



In the Criminal Courts of Appeal

**Hon Madame Justice Consuelo Scerri Herrera, LL.D., Dip Matr.,
(Can), Ph.D**

Appeal Number : 32 / 2023

The Police

Vs

Kristic Miroslav

Today 25th May, 2023,

The Court

Having seen the charges brought forward against the accused Kristic Miroslav holder of Maltese Identity Card number 188404 A, and charged before the Courts of Magistrates that:

On the 29th June, 2019, at about 01:00 in St George's road, St Julians;

1. Used force against Tomasz Bialecki and caused injuries of slight nature as certified by Dr. Isaac Balzan MD5926 of Mater Dei Hospital Art 221(1) Kap 9;

The Courts were consequently asked so that in case of a judgement pronouncing guilt to provide for the security of Tomasz Bialecki in terms of Article 383 Kap 9 of the Laws of Malta.

Took note of the judgement delivered by the Courts of Magistrates as a Court of Criminal Jurisdiction on the 26th January, 2023, where the Court took note of Article 221 (1) of Chapter 9 of the Laws of Malta, found the accused guilty of the charge given against him and discharged him in terms of article 22 of Chapter 446 of the Laws of Malta under the condition not to carry out another offence within the period of two years from date of judgement.

The Court explained the consequences of the judgement that was delivered to the accused and what would happen should he fail to abide by it

The Court took note of the appeal application of appellant Kristic Miroslav, presented in the registry of this Court on the 1st February, 2023, wherein he asked this Honourable Court to revoke and cancel the judgement of the Court of Magistrates (Malta) as a Court of Criminal Jurisdiction delivered in the above captioned proceedings and consequently declare the appellant not guilty of the charge brought against him.

The Court saw the aggravations put forward by the appellant Kristic Miroslav which were clear and manifest and consisted in the following:

- 1) *That primarily, it is to be pointed out that this application of appeal is being filed in the English language, notwithstanding the fact that the appealed judgement is in Maltese. From the minutes of the sitting on the 21st November 2019 the Court ordered that the case is heard in the English language.*
- 2) *That the Court of Magistrates as a Court of Criminal Jurisdiction did not assess the evidence accordingly and completely discarded the proof brought forward by both the prosecution as well as the defence and consequently erroneously found the appellant guilty as charged.*

In fact, during the sitting of the 21st November 2019, whilst Tomasz Bialecki was giving evidence his testimony was suspended by an order of the Court. The minutes of the 21st November 2019 indicate that precisely on account of the testimony of Tomasz Bialecki, the Court deemed it expedient that the prosecution delves further into the allegations and facts as related by Tomasz Bialecki with a view to issue fresh charges.

In fact, the accused himself also gave evidence and exhibited screen shots of a messenger chat between himself and the parte civile, whereby the latter explained that he had understood that it was not the appellant who had caused these injuries and that therefore had been mistaken in his identification. At a point in time parte civile writes, "Listen man don't worry about police and shit I make sure they will clear ur name from their case".

The Court took note of all the acts of the proceedings.

Heard the submissions made by the parties during the sitting of the 27th April, 2023.

Considers further.

In the first aggravation the appellant states that the judgement of the First Court is null and explains that this is due to the fact that the judgement of the First Court was delivered in the Maltese language even though during the sitting of the 21st November, 2023, the First Court had ordered that proceedings were to be held in the English language (fol. 7 of the acts of the proceedings).

This Court makes reference to the judgement delivered by this Court in the names **The Police vs Deidre Nyasa Rolfe Hornyold Strickland**¹ wherein it held that:-

The language of judicial proceedings in this country is, by default, the Maltese language. This is specifically provided by section 5(3) of the Constitution of Malta which states: -

(3) The language of the Courts shall be the Maltese language:

¹ Delivered by the Court of Criminal Appeal on the 28th November 2019

Provided that Parliament may make such provision for the use of the English language in such cases and under such conditions as it may prescribe.

Furthermore article 516 of the Criminal Code states as follows: -

516.(1) The Maltese language shall be the language of the Courts and, subject to the provisions of the Judicial Proceedings (Use of English Language) Act, all the proceedings shall be conducted in that language.

(2) Where any person charged does not understand the language in which the proceedings are conducted or any evidence is adduced, such proceedings or evidence shall be interpreted to him either by the Court or by a sworn interpreter.

According to section 3 of Chapter 189 of the Laws of Malta:

In a Court of criminal jurisdiction:

(a) Where all the persons charged are English-speaking, the Court shall order that the proceedings be conducted in the English Language.

(d) Where a Court has ordered proceedings to be conducted in the English language, that language shall be used in all subsequent stages of the proceedings, unless the order is revoked by that Court or any other Court before which the proceedings are pending;

In this case all proceedings were carried in English except for the charge sheet found in fol 1 filed by the prosecution and the current Incident report drawn up by the police at fol.2 et seq. The Court minute found in page 7 started off in the Maltese language though carried on in the English language. From then all the evidence brought forward and the Court verbals are all in English.

That Maltese case law on this subject is not unanimous. In some cases the position adopted by these Courts was that appeal applications or judgements written in a language that was not the language of the proceedings as ordered by the Court brought about their nullity. This was the *traditional* approach adopted in the case **The Police vs**

Martin Barnes². That Court considered that where a Court ordered proceedings to be conducted in English, that language had to be used in all subsequent stages of the proceedings, unless the order was revoked by that Court or any other Court before which the proceedings were pending. It added that where the wrong language was used, the nullity of the application of appeal could be raised by the Court *ex officio*.

Subsequently in the case **The Police vs Elizabeth sive Alice Piscopo**³ decided by this Court, the Court upheld the plea of nullity of the appeal application of the Attorney General on account of the fact that the note filed by the Police in terms of article 414 of the Criminal Code was drawn up in English when it had to be drawn up in Maltese.

On the otherhand a different line of reasoning was adopted in the case **The Republic of Malta vs Martin James Denning**⁴, wherein it was held that:

It would not, however, be understandable or logical, if in the application of these rules, a stance is taken which would render a rule intended precisely in the interest of a special category of persons, into one which proves to be unnecessarily prejudicial to it. It is consequently perfectly right and just for these Courts to intervoene when this special rule intended for the protection of the rights of a particular category of persons is not observed or is contravened in a way, which even in theory can be prejudicial to such category of persons, precisely because such non observance or contravention intrinsically would run counter to the raison d'etre of this special rule. It would be incongruous, however, and illogical, if these Courts were to take the same stand if the failure to observe or the contravention of the same rule comes from the person who has the greatest interest for the observance and application of that rule and in whose main interest that rule has been conceived. In this contest, upholding the Attorney General's submission would be tantamount to stretching the application of the said rule to an extent

² Decided by the Criminal Court of Appeal on the 11th December 1986

³ Decided by the Criminal Court of Appeal on the 10th December 1996

⁴ Decided by the Court of Criminal Appeal in its superior jurisdiction on the 11th January 1994

which would only serve to defeat the purpose for which the rule owes its existence

In the case **Il-Pulizija vs. Osy Chijioke Emanuel Nkwocha**⁵ while acknowledging that the case law of the Court of Criminal Appeal constantly upheld pleas of nullity of appeal applications filed in the wrong language on the basis that these language provisions were matters of public order that could also be raised by the Court ex officio, it still accepted this same line of reasoning in re Denning. That Court claimed that it was legally absurd to penalise the person enjoying the benefit of language because the application of that rule was deemed to be a matter of public order. In *Nkwocha* the Court obliged applicant to declare whether the remaining proceedings were to be conducted in the English or Maltese language.

This Court notes that since 1995, various legal amendments were introduced aimed at limiting, as much as possible, rigid and strict interpretation and application of procedural law. Courts accepted this current and started adopting a more practical and substantive approach in their administration of justice. This can be seen in the **Denning and Nkwocha** cases mentioned above. More recently, this Court in the case **Il-Pulizija vs Rudy Dorekens**⁶ adopted a similar flexible approach towards the language of the proceedings issue. It stated that the choice of language made by the Court could be also reversed implicitly by the same Court or by a subsequent Court and such a decision needed not be necessarily minuted in the records or in any way explicit. The Court concluded that it could be tacit and implicit.

17. *In this particular case, the Court considers that the applicant qua an English-speaking accused person was acknowledged as such by the Court of Magistrates and this in terms of article 7 of Chapter 189 of the Laws of Malta. Hence that Court ordered those proceedings in that case had to be conducted in terms of article 3 of Chapter 189 of the Laws of Malta. Clearly the accused had a right to understand these criminal proceedings against her and the decision of the Court of Magistrates was aimed to practically enforce this benefit such that she could*

⁵ Decided by the Criminal Court of Appeal on the on the 23rd November 2001

⁶ Decided by the Criminal Court of Appeal on the on the 25th September 2018

be in a position to follow the criminal proceedings against her in a language that she understood well.

When the judgement was delivered, the accused felt aggrieved and wanted to lodge an appeal from the judgement as can be seen from bond and the request for the suspension of the execution of the judgement found at folios 47 and 48 of the records of these proceedings. Subsequently, the accused lodged her appeal from the judgement delivered by the Court of Magistrates, but this appeal was drafted by his lawyers in the English language. This fact was in line with the provisions of the Court of Magistrate's decree and the provisions of the Law quoted earlier on. The appeal application was drawn up in the English language in symphony with the language used by the Court of the first instance though the judgement was delivered in the Maltese language and thus not inline with provisions of the Court of Magistrate's decree quoted earlier on.

According to the traditional approach the judgement delivered by the First Court should be declared null and the Court abstains from taking futher cognisance of it since the appellant does not understand the Maltese language and the Court of first instane had already accepted this fact so much so that the proceedings were held in the English language.

20. *In this context this Court reiterates that the provisions of Chapter 189 of the Laws of Malta are subject to and must be interpreted first in line with article 5 of the Constitution of Malta. The language of these Courts is Maltese by default. But if an accused is English speaking in terms of article 7 of Chapter 189, then he has the right to request the Court to have criminal proceedings carried out in English. If proceedings are carried out in English for the benefit of the accused, all pleadings should be carried out in that language.*

Consequently, for the above mentioned reasons, the Court refrains from taking cognisance of the other plea mentioned in the appeal application and accepts the

preliminary plea raised by the defence in his application of appeal and declares the judgement delivered by the First Court as null and thus so as not to deprive the appellant from his right of double examination is sending back the acts of these proceedings to the Courts of Magistrates so that he may be judged afresh.

Consuelo-Pilar Scerri Herrera

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True Copy

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Deputy Registrar