



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

**MAGISTRATE DR.
ANTONIO MICALLEF TRIGONA**

Sitting of the 23 rd October, 2007

Number 467/1998

The Police
(Inspector Alexandra F Mamo)
VS
Roy Kindermann

The Court,

Having seen the accusations of the accused Roy Kindermann holder of German passport number 6000302430, charged with:

- a. having during the past months without having been granted a residence permit, landed or was in Malta without leave from the principal immigration officer in breach of Section 5 of Chapter 217;
- b. by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of

any fictitious enterprise or of any imaginery power, influence or credit, or to create the expectation or apprehension of any chimerical event, made gain of over Lm3,000 to the prejudice of Blokrete, over Lm200 to the prejudice of Nazzareno and Hilda Grima, over Lm300 to the prejudice of Percius Car Hire Garage, over Lm400 to the prejudice of Billy's Car Hire, over Lm400 to the prejudice of Medina Hotel and several other persons, in breach of Sections 308 and 310(1) of Chapter 9 of the Laws of Malta;

c. exercised any profession or occupation or held an appointment or was employed by any other person without a licence from the Minister responsible for Immigration and this in breach of Section II of Chapter 217 of the Laws of Malta.

Having seen the Attorney General's note that the case be heard summarily, not opposed.

Having heard all the evidence.

Having seen all acts and records of the proceedings.

Considers:

- Accused is charged with crimes based on Chapter 217 of the Laws of Malta, notably under Article 5 and 11, and with further obtaining money or property under false pretences in breach of Article 308 of Chapter 9 of the Laws of Malta. The first set of offences with which the accused is charged were clearly applicable when those offences were deemed to have been committed

according to the charges sheet. Clearly they are unsustainable now that Malta has joined the European Union which applies the fundamental norm of free

movement of all European citizens which have adhered to the Union's principles and tenets. It is in this context an uncontested fact that accused who is a German national enjoys free movement within states which form part of the Union. In other words accused has a vested right to enter any country of the Union simply on showing that he is a national of a state belonging to the Union. The first charge has consequently been superseded by events such that no punishment is applicable. This also applies, albeit within certain constraints, with that part of the charge sheet which accuses him of 'having exercised any profession or occupation or having held an appointment or being employed by any other person without a licence from the Minister responsible for immigration'.

- This leaves the Court to consider that part of the charge sheet which relates to the obtainment of money or property by false pretences as aggravated by the fact that the amount involved exceeds Lm1000. On the strength of the evidence produced by the prosecution it does not result to this Court that the accused made use of devices and stratagems which uphold or can sustain the charge. The law in Article 308 of Chapter 9 specifically lists the devices and stratagems which must exist for this crime to subsist. Although it transpires as a proven fact that the accused made gains in that he failed to honour dues which became owed by him for rentals of apartments and cars there is no evidence that gains were obtained by any of the means mentioned in Article 308. Nor it would appear from the evidence produced that the gains were made by any other fraudulent means. The fact alone that accused failed to pay rentals for some apartments and cars do not constitute the crime with which he is charged with neither under Article 308 and nor Article 309 which would have been applicable in lieu in so far as connected and of a less serious nature.

Accused is charged with crimes under Chapter 217 of the Laws of Malta, notably under Article 5 and 11, and further, with obtaining money or property under false pretences in breach of Article 308 of Chapter 9 of the Laws of Malta. The first set of offences with which the accused is

charged were clearly applicable when those offences were deemed to have been committed according to the charge sheet. Clearly they are unsustainable now that Malta has joined the European Union which applies among its basic principles that of the free movement of all European citizens. It is an uncontested fact in this context, that accused, who is a German national, enjoys free movement within the countries that form part of the Union. In other words accused has a vested right to enter any country of the Union simply on showing that he is a national of a state belonging to the Union. The first charge has consequently been superseded by events such that no punishment is applicable. This also applies, albeit within certain constraints, with that part of the charge sheet which accuses him of 'having exercised any profession or occupation or having held an appointment or being employed by any other person without a licence from the Minister responsible for immigration' so however that the free movement of workers within the European Union is also another of the four freedoms which distinguishes the Union.

This leaves the Court to consider that part of the charge sheet which relates to the obtainment of money or property by false pretences as aggravated by the fact that the amount involved exceeds Lm1000. On the strength of the evidence produced by the prosecution it does not result to this Court that the accused made use of devices and stratagems which uphold or can sustain the charge. The law in Article 308 of Chapter 9 specifically lists the devices and stratagems which must exist for this crime to subsist. Although it transpires, as a proven fact, that the accused made gains in that he failed to honour dues which became owed by him for rentals of apartments and cars, there is no evidence that such gains were obtained

Informal Copy of Judgement

by any of the means mentioned in Article 308. Nor it would appear from the evidence produced that the gains were made by any other fraudulent means. The fact alone that accused failed to pay rentals for some apartments and cars he hired does not constitute the crime with which he is charged; neither under Article 308 nor under Article 309 which could otherwise have been applicable as a connected and alternative charge.

Consequently it acquits the accused of all charges proffered against him.

< Final Judgement >

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