



MALTA

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

**MAGISTRATE DR.  
CONSUELO-PILAR SCERRI HERRERA**

Sitting of the 16 th December, 2003

Number 833/2002

**The Police**  
**Inspector Alexandra Mamo**  
**Inspector Sandro Zarb**  
**V**

**SANDJAR DEKHKANKHOHAYEV**

**SHAKHZADA DEKHKANKHOJAYEVA**

**The Court**

Having seen that the accused **SANDJAR DEKHKANKHOJAYEV**, aged 40, born in Tashkent, Soviet Union on 13<sup>th</sup> July 1962 and presently residing at 'Casa Leone', G. Despott Street, Kappara, in possession of passport number CA 0504333 issued in Uzbekistan and **SHAKHZADA DEKHKANKHOJAYEVA** aged 41 wife of Sandjar Dekhkankhojayevev, born in Tashkent, Soviet Union on 17<sup>th</sup> August 1961 and presently residing at 'Casa

Leone', G. Despott Street, Kappara, in possession of passport number CA 0504334 issued in Uzbekistan were arraigned before her accused with having in these Islands during the last three years by means of several acts committed at different times, which constitute violation of the same provision of the law and which were committed in pursuance of the same design, gave false evidence in the criminal proceedings - Police versus Alexei Makarov, Taissia Selivanova and Olga Koutsenko before the Magistrates Court (Malta) as Court of Criminal Inquiry, against accused for a crime liable to a punishment higher than the punishment of imprisonment for a term of two years.

The Court was requested that besides awarding the punishment prescribed by law, to declare same accused Sandjar Dekhkankhojyev and Shakhzada Dekhkankhojyeva as prohibited immigrants and issue a Removal Order against the above mentioned persons.

Having seen all the documents exhibited in the acts of these proceedings by the Prosecution in particular the consent of the Attorney General dated 13<sup>th</sup> February 2003 marked as document AM 5 exhibited at page 34 of the acts of these proceedings, so that this case will be dealt with summarily.

Having seen that both accused had no objection to their case being dealt with summarily as can be evidenced from the examination of the accused held on the 6<sup>th</sup> February 2003 as results from fol 7 and 8 of the acts of these proceedings.

Having heard all the witnesses brought forward by the Prosecution.

The Prosecution represented by Inspector Alexandra Mamo stated in Court that the Magistrates Court ordered the Commissioner of Police to take court action against the accused for perjury by means of judgment delivered by the Magistrates Court per Magistrate Antonio Micallef Trigona in the names Police v Alexei Makarov, Taissia

Selivanova and Olga Koutsenko on the 7<sup>th</sup> September 1999.

The present Prosecuting Officer stated that the Prosecution in the case decided by Magistrate Antonio Micallef Trigona was represented by Superintendent Raymond Vella Gregory and that she was not present for any of the sittings.

The Prosecution in this case failed to bring forward the accused against whom the judgment was given in particular Alexei Makarov, Taissia Selivanova and Olga Koutsenko since they had been deported and were no longer in Malta to give evidence against the present accused. This results from the statement made by the Prosecuting Officer on the 3<sup>rd</sup> April 2003, in these acts.

Frank Galea, Director of the Criminal Court was summoned to give evidence and on the 3<sup>rd</sup> April 2003 he presented a true legal copy of all the proceedings that were held regarding the case above mentioned now res judicata, in the names Police v Alexei Makarov, Taissia Selivanova and Olga Koutsenko. The above document included the alleged testimony which the accused had given against the then accused on the 12<sup>th</sup> June 1997.

The Court however feels that from the production of such document per se does not constitute any evidence against the accused since most of it was gathered in their absence and it is a known legal principle in criminal matters that all evidence is gathered in the presence of the accused with a few exception such as in a compilation of evidence where the accused is duly notified and does not turn up for his sitting and the Court would proceed to hear evidence in their absence.

This however is not the case in question.

The Prosecution did not bring forward any other witnesses to give evidence in Court. It exhibited the statements released by both accused on the 2<sup>nd</sup> October 2002 which statements are marked as document AM and AM 1 which

are exhibited at fol 9 et seq of these acts of proceedings. From an examination of both statements it does not transpire at any moment that the accused did in actual fact give false testimony or that they were admitting the charges brought forward against them.

The Court is rather baffled how in actual fact on the basis of such poor evidence the Prosecution could actually charge the accused and bring them to court. The Prosecution should not have deported the persons acquitted by Magistrate Antonio Micallef Trigona before summing them as witnesses in these proceedings, something it failed to do.

Having seen the relevant sections at law in particular Sections 104(1) of Chapter 9 of the Laws of Malta, consequently declares it **does not find both accused SANDJAR DEKHKANKHOJAYEV and SHAKHZADA DEKHKANKHOJAYEVA guilty of the charges brought forward against them and acquits them accordingly.**

**Since the Court acquitted both accused it does not uphold the request of the Prosecution to issue a removal order against them both.**

**< Final Judgement >**

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