

**IN THE COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

MAGISTRATE

DR RACHEL MONTEBELLO B.A. LL.D.

THE POLICE

(Inspector James Grech)

-Vs-

VASIL JIKURASHVILI [Identity Card Number 109689A] also known as
IGNAS NAIDZINAVICIUS [Identity Card Number 39504A]

Today, 26th June 2019

The Court,

Having seen that **VASIL JIKURASHVILI** holder of Georgian passport number 15AA09122 and Maltese Identification number 109689A,

Also known as

IGNAS NAIDZINAVICIUS of 34 years, son of Odetas and Niene, born in Lithuania on the 21st of November 1983, residing at Fl 1C, Savoy Terrace, Triq Sir Hilderbrand

Today, 26th June 2019

Magistrate Dr. Rachel Montebello B.A. LL.D.

Oakes, Gzira and holder of Lithuanian passport number 565134DOI and Maltese Identification number 39504A,

Was accused of having, in the Maltese Islands, during these past years, with several acts committed at different times and which constitute violations of the same provision of the law, and committed in pursuance of the same design:

1. With the intent to deceive, made any false statement, or gave any false information, or produced any false document, for any of the purposes of the Identity Card and Other Identity Documents Act, Chapter 258 of the Laws of Malta, knowing the same to be false and/or forged an identity document or any other document whatsoever required by, or intended for, any of the purposes of the Act;
2. Also with having forged, altered or tampered with any passport, identity card or residence permit, or used or had in his possession any passport, identity card or residence permit which he knew to be forged, altered or tampered with;
3. Also with having, in order to gain any advantage or benefit for himself or others, in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information;
4. Also with having committed any other kind of forgery, or knowingly made use of any other forged document;
5. Also with having forged any document or true copy of a document or an entry made in pursuance of the Immigration Act, Chapter 217 of the Laws of Malta;

The Court was requested to treat the accused as being a recidivist in terms of Art. 49 and 50 of Cap. 9 of the Laws of Malta, after being sentenced for an offence by judgement dated 10th December 2013, which has become res judicata.

Having seen that in virtue of a decree dated 26th July 2018, the proceedings were ordered to be conducted in the English language;

Having seen the consent granted by the Attorney General in terms of Article 370(4) of the Criminal Code for these proceedings to be dealt with summarily;

Having heard the evidence and seen all the documents exhibited in the acts of the proceedings;

Having seen all the acts of the proceedings;

Having heard the oral submissions of both the Prosecution and the defence during the hearing of the 8th May 2019;

Having seen that the case was adjourned for today for the delivery of judgement;

Having considered;

Facts of the Case and Evidence

The facts giving rise to the charges in this case, while relatively straightforward and mostly uncontested, emerge largely from the statement given by the accused during his interrogation by the Police on the 25th July 2018.

The accused, a Georgian national, born as Vasil Jikurashvili in Tbilisi on the 4th January 1980, came to Malta in 2005 in order to find employment and reside here. When he encountered difficulty, as a third party national, to obtain a permit to remain in Malta for more than a couple of months at a time and consequently to find stable employment, he made arrangements with a third party in order to purchase a Lithuanian passport. This passport was handed to him against payment and accused admits that he knew that this passport contained details of a person other than himself, a certain Ignas Naidzinavicius, a Lithuanian national born in Lithuania on the 21st November 1983.

From the acts of the proceedings, particularly from the testimony of Josianne Sultana¹ it results that, with this Lithuanian passport in hand, the accused presented himself to the Electoral Office² on the 29th March 2007 as Ignas Naidzinavicius and presented the said passport to the Electoral Office to apply for a Maltese Identity Card in the name of said Ignas Naidzinavicius, personally.

On the basis of this application, the accused was issued with a Maltese Identity Card with Number 039504A in the name of Ignas Naidzinavicius but containing a photo of Vasil Jikurashvili, the accused (hereinafter referred to as the “identity card”). The identity of Ignas Naidzinavicius as assumed by the accused, is manifested *inter alia* in the document at fol. 15 of the acts of the proceedings.

Josianne Sultana testified further that on the 7th April 2007, Ignas Naidzinavicius applied to the Electoral Office in order to correct the details of the place of birth

¹ 8th August 2018.

² The authorised officer for the purposes of the Act is the person authorised by the Minister to issue identity documents. Until 2013, this function was delegated to the Electoral Office and subsequently, to Identity Malta – testimony of Josianne Sultana, fol. 54

indicated on the identity card³, and on the 9th April 2010 had also called personally at the Electoral Office to apply for a change in the address indicated on the said identity card. This new identity card was valid until the 31st August 2014⁴.

From the acts of the proceedings it also results that the accused, again purporting to be Ignas Naidzinavicius, made use of the said identity card in order to purchase a vehicle Peugeot 106 with registration number OAS-515 and license it in the name of Ignas Naidzinavicius, on the 22nd June 2009. Karen Cremona confirmed in her testimony⁵ that the vehicle logbook, identity cards of the parties and a copy of the insurance certificate covering the vehicle would need to be produced to the transport authorities, in order to effect the transfer of a vehicle. Indeed, amongst the documents that were indeed presented to the transport authorities in order to register the transfer of this vehicle in the name of Ignas Naidzinavicius, as exhibited by witness Karen Cremona, the accused presented the identity card of Ignas Naidzinavicius bearing the photo of Vasil Jikurashvili. The said vehicle was not transferred to third parties but remained licensed in the name of Ignas Naidzinavicius until the 30th March 2011⁶ when it was scrapped.

It results further that in April 2011 the accused also purchased another vehicle, an Opel Astra with registration number VIP-309, using the said identity card issued in the name of Ignas Naidzinavicius, which vehicle was eventually transferred, purportedly by the said Ignas Naidzinavicius, to the accused's wife Kevetan Khutsishvili on the 4th November 2015. Again, the documents exhibited by witness Karen Cremona, being the same documents produced to the authorities in

³ Dok. JS3 a fol. 64.

⁴ Dok. JS4 a fol. 65 and 66.

⁵ 8th August 2018.

⁶ Fol. 77 u Dok. KC1 a fol. 79 *et seq.*

connection with the acquisition and transfer of the said vehicle, include the identity card issued in the name of Ignas Naidzinavicius bearing photo of the accused, Vasil Jikurashvili⁷.

This same vehicle, VIP-309, had been involved in a hit-and-run accident while it was being driven by the accused on the 20th March 2013. The accused was questioned by PS 285 Geoffrey Cutajar on the same day, admitted that he had been driving the vehicle and identified himself to the said Police Officer as Ignas Naidzinavicius, by producing the identity card⁸. PS 285, during his testimony before the Court, identified Ignas Naidzinavicius who he had questioned, as the accused.

From the evidence adduced⁹, it also results that the accused, once again purporting to be Ignas Naidzinavicius, was condemned by a judgement dated 10th December 2013 on charges of having, on the 1st November 2013, driven the said vehicle VIP-309, licensed in the said name of Ignas Naidzinavicius, in contravention of traffic regulations.

Accused also used the identity card issued in the name of Ignas Naidzinavicius when he entered into a two-year contract with Melita Limited on the 4th October 2010 under the same name¹⁰, for the subscription to a mobile phone service with number 77021969. From the evidence adduced it results that the accused provided this same number, registered in the name of Ignas Naidzinavicius, as his own mobile phone number when his wife filed a Police report in connection with an

⁷ Fol. 93.

⁸ Dok. GC1 and GC2 – testimony of PS285 Geoffrey Cutajar, 3rd October 2018.

⁹ Testimony of Inspector James Grech, 3rd October 2018, Dok. JG14.

¹⁰ Testimony of Dr. Emily Abela, 8th August 2018 – vide Dok. EA1 and fol 73.

armed robbery that took place in their residence on the 13th August 2017. The supply of this mobile number registered in the name of Ignas Naidzinavicius, by the accused Vasil Jikurashvili to the Police, in effect led to the discovery that the same person, that is the accused, was making use of two different identities, and in turn, to these present charges being brought against him.

Inspector James Grech testified¹¹ in connection with the investigations that led to the arraignment of the accused, and also regarding the information and documents that he received from Interpol regarding the said Ignas Naidzinavicius, which included a photo of the original person who, evidently, is not the same person as the accused.

Having considered;

That the evidence brought by the Prosecution includes the voluntary statement made by the accused himself to the Police during the investigations conducted in connection with the present charges, which statement is effectively tantamount to an unqualified confession on the part of the accused in terms of Article 658 *et seq.* of the Criminal Code. It is uncontested that this confession is admissible in evidence, since it was undoubtedly made voluntarily and in line with the other requisites of the said legal provision, as well as after accused was offered all the necessary legal assistance in line with the required procedural safeguards to his right to a fair hearing.

The Court of Criminal Appeal, in a judgement dated 26th March 2009 in the names **Il-Pulizija vs Robert Attard**, while referring to a confession made by the accused, held that:-

¹¹ 8th August 2018.

“Din id-dikjarazzjoni tieghu, ladarba giet maghmula volontarjament tikkostitwixxi l-prova regina w ma hemmx ghalfejn tkun akkompanjata minn xi prova ohra bhal ma hi s-sejbien fiziku tad-droga fil-pussess tieghu.”

Legal Considerations

The defence, in its submissions made orally during the hearing of the 8th May 2019, submitted *in primis* that since the accused is charged *inter alia* with forgery of a document and with the production, use and possession of a forged or false document, it was necessary for the Prosecution to produce the actual documents averred to be false, that is the Maltese Identity Card and the Lithuanian Passport both issued in the name of Ignas Naidzinavicius.

The Court observes, however, although Article 558 of Chapter 12¹² requires that the parties should produce the best evidence that they are able to produce, which evidence in this case would of course be the actual document averred to be forged or false, the best evidence rule does not exclude other evidence being brought which, in the circumstances, would be considered to be the best evidence. Clearly, in this case, the failure to produce the original document is a direct consequence of the fact that, as the accused himself confessed in his statement released to the Police on the 25th July 2018¹³, he had discarded all documents issued in the name of Ignas Naidzinavicius¹⁴ when he regularised his status in Malta in his proper name and using his proper identity of Vasil Jikurashvili. The Court consequently

¹² Rendered applicable to criminal proceedings by virtue of Article 520(1) of the Criminal Code.

¹³ Dok. JG13, transcribed as Dok. MM1.

¹⁴ “I threw everything” – fol. 160.

deems that the production of the actual documents averred to be false was not only rendered impossible by the actions of the accused himself, but also unnecessary in view of the accused's admission, indeed confession, that he used the Lithuanian passport in order to apply for the issue of a Maltese identity card, and that he used the identity card issued in the name of Ignas Naidzinavicius on several occasions for various purposes. This alone already satisfies the Court that the Prosecution has brought sufficient evidence of the existence of the documents averred to be false.

Moreover, and in any event, the Court also considers that the production, use and possession of the allegedly false or forged documents have been amply proven by means of the testimony of various witnesses who exhibited in the acts of these proceedings true copies of the documents submitted by the accused himself when using the identity of Ignas Naidzinavicius. This line of defence is therefore unfounded.

Having considered;

With regard to those aspects of the first, second, fourth and fifth charges which attribute to the accused the crime of forgery, namely of having committed forgery of a passport, identity card or other document or knowingly made use of a forged document, the Court makes the following considerations.

- The Lithuanian Passport

It is clear from the evidence and the documents exhibited in acts of these proceedings, that the accused, as he himself admits, used a **passport** issued in the name of Ignas Naidzinavicius which passport he knew contained an identity which was not his own, having also acquired it by paying a sum of money to a third party.

Today, 26th June 2019

Magistrate Dr. Rachel Montebello B.A. LL.D.

The correspondence sent by Interpol¹⁵ leaves little doubt as to the fact that a passport bearing number LC56535 issued on the 20th June 2000 in favour of Lithuanian national, with the name of Ignas Naidzinavicius born on the 21st November 1983, belonged to the person in the photo at fol. 147 and not to the accused.

The Court is morally convinced, on the basis of the evidence produced, that the accused used the passport that he admitted to having acquired not from the competent authorities but from an individual against payment of a sum of money¹⁶ - which passport evidently contained his own photo and not that of the person indicated in the photo at fol. 147 - in order to apply for the issue of a Maltese identity card using the personal details of Ignas Naidzinavicius. It results that these personal details, indicated in the application for a Maltese Identity Card completed and signed by the accused¹⁷, are the same details, save for the photo, of the real Ignas Naidzinavicius, as confirmed by Interpol¹⁸. The same correspondence also reveals that the passport bearing number LC565134 which accused used in order to apply for the Maltese Identity Card¹⁹ in 2007, was not issued in Lithuania.

This evidence, even in the absence of the direct evidence consisting in the actual passport, also convinces the Court to the degree required by Law, that the passport containing the details of Ignas Naidzinavicius, presented by the accused to the authorities in 2007 for the issue of a Maltese Identity Card, was **false**.

¹⁵ Fol. 145 and 146, Dok. JG10.

¹⁶ Statement of the accused at fol. 159/160.

¹⁷ Dok. JS2 at fol.62

¹⁸ Fol. 145 *et seq.*: born on 21.11.1983.

¹⁹ Fol. 62, Dok. JS2.

However, it is manifest that the evidence adduced does not support the charge that the accused himself forged, or even altered or tampered with the Lithuanian passport, since in the absence of any other evidence showing that the accused forged or tampered with this document, the Court chooses to rely on the accused's statement that he acquired the said passport from a third party by paying a sum of money.

- The Maltese Identity Card

As for the **Maltese identity card** issued in the name of Ignas Naidzinavicius, the charges of forgery, alteration or tampering with this document, are also unfounded, since it is uncontested that the said identity card with number 039504A was issued by the Maltese authorities and is an authentic public instrument.

In the light of the above considerations, the Court cannot find the accused guilty of the fifth charge, and nor can any guilt be established for the charge of having actually committed the forgery attributed in the first, second and fourth charge.

Having considered;

Moreover, as for the **second and the fourth charge**, which attribute to the accused **the offence of having used or had in his possession a passport, identity card, residence permit or other document which he knew to be forged, altered or tampered with**, the Court deems that this charge can only subsist in respect of the **Lithuanian passport** that was used by the accused in order to apply for a Maltese identity card, and not in respect of the said identity card since, as has already been established, the Maltese identity card although issued on the basis of false

Today, 26th June 2019 *Magistrate Dr. Rachel Montebello B.A. LL.D.*

information or a false statement or document, was issued by the competent Maltese authority and moreover, does not result to have been altered or tampered with.

However, as for the Lithuanian passport, although it does result to be amply proven that the accused did use and have this false document in his possession, he results to have used it last on the 29th March 2007. There is no evidence in the acts of the proceedings that shows that the accused made further use of this passport **after he applied for the Maltese identity card in March 2007**. Even if one can concede that when, on the 7th April 2007²⁰ the accused, purporting to be Ignas Naidzinavicius, applied for a correction of the identity card in order to reflect the details of the place of birth as indicated on the passport, would have had to produce the passport issued in the name of the said Ignas Naidzinavicius, there is no evidence to prove that this document was actually made use of by the accused thereafter, although it results to have remained in his possession until the issue of his work permit which, from the document exhibited as Dok. A²¹, was issued on the 24th October 2013.

Consequently, the Court cannot find any guilt on the part of the accused for the offence subject of the **second charge, save in so far as it has been proven that he had in his possession a passport which he knew to be forged, altered or tampered with.**

Having considered;

²⁰ Although no concrete evidence supporting the use of this passport after 7th April 2007, when the identity card was corrected to reflect the details of place of birth as indicated on the passport, was brought.

²¹ Fol. 37

These considerations also lead the Court to consider that the **fourth charge** brought against the accused, that is, **making use of a forged document** in terms of Article 189 of the Criminal Code, is **time-barred**. As already pointed out, while this charge can subsist only in respect of the Lithuanian passport, the evidence adduced shows that the false Lithuanian passport had to have been necessarily created before the 29th March 2007 when it was used for the first time by the accused to apply for the Maltese identity card, and in the worst-case scenario for the accused, it could not be deemed to have been used after 7th April 2007²² which date is therefore to be deemed as the date of the last violation. Since the period of prescription applicable in respect of offences punishable by imprisonment for not more than one year²³, is of two years, there is no doubt that the statutory time-limit for charging the accused with the offences contemplated in Article 189 of Chapter 9, has irretrievably lapsed and consequently, the criminal action is extinguished in respect of this aspect of the offence.

Having considered;

Notwithstanding the above considerations and conclusions, it has been amply proven that the accused knowingly made a false statement and gave false information when he provided personal details which were not his, and produced a document – that is, the Lithuanian passport in the name of Ignas Naidzinavicius - which he knew to be false, for the purpose of securing the issue of a Maltese Identity Card. The intent to deceive is also amply proven since the accused himself admitted that by using a Lithuanian passport he was not considered to be a third country national but a national of a European Union Member State, and thus

²² Date of correction of place of birth.

²³ Article 188 of Chapter 9.

was able to skirt the impediments and limitations applicable to third country nationals in the areas of residence and employment.

These acts in themselves constitute the offence contemplated by Article 24(2)(b) of Chapter 258 (Identity Card and Other Documents Act) which is being attributed to the accused by means of the **first charge**.

This offence carries a punishment of imprisonment for a period of not less than two years and not exceeding five years, and consequently, the applicable prescriptive period is that of ten years. The defence pleaded that the criminal action based on this offence, is time-barred by the lapse of the said period of ten years since the accused allegedly produced the false passport and made false statements and provided false information for the purposes of the Identity Card and Other Identity Documents Act, only back in March 2007 when he produced the allegedly false Lithuanian passport in order to obtain the issue of a Maltese identity card.

However the Court cannot but observe that while it is true that this offence, in so far as the production of the said false Lithuanian passport in 2007 is concerned, might indeed be time-barred²⁴, there is ample evidence in the acts of these proceedings to sustain the charge that the accused made false statements and gave false information also at a later stage and regularly throughout the period of validity of the **Maltese identity card** issued in the name of Ignas Naidzinavicius, that is, **each and every time that he produced and made use of the false information contained in this identity document**, which ultimately expired on the 31st August 2014²⁵.

²⁴ There is no evidence to support the charge of producing the false passport after April 2007.

²⁵ Vide fol. 66

The Court is of the firm belief that the use by the accused Vasil Jikurashvili of this identity card containing false information about the holder of the document, is tantamount to the **supply of false information and the making of a false statement on each of the aforementioned occasions, for the purposes of the Identity Card and Other Identity Documents Act** (Chapter 258 of the Laws of Malta). After all, the purpose of the Act is to regulate *inter alia*, not only the issue of identification documents which are intended to serve as a means to identify the holder of the document, but also the use that is to be made of such documents and the circumstances in which the holder is required to produce or deliver such document upon demand to a lawful authority²⁶.

As already established, it has been satisfactorily proven that the accused produced the said identity card to: the transport authorities on various occasions in order to purchase and sell / scrap two vehicles²⁷; to a Police officer when asked to identify himself in connection with a traffic accident in which he was involved on the 20th March 2013; to Melita Limited to subscribe for a mobile phone service on 4th October 2010, amongst several other instances between 2007 and 2015 in which accused identified himself by supplying the false information contained in the identity card in question.

²⁶ In Article 17(3), the Act expressly provides that: *Any member of the police force may require any person to whom an identity document has been issued to produce that document on demand or, if it is not practicable for the person so required to produce it on demand, not later than twenty-four hours, or at an earlier time which may be established, to produce such document after the demand is made.*

Article 18 then provides also that: *An identity document which has not been tampered with shall, unless its validity expires or is terminated, be evidence of the identity of the holder as shown on the document, and shall be accepted as such by every public officer or authority and by every other person.*

²⁷ Between 2009 and 2015: he transferred the vehicle VIP-309 to his wife and produced the false identity card to the transport authorities, on the 4th November 2015 – fol. 83B.

It has also been duly proven that on the 9th April 2010, the accused, again posing as Ignas Naidzinavicius, personally presented himself at the Electoral Office to apply for a change in the particulars regarding the address indicated on said identity card, for the purposes of Article 19 of the Act²⁸, and was subsequently issued with a new identity card containing the address of his new place of residence, which had a period of validity up until 31st August 2014.

On the basis of the above considerations, it has been sufficiently and satisfactorily proven that the while the accused is **guilty** of having committed the offence contemplated in the **first part of Article 24(2)(b) of Chapter 258 and consequently also the offence subject of the third charge in terms of Article 188 of Chapter 9**, this offence must be deemed to be of a **continuous nature** since it has also been committed by means of several acts perpetrated at different times during the entire period of time that has elapsed since the accused, on the **29th March 2007**, procured the issue of a Maltese Identity Card on the basis of a false statement and false information supplied to he authorised officer. It is proven that he subsequently, made use of the same identity card regularly and systematically in order to supply false information to a public authority on several occasions up until **4th November 2015** when he transferred vehicle VIP-309 to Ketevan Khirushvili – this being the last act in a series of acts committed in violation of the said Article 24(2)(d).

Consequently, the Court considers that the **first charge, limitedly to the offence of making false statements and giving false information and producing a false document**, namely the identity card issued in the name of Ignas Naidzinavicius,

²⁸ 19(1) Whenever for any reason any of the particulars or any other information contained in an identity document is or becomes incorrect, the holder of the document shall, without delay, report the fact to the authorised officer and shall surrender the incorrect document to, and give all such information as may be required by, that officer.

cannot be said to be time-barred by the lapse of ten years since the continuous nature of the offence has been amply and sufficiently proven, such that, as the Prosecution rightly pointed out, the prescriptive period must be deemed to commence to run as from 4th November 2015 which was the last proven instance that the identity card containing false information was produced to the authorities, that is, the date on which last violation took place. This period had not effectively lapsed by the date of the accused's arraignment on the 26th July 2018.

Having considered;

The same considerations apply to the **third charge** relating to the offence under Article 188 of the Criminal Code, which attributes to the accused the crime of knowingly making a false statement or declaration of giving false information in any document intended for any public authority, with the intention of gaining any advantage or benefit. However, although the criminal action in respect of this offence is not time-barred²⁹, it is evident that by applying the doctrine of formal concurrence of offences, this charge must be deemed to be **alternative** to the first charge, and consequently the Court shall abstain from taking cognisance of the said third charge and apply the offence carrying the graver punishment.

Having considered;

With regard to the charge of recidivism, the Court finds that this charge has been proven sufficiently in respect of the accused, Vasil Jikurashvili. Although it is true that the evidence shows that it was Ignas Naidzinavicius (having the same particulars as the Ignas Naidzinavicius whose identity the accused falsely

²⁹ The statutory prescriptive period applicable to this offence is that of five years, in terms of Article 688(d) of Cap. 9.

assumed)³⁰ and not Vasil Jikurashvili, who was found guilty of an offence on the 10th December 2013 and was condemned by this Court, differently presided, to a fine *multa* and the suspension of his driving licence, the said Ignas Naidzinavicius was in reality the accused using a false identity. Consequently, although the conviction sheet of Vasil Jikurashvili, the accused, does not indicate any convictions, the Court cannot accept that the use by the accused Vasil Jikurashvili of a false identity, which is a crime that in itself constitutes breach of several different provisions of Law, can be availed of in order to evade guilt of the charge of recidivism when it is evident as well as uncontested, that the accused is the same person who was found guilty of and crime and condemned by the court on the 10th December 2013.

Although it is also true that the accused continued to perpetrate acts amounting to the commission of the offences for which he is being presently found guilty, **after** the date that this judgement became *res judicata*, it is also evident that the crime for which he was convicted on the 10th December 2013 was committed by the accused after the commission of several other acts constituting the offences for which he is being found guilty in this present case.

However, while the said judgement Dok. JG14 condemned the accused to the payment of a fine *multa*, the Court observes that since no evidence was brought to show that the fine imposed on the accused was actually paid, it cannot be held that the punishment has been remitted as required by Article 50 of the Criminal Code³¹. Consequently, Article 50 cannot be deemed to be applicable in this case although there is sufficient evidence for the accused to be deemed to be a recidivist in terms of Article 49 of Chapter 9.

³⁰ Vide legal copy of judgement at fol. 183 – part of Dok. JG14.

³¹ See also *Il-Pulizija vs Lydon Cutajar*, decided by the Court of Criminal Appeal on the 6th February 2013.

Considerations regarding Punishment

With regard to the punishment to be inflicted for the finding of guilt of the first and second charges, the Court observes that in this case the acts perpetrated by the accused gave rise to the simultaneous violation of several provisions of law, such that with the application of the doctrine of the formal concurrence of offences, punishment is to be awarded for the gravest offence which, in this case, is the offence under Article 24(2)(d) of Chapter 258 of the Laws of Malta which prescribes a punishment of imprisonment for a term of not less than two years and not more than five years.

In order to determine the punishment applicable upon the finding of guilt for the offence attributed in the first charge, the Court also took into account the nature of the offence, the accused's clean conduct and his immediate and full co-operation during the Police investigations, where he confirmed all details of the facts attributed to him as well as provided relevant information spontaneously, which information also led to the determination of his guilt for the offences with which he was charged in these proceedings.

In so far as the nature of the offence is concerned, the Court considers that the offences of which the accused is being found guilty while being innocuous in that no individual was caused to suffer, it is a grave offence since it constitutes a calculated attack on the trust which society is expected to have in public documents and undermines the security of documents issued by public authorities. Moreover, the Court cannot ignore the fact that the crimes of which accused is being found guilty were committed continuously over a protracted period of time amounting to no less than six years.

However the Court also took note of the fact that in the statement that he released to the Police, the accused insists that although he was aware that he was using another person's identity and was in effect making false declarations to a public authority and providing false information, he acted in this manner in order to be able to secure a stable employment and earn a living. In his statement, he explains that when he eventually did acquire a work permit as Vasil Jikurashvili and was issued with the necessary identification documents in his proper name and no longer needed to use the false identity of Ignas Naidzinavicius, he ceased making use of the identity documents issued in the name of said Ignas Naidzinavicius. He also transferred and scrapped the vehicles registered in that name and discarded the false identification documents and the false identity several years ago.

From the evidence adduced it transpires that the accused was indeed issued with an employment licence in his proper name, that is Vasil Jikurashvili, as from the 24th October 2013³². The evidence also reveals that the accused Vasil Jikurashvili does indeed have a stable employment in Malta and has been in the employment of the same employer for several years and appears to be a trusted and hardworking employee. He married in Malta and his child was also born in Malta and he has been making use of regular identification documents ever since.

It also results that apart from the traffic-related offence of which the accused, under the false identity of Ignas Naidzinavicius, was found guilty in 2013, the accused has a completely clean conduct, and has long since relinquished his illegitimate and dishonest identity and discarded the illegal documents, apart from having also acquired a legitimate status in Malta without having actually used the false documents or made false statements. In the light of the above considerations,

³² Dok. A, fol. 37, presented by Dr. Dustin Camilleri.

keeping in mind the relatively innocuous nature of the offences and also that the accused is clearly intent on maintaining his legitimate employment and residence status in Malta together with his family, the Court deems that it would not be appropriate or expedient to inflict punishment. However at the same time, the accused would also need to show that he can effectively steer clear of any form of criminality.

Decide

For these reasons, while the Court declares the criminal action in respect of the fourth charge, extinguished, and finds the accused not guilty of the fifth charge and consequently acquits him from guilt in respect of such charges, abstains from taking cognisance of the third charge and, after having seen Article 17 and 18 of Chapter 9, Article 24(2)(d) of Chapter 258 and Article 5 of Chapter 61 of the Laws of Malta, finds VASIL JIKURASHVILI guilty of the first charge in so far as having with intent to deceive, made false statements, given false information and produced a false document for the purposes of Chapter 258, knowing the same to be false; also finds him guilty of the second charge in so far as having had in his possession a passport which he knew to be forged, altered or tampered with, and also finds him guilty of being a recidivist in terms of Article 49 of Chapter 9 of the Laws of Malta.

In the circumstances, upon application of Article 22 of Chapter 446 of the Laws of Malta, the Court is discharging VASIL JIKURASHVILI subject to the condition that he does not commit another offence within a period of three (3) years from today.

The Court explained in ordinary language to VASIL JIKURASHVILI that if he commits another criminal offence during the period of conditional discharge, he will be liable to be sentenced for the offences of which he is presently being found guilty.

**DR. RACHEL MONTEBELLO
MAGISTRATE.**