



Court of Magistrates (Malta) as a Court of Criminal Judicature
Magistrate: Dr. Victor G. Axiak B.A., LL.D., Dip. Tax

LOCAL ENFORCEMENT SYSTEM AGENCY V. PAVLA STEJSKALOVA
(ID. 148365A)

CONTAVENTION NO. 090-00047-8

20 January 2022

THE COURT,

Having seen the charge brought against the appellant Pavla Stejskalova (ID. 148365A) who was accused before the Commissioner for Justice of having:

- On 16/11/2020 at 19:59 hrs in Triq l-Artillerija, Kirkop, breached one or more of the conditions relating to quarantine (Legal Notice 72 of 2020, Art. 2).

Having seen the decision of the Commissioner for Justice taken on 8 April 2021 whereby the appellant, duly notified, was found guilty in her absence and fined the amount of three thousand euro (€ 3,000).

Having seen the appeal application filed by the appellant on 20 April 2021 by means of which the Court was requested to reverse the decision of the Commissioner for Justice and acquit her from the charge on the following grounds:

1. *“Ili fl-ewwel lok tali sentenza hija kompletament nulla u bla effett stante illi skond id-direttivi tal-S.T.O. Prim Imhalled kif mahruga nhar il-5 ta’ Marzu 2021, liema direttivi gew imgedda sal-ahhar tax-xahar ta’ April 2021, rigwardanti kawzi mhux urgenti, tali seduta li nzammet mit-Tribunal Lokali nhar it-8 ta’ April 2021 qatt ma kellha ssehh. Illi ma hemm ebda dubju illi t-Tribunal Lokali huwa tribunal ta’ natura gudizzjarja u ghalhekk tali direttivi kellhom ukoll jigu rispettati u s-seduta kellha tigi differita bhal hafna kawzi ohra ta’ natura mhux urgenti”*

2. *“Illi minghajr pregudizzju għall-aggravju precedenti, r-Rikorrenti qatt ma setghat tinstab hatja tal-kontravvenzjoni kif dedotta kontriha stante illi nhar is-16 ta’ Novembru 2020 ma kien hemm ebda obbligu impost fuqha sabiex toqghod fi kwarantina. Illi kif jikkonfermaw id-dokumenti hawn annessi u mmarkati bhala ‘Dok. C’ u ‘Dok. D’, l-obbligu tal-kwarantina kien impost fuqha mis-Supretendent tas-Sahha Pubblika b’effett minn nhar is-17 ta’ Novembru 2020. Illi r-Rikorrenti osservat fl-intier tieghu l-perjodu ta’ kwarantina kif impost fuqha u dan għamlitu flimkien mall-familja tagħha.”*

3. *“Illi minghajr pregudizzju għall-aggravji precedenti, ordni ta’ kwarantina qatt ma setghat tigi mposta fuq ir-Rikorrenti mis-Suprintendent tas-Sahha Pubblika, stante illi hi qatt ma kellha l-COVID-19 (Vide ‘Dok. E’). Dan ged jinghad għar-raguni illi Artikolu 3 tar-“Regolamenti Dwar L-Infurzar ta’ Ordnijiet li Jirrigwardaw il-Kwarantina” (LS 465.12) jipprovdi s-segwenti: “Kull perjodu ta’ kwarantina impost mis-Suprintendent għandu jigi strettament osservat skont dawk l-ordnijiet li jistgħu jingħataw mill-imsemmi Suprintendent, taht id-dispozizzjonijiet tal-artikolu 29(1) tal-Att. Jekk wieled jagħmel referenza għall-artikolu 29(1) tal-Att Dwar Is-Sahha Pubblika Kap. 465 tal-Ligijiet ta’ Malta, dan jipprovdi illi: “s-Suprintendent jista’ jordna li persuna li jkollha marda li għandha tigi avzata: (a) tkun izolata xi mkien fejn is-Suprintendent jiddecidi; (enfasi tar-rikorrenti). Illi għalhekk huwa bil-wisq car u evidenti illi ordni valida ta’ kwarantina tista’ biss tigi validament imposta mis-Suprintendent tas-Sahha Pubblika fuq persuna li jkollha marda. Illi minhabba li r-Rikorrenti qatt ma kellha marda li biha s-Suprintendent għandha tigi avzata allura l-ebda ordni ta’ kwarantina ma setghat tigi mposta fuqha u konsegwentement qatt ma seta’ jkun hemm sejbien ta’ xi htija kontriha.”*

Having heard the parties make their submissions in the sitting held on 28 October 2021 during which the Court also ordered that proceedings be conducted in the English language given that the appellant is English-speaking.

Considered:

That first of all the Court is raising *ex-officio* the nullity of the proceedings taken against the appellant since it does not appear that the Local Enforcement System Agency (commonly known as LESA) has the power to enforce the Regulations under which the appellant was found guilty.

That according to Art. 3 of the Subsidiary Legislation 595.14 (“Local Enforcement System (Establishment As An Agency) Order”):

'3. There shall be an Agency, to be known as the Local Enforcement System Agency, which shall carry out the functions and duties of the public administration in the following matters:

(a) providing for the enforcement of any law, regulation or bye-law, the enforcement of which has been delegated to regional committees, local councils or to such other local or regional authorities as are designated by the Local Government Act ...'

That such enforcement that was delegated to local councils and regional committees is regulated by Subsidiary Legislation 363.41 ("Local Councils and Regional Committees (Delegation of Enforcement) Order") that provides *inter alia* as follows:

'2. (1) In terms of article 33(1)(n) of the Local Government Act, hereinafter referred to as "the Act", the enforcement of –

(a) Bye-Laws made, or which may from time to time be made, by each Local Council under the provisions of article 34(1) of the Act;

(b) contraventions for such of the offences listed in the Schedule to the Commissioners for Justice Act which are shown under the First Schedule to this Order (emphasis made by the Court), shall be a function which is hereby being delegated to each Local Council in relation to contraventions committed in its locality or to the Joint Committee or Regional Committee with regards to contraventions that are committed in any locality falling under its under its responsibility according to this Order.'

That the appellant was accused before the Commissioner for Justice of having committed an offence regulated under Subsidiary Legislation 465.12 ("Enforcement of Directions relating to Quarantine Regulations" – LN 72 of 2020).

That although these Regulations are listed in the Schedule to the Commissioners for Justice Act (Chap. 291) which means that breaches of said regulations fall within the competence of the Commissioners under Chapter 291 of the Laws of Malta, this notwithstanding they are not listed in the First Schedule to the Subsidiary Legislation 363.41 ("Local Councils and Regional Committees (Delegation of Enforcement) Order"). Therefore as things stand no local council or regional committee (or agency for local enforcement) has any power to enforce or bring forward proceedings against any person accused of breaching the Enforcement of Directions relating to Quarantine Regulations" (Subsidiary Legislation 465.12).

That it is an established legal principle that "*ubi lex voluit dixit, ubi noluit tacuit*" and given that such power is not expressly provided for in the law, which being a subsidiary

legislation is a special law, then the Local Enforcement System Agency cannot bring forward proceedings and prosecute persons for a breach of the regulations in question.

Decision

For these reasons the Court declares that the proceedings against the appellant are null and void, revokes the decision of the Commissioner for Justice and acquits the appellant of the charge brought against her.

V.G. Axiak
Magistrate

Y. M. Pace
Dep. Registrar