

Kopja Informali ta' Sentenza



MALTA

**QORTI TAL-MAGISTRATI
(MALTA) BHALA QORTI TA' GUDIKATURA
KRIMINALI**

**MAGISTRAT DR.
JOSEPH A. APAP BOLOGNA**

Seduta tat-13 ta' Jannar, 2003

Numru.

The Police
(Inspector Neville Xuereb)

VS

Atabek Sandzhari Zakhraberinika
Atabek Sandzhari Asanarakhima

Today the 13th of January, 2003.

THE COURT

Having seen the charges against both the accused and this with having:

a) during the previous months before the 27th June 2002, as persons who left Malta under a removal order or a

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deportation order, when seeking leave to land or leave to land and remain in Malta or seeking to obtain a residence permit, they failed to expressly declare in writing to the Principal Immigration Officer such circumstance, thus rendering any such leave or any residence permit granted to them null and void.

b) On the 21st January 2002 and on the previous months, without having been granted a residence permit, landed or were in Malta without leave from the Principal Immigration Officer.

c) On the days previous to the 27th June 2002 in relation to any information to be given under or for purposes of the Immigration Act made or caused to be made a false return, false statement or false representation.

d) Failed to show that they have the means to sustain themselves and thus can become a charge on public funds.

Having seen the request by the prosecution for the Court to, besides awarding the punishment according to Law, declare the accused as prohibited immigrants and issue a Removal Order against them.

Having heard the accused plead not guilty in regard to the same charges.

Having heard the witnesses and seen the documents produced by the prosecution.

Having heard the accused give evidence on their own initiative.

Having seen the documents produced by the accused.

Having heard the submissions of the parties.

Having considered

That Inspector Neville Xuereb (Page 13 of the acts) explained that whilst he was processing applications submitted by foreigners for the extension of their visas, two files were brought to his attention, namely those referring to the two accused. When he saw the photographs of the same accused, he remembered that, during 1996, they had been charged in Malta, with having landed or were in Malta without the leave of the Principal Immigration Officer besides with having no means to sustain themselves and therefore becoming a charge on public funds. (Vide the relative true copy of the judgement delivered on the 12th of December 1997 and attached to these acts on page 30).

At this stage it is to be pointed out that the name and surname of the accused as quoted in this judgement are different from those to be found in their relative passports, also exhibited in acts on page 5. The witness investigated the above and it resulted that the accused had applied and obtained an entry visa without however informing the Authorities about the Removal Order issued by the Court in delivering the above mentioned judgement and without applying in writing for re-entry as established by law. (Vide also the evidence of Superintendent Paul Debattista on page 23 *ibid*).

Having considered

That in regard to the above, the accused did not in any way contest the facts as established by the prosecution. They pointed out that they had changed their name and surname in the manner prescribed by law (Vide page 18 and 19 of the acts), and that they were in Malta in connection with charitable work carried out by them and that they were not aware of the requirements under Maltese law in the case of re-entry into Malta, after a removal order had been ordered by the Court.

Having considered

That in this regard it is to be pointed out that Article 24 of Chapter 217 of the Laws of Malta expressly stipulates that if any person against whom a removal order has been

issued, requests permission to enter and stay in Malta, such person must declare, expressly in writing, to the Principal Immigration Officer about this circumstance.

In respect to this rule of Law, it is expressly stated in the same article, that failure to abide by this, will render any entry visa, already issued, null and without effect as well as subject the same person to the punishment therein specified.

That the accused are pleading that their conduct was based on a mistake of fact. Moreover, it is to be pointed out that the above cannot, in any way, be considered as a mistake of fact but one of law which is not accepted by our law as a defence (*Ignorantia juris non excusat*).

That, in this regard, it is to be pointed out that the accused Atabek Sandzhari Zakhraberinika, confirmed under oath (page 46 *ibid*) that "in regard to item 16 (on the visa form filled by both the accused on their arrival in Malta) we left it blank, we did not answer it". This item, as can be seen on page 50 of the acts, specifies that the applicant has to provide the 'date of previous visits'. In view of this, even if a mistake of fact could be involved in this case, it appears that the accused did, in no way, act under a mistake of fact or omit to fill the above mentioned item, due to this.

Having considered

That on the bases of the above the accused are to be found guilty as charged.

Therefore the Court finds the accused guilty of having

a) During the previous months before the 27th June 2002, as persons who left Malta under a removal order or a deportation order, when seeking leave to land or leave to land and remain in Malta or seeking to obtain a residence permit, they failed to expressly declare in writing to the Principal Immigration Officer such circumstance, thus rendering any such leave or any residence permit granted to them null and void.

b) On the 21st January 2002 and on the previous months, without having been granted a residence permit, landed or were in Malta without leave from the Principal Immigration Officer.

c) On the days previous to the 27th June 2002 in relation to any information to be given under or for purposes of the Immigration Act made or caused to be made a false return, false statement or false representation and this in accordance with articles 24, 5(1) and 32 (1) (c) of Chapter 217 of the Laws of Malta, whilst being pointed out that the accused failed to show that they have the means to sustain themselves and can become a charge on public funds .

In regard to the punishment to be inflicted by the Court it is obvious that the accused do not merit one of imprisonment. Moreover it cannot see how it can impose a fine bearing in mind:

- a) That it seems they have no means to sustain themselves as stated.
- b) As well as their motive for being in Malta as resulting from the evidence produced.

Therefore it is advisable that section 9 of Chapter 152 be applied again by the Court.

Therefore the Court orders that the accused be set free on condition that they commit no other offence within one year from today.

Moreover the Court, on the bases of Article 15 of the same Chapter 217 of the Laws of Malta, declares the accused to be prohibited immigrants and orders the issue of the attached Removal Orders against both the accused.

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