il-Proċedura (paġina 45) jgħid hekk:

‘In any such case if the agent is tried for any one of the several violations of the law arising out of that fact, be it even the least serious, and a judgement is given, it shall not be lawful to subject the agent to another trial for the more serious violations. This principle, first expressly affirmed in ‘Rex versus Rosaria Portelli’ has now become settled law.’

“Fil-fatt fit-2 ta’ Diċembru, 1939, l-Imħallef Harding fil-każ ‘**Camilleri versus Cilia**’ kien qal li huwa prinċipju stabbilit fil-ġurisprudenza tagħna li meta mill-istess fatt, **mibni fuq l-istess intenzjoni**, jinkisru żewġ drittijiet jew aktar, **m’hemmx pluralita’ ta’ offiżi iżda offiża waħda** bil-vjolazzjoni li jkunu iżgħar jkunu assorbiti fil-vjolazzjoni l-aktar serja. U jekk persuna tkun iġġudikata għal waħda mill-vjolazzjonijiet u jkun meħlus jew jinsab ħati, is-sentenza iżżomm kull prosekuzzjoni ġdida li tista’ ssir għal kull vjolazzjoni oħra, ukoll jekk il-vjolazzjoni li jkun tressaq fuqha l-ewwel darba tkun l-anqas waħda serja.²”

In another judgement by the said Court in the names **II-Pulizija vs Antoine Cassar** it was stated:³

L-ewwelnett din il-Qorti tirreferi għas-sentenza citata mill-Avukat Generali **Ir-Repubblika ta’ Malta v. Michael Bonnici u Joseph Azzopardi**⁴ fejn jinghad illi:

“... taht il-ligi tagħna, huwa rikonoxxut illi att uniku, cioe` *actus reus* wiehed jista’ jaghti lok għal ksur ta’ aktar minn disposizzjoni waħda tal-ligi. Infatti, huwa prinċipju notorju fid-dritt penali tagħna, kif ukoll f’sistemi esteri oħra, illi l-istess att doluz jista’ jikser diversi disposizzjonijiet tal-ligi u jikkostitwixxi aktar minn delitt wiehed.”

¹ Per The Hon. Mdme. Justice Dr. Edwina Grima, Delivered on the 21.01.2016; Criminal Appeal No. 480/2015.

² **II-Pulizija vs Gregory Paul Brincat et** – Inferior Appeal: 20/09/2012

³ Per The Hon. Mr. Justice Dr. David Scicluna, Delivered on the 22.09.2009; Criminal Appeal No. 197/2007

⁴ Criminal Appeal: 11.01.1994.

In **Il-Pulizija vs Joseph Mifsud** the Court held:⁵

Għal dik li hi plurarita' ta' akkużi, il-Qorti qed timxi mad-duttrina tal-konkurs formali jew ideali kif esposta mill-**Professor Mamo** fl-Ewwel Parti tan-Noti tiegħu dwar il-Ligi Kriminali. Infatti l-Professor Mamo jikteb:

'The first and typical form of this concursus arises where one and the same fact constitutes an offence under two or more provisions of the law. (In such a case) the accused is punished in accordance with the provision establishing the heaviest punishment. Two elements are necessary to constitute this form of ideal concursus i.e. one fact and several violations of the law.

Omissis

So, in order that the violations of the several provisions of law may constitute and be dealt with as one single offence, it is essential that they be the result of one single action on the part of the offender and of one and the same criminal determination.....That which therefore prevails in determining whether the fact was one is the assessment of the intention and the purpose of the agent.'⁶

Fil-każ odjern jidher li għalkemm hemm għadd ta' imputazzjonijiet, l-intenzjoni kriminali kienet waħda.

With regards to punishment the Court took into consideration the accused's admission of guilt, his clean criminal record, the nature of the offences of which he stands charged and the circumstances of the case, in particular, the recommendations made by the Officer for Probation and Parole who deemed that the interests of society are better served through the imposition of a community service order instead of a custodial sentence.⁷

The Court gave further consideration to the submissions made by the family of the deceased in particular that they are not insisting on a custodial sentence being imposed. Moreover the Court could not but consider the tragic and unfortunate circumstances of this case where, as attested by witnesses being driven by the accused, none ever saw the victim crossing the road nor realised that a person had been hit. The findings by the court appointed expert Mario Buttigieg were also taken into account particularly, his findings regarding the poor street lighting, the position of the trees along the road and the adverse weather conditions compounded by the fact that the deceased was wearing black

⁵ Qorti tal-Magistrati (Malta) Bħala Qorti ta' Gudikatura Kriminali per Onor. Magistrate Dr. Lawrence Quintano, Delivered 15.05.2005.

⁶ Professor Mamo: Notes on Criminal Law Part I pages 151 and 152.

⁷ Fol.293 et seq.

and whilst crossing the road, chose not to use the pedestrian crossing which was only 9.2 meters away from the point of impact; factors which undoubtedly contributed to this tragedy.

The toxicological results pertaining to the victim also weighed in on the Court's considerations; wherein it was established that the victim had been found with a blood alcohol concentration which was twice that of the drink/drive limit and consistent with it producing a state of drunkenness in a normal social drinker. Moreover the same results also concluded that the victim had used cannabis or cannabis resin at some time prior to his death and he may have been experiencing effects due to the drug at the time of the incident.⁸

Whereas these findings in no way detract from the culpability of the accused, they must be taken into account when calibrating the punishment which is to be meted out. Sight cannot be lost of the fact that a human life was lost; a loss which could have been averted had the accused exercised due prudence and caution whilst driving the vehicle in the obtaining circumstances and in the conditions mentioned of which has already been made above.

In view of the above, the Court, after having seen articles 17(b)(h), 31, 225 and 328(a) of the Criminal Code, Article 15(1) of the Traffic Ordinance, Chapter 65 of the Laws of Malta and regulations 67(1) and 127 of The Motor Vehicles Regulations (S.L. 65.11), finds the accused guilty of the charges brought against him and by application of section 11 of Chapter 446 of the Laws of Malta, places the accused on a community service order.

This community service order shall require the accused to perform unpaid work or unpaid work and training, as recommended in the Probation Officer's report, for a period of four hundred and fifty (450) hours as is being specified in the order.

In terms of article 11(4) of the Probation Act, the court has explained to the accused in ordinary language the effect of the order and that should he fail to comply therewith or commits another offence, he will be liable to be sentenced for the original offence.

⁸ Fol.282

In terms of article 11(5) of the Probation Act, orders that copies of the community service order are given to the offender, to the Director of Probation Services, the community service officer assigned to the case by the Director of Probation Services, and to the agencies and authorities responsible for the supervision of the community service order.

Furthermore in terms of article 412D of the Criminal Code, the accused is being placed under a treatment order for a period of two (2) years so that he may be afforded the necessary psychological help needed.

After having seen article 15(2) of the Traffic Regulation Ordinance, disqualifies the accused from holding or obtaining a driving licence for a period of two (2) years commencing today.

Finally in terms of article 533 of the Criminal Code, condemns the accused to the payment of €2,335.23 representing costs incurred in the employment in the proceedings of any expert or referee, including such experts as would have been appointed in the examination of the process verbal of the inquiry. This computation of expenses does not include the expenses incurred in connection with the appointment of Michael Scott-Ham. Thus, having seen article 392C of the Criminal Code, orders the Registrar to determine the said costs and to proceed to their recovery from the accused.

For this purpose, the Court orders that a copy of this judgement be notified to the Registrar of Courts.

Finally the Court orders that a copy of this judgement be notified to the Director of Probation Services.

Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)
Magistrate