



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. VLADIMIRS
PUZANOV (ID. 183082A)**

CONTRAVENTION NO. 043-24288-2

25 January 2022

THE COURT,

Having seen the charge brought against the appellant Vladimirs Puzanovs (ID. 183082A) who was accused before the Commissioner for Justice of having:

- On 25/05/2021 at 07:22 hrs in Triq tal-Katidral, Sliema, parked on the pavement the vehicle ES000048 Segway in breach of Article 79 of the Motor Vehicles Regulations (Subsidiary Legislation 65.11)

Having seen the decision of the Commissioner for Justice taken on 13 September 2021 whereby the appellant was found guilty and fined the ammenda of twenty-three euro twenty-nine cents (€ 23.29).

Having seen the appeal application filed by the appellant on 11 October 2021 by means of which the Court was requested to reverse the decision of the Commissioner for Justice and acquit him from the charge on the following grounds:

1. *“First preliminary plea: There is an incorrect application of the relevant law, as the law quoted on the summons did not cater for electric scooters and the penalties given should be those defined under L.N 352 of 2019 (S.L 65.32).*
2. *Second preliminary plea: That all licensed E-kick scooters are categorised under EU vehicle category ES and the national category LSC. In the legislation referred to in*

the summons, although there is reference to several categories, there is no reference to categories ES and/or LSC.

3. *Third preliminary plea: Contravention was issued in the name of Vladimirs Puzanovs personally and in the logbook the owner is licensed e-kickscooter sharing services operator company, namely BLT Malta Ltd (C) thus the summons should have been issued on the name of the company or at the very least the appellant should have been indicated as the representative of the company.”*

Having heard the parties make their submissions in the sitting held on 20 January 2022.

Considered:

That primarily this court is tasked with the revision of a decision taken by the Commissioner for Justice in accordance with Article 11 of Chapter 291 of the Laws of Malta. This Court does not and cannot change findings of a factual nature, legal conclusions and decisions when it appears to it that the Commissioner was legally and reasonably correct. As held by the Court of Criminal Appeal in the case “**Ir-Repubblika ta’ Malta v. Emanuel Zammit**” with regard to the powers of that Court when dealing with appeals from judgements of the Court of Magistrates as a Court of Criminal Judicature, the Court of Appeal makes its own detailed analysis of the record of the proceedings held before the Court of first instance in order to see whether that Court was reasonable in its conclusions. If as a result of this detailed analysis this Court finds that the Court of first instance could not reasonably and legally arrive at the conclusion reached by it, then the said Court would have a valid, if not impelling reason, to vary the discretion exercised by the Court of first instance and even change its conclusions and decisions.

That in the ordinary course of its functions as a court of revision under Article 11 of Chapter 291 of the Laws of Malta, this Court does not act as a court of retrial (this would be possible under Article 11A of the same law), in that it does not rehear the case and decide it afresh; but it intervenes when it sees that the Commissioner for Justice, would have mistakenly assessed the evidence or wrongly interpreted the Law - thus rendering his or her decision unsafe and unsatisfactory. In that case this Court has the power, and indeed, the duty to change the findings and decisions of the Commissioner for Justice or those parts of his/her decisions that result to be wrong or that do not reflect a correct interpretation of the Law.¹

¹ See “**The Police v. Tatiana Skoric Tesic**” (Appeal number: 175/14, Mr. Justice Aaron M. Bugeja, 30/09/2021)

That in the decision taken on 13 September 2021, as is customary in proceedings before the Commissioners for Justice, the Commissioner did not give any reasons justifying his finding of guilt and there is no transcript of the testimony supposedly given by CO 208 Christopher Cassar other than a black and white true copy of two photos purportedly showing the e-kick scooter in question parked on the pavement. The record of the sitting held on 13 September 2021 has scant details and does not provide any clue as to whether the three grievances of a procedural nature raised in the appeal application had also been raised before the Commissioner.

First preliminary plea

That in the sitting held on 20 January 2022 the appealed Agency declared in open court that it agreed in principle with the first preliminary plea raised by the appellant.

That the offence of which the appellant was found guilty concerns a breach of Article 79 of the Motor Vehicles Regulations (Subsidiary Legislation 65.11) that reads as follows:

'79. No person shall, unless otherwise directed by a Police officer or a community officer, park or leave unattended any motor vehicle or trailer ... (d) on the footpath unless road signage directs otherwise'

That Part IV of the Micromobility Regulations (Subsidiary Legislation 65.32 - Legal Notice 352 of 2019) specifically deals with "Parking" of e-kick scooters:

'21. Electric kick scooters may be parked on pavements and promenades or on footpaths and in pedestrian zones but not in such a manner as to obstruct the free flow of pedestrian traffic or in such a manner as to restrict or hinder the use thereof by persons with mobility impairment or to impede the access to such pavements, promenades or footpaths.

22.(1) Wherever available, e-kickscooters are to be parked in such parking infrastructures, such as racks, which may be provided or in such parking spaces which are specifically designated and marked for such purpose.

(2) In such roads where there are no spaces specifically designated and marked for such purpose, e-kickscooters may be parked on the road in a perpendicular position to the pavement but not in such a manner as to occupy a parking space which is specifically designated and marked for the parking of other types of vehicles.

23.(1) Any e-kickscooter parked in any manner which is in breach of regulations 21 or 22 shall be subject to a fine for illegal parking or obstruction, depending on the circumstances of the case.'

That Part VI of the said Regulations provide for the penalties to be imposed upon conviction of one or more of the offences outlined therein. The very last article of Part VI (Article 28) then states as follows:

'28.(1) Unless specifically regulated in Part VI, the commission of any offence in violation of any traffic regulation whilst using or driving an electric kick scooter shall carry with it the same penalties and consequences applicable to the commission of the same offence whilst using or driving a motor vehicle...'

That with regard to the grievance giving rise to this plea the appellant states that the appealed decision is null and void since there was an incorrect application of the law in that the law quoted on the summons does not cater for the case of e-kick scooters. He holds that *"it is evident that, having regard to the particular features of e-kickscooters, the legislator's intention was to regulate parking of e-kick scooters with specific rules, including rules relating to the parking of e-kickscooters, in terms of the provisions of the Micromobility Regulations L.N 352 of 2019 (S.L 65.32 of the Laws of Malta). This position has been upheld several times by other Tribunals which have considered the same preliminary pleas in similar cases (copy of one of the judgments dated the 15th September 2021 attached and marked as DOC A)."*

The Court does not concur with this reasoning. Article 79(d) of the Motor Vehicles Regulations refers to "any motor vehicle" that is parked on the footpath and Article 2 defines a "motor vehicle" as "**a vehicle which is propelled by mechanical power**". An e-kick scooter is a type of vehicle that is propelled by mechanical power generated by an electric motor. There is nothing in the Motor Vehicle Regulations that suggests that the regulations do not apply to electric scooters. It is only when an offence concerning e-kick scooters is specifically provided for by Part IV of the Micromobility Regulations that the Motor Vehicles Regulations lose their applicability. Article 28(1) further confirms this when it provides that if the matter is not specifically regulated under that part, the legislation that regulates motor vehicles applies. Strictly speaking this article is superfluous as the same principle would apply, with or without it.

That Article 23(1) of the Micromobility Regulations provides that *"any e-kickscooter parked in any manner which is in breach of regulations 21 or 22 shall be subject to a fine for illegal parking or obstruction, depending on the circumstances of the case"*. The Regulations do not specifically provide for such fines. Neither do the Motor Vehicles Regulations (SL 65.11) provide for such fines. Therefore the proviso to Article 55(1) of the parent Act (Traffic Regulation Ordinance) applies and the applicable fine is that set out in the Second Schedule to the Ordinance (*"Parking or waiting or stopping at prohibited place €23.29"*).

That therefore this plea is being rejected by the Court.

Second preliminary plea

That with regard to the grievance giving rise to this plea the appellant states that *“the Motor Vehicles Regulation of 1994 referred in the summons, makes reference to vehicle categories M1, M2, M3, N1, N2, N3. Electric Kick scooters are categorised by the Transport Malta authority as national category LSC. Therefore it is clear that Motors Vehicles Regulations do not apply to Electric Kick Scooters.”*

That the Court refutes this assertion as unfounded at law. As already said, the Motor Vehicles Regulations defines a “motor vehicle” as **“a vehicle which is propelled by mechanical power”**. In so doing it does not make any distinction whatsoever as to the classification or category of the vehicle.

That this plea is therefore also rejected by the Court.

Third preliminary plea

That with regard to this third preliminary plea that appellant states that *“the electric scooter is registered under BLT Malta Limited. Therefore the appellant humbly suggest that the summons should have been issued in his capacity as a representative of BLT Malta Limited and not in his own name. The law indicates that the contravention should be issued against whoever is making use of the electric scooter or the owner of the e-scooter. Therefore it is respectfully submitted that the contravention had to be issued not in the personal name of the appellant but rather to the appellant in his capacity as representative of the BLT Malta Ltd.”*

That Article 2 of the “Registration and Licensing of Motor Vehicles Regulations” (Subsidiary Legislation 368.02) defines “owner” as **“the person, whether as an individual or in representation of a company (emphasis made by the Court), partnership or cooperative society, in whose name a motor vehicle is registered and licensed;”**

That the certificate of registration exhibited in the acts of the case clearly lists “BLT Malta Ltd” as the registered owner of the vehicle. While the name of “Vladimirs Puzanovs” is also listed underneath it is clear that this is the name of the natural person **representing** the company (although as will mentioned further on, separate evidence should also be adduced in this regard) and not the person in whose name the vehicle is registered.

That in accordance with Article 13 of the Interpretation Act (Chapter 249 of the Laws of Malta):

‘13. Where any offence under or against any provision contained in any Act, whether passed before or after this Act, is committed by a body or other association of persons, be it corporate or unincorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence

unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence'

That therefore while the appellant remains responsible at law, he should only have been cited "as a representative of BLT Malta Ltd" and not in his personal capacity. Furthermore the Court adds that even if the charge was issued in the name of the appellant representing BLT Malta Ltd, it was also incumbent on the Prosecution to prove that Vladimirs Puzanovs indeed represents the company BLT Malta Ltd by submitting the relevant evidence from the Malta Business Registry. This is so because although a person may be listed on the logbook of the vehicle as the natural person representing the registered owner, it may well be the case that that person was no longer associated with the corporate owner at the time of the alleged incident.

That for all intents and purposes the Court also points out that while the Micromobility Regulations provide for the issue of an operator's license "***in the name of a natural person authorised to represent the undertaking***", the said license is distinct from the registration license regulated under Subsidiary Legislation 368.02 and only concerns the operations of an undertaking that provides e-kick scooter sharing services.

That therefore the Court upholds this plea.

Decision

For these reasons the Court whilst rejecting the first and second grievances in the appeal application filed by the appellant, upholds the third grievance, revokes the decision given by the Commissioner for Justice and acquits the appellant of the charge brought against him.

V.G. Axiak
Magistrate

Y. M. Pace
Dep. Registrar