



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

**MAGISTRAT DR.
MIRIAM HAYMAN**

Seduta tat-23 ta' Novembru, 2007

Numru 996/2002

**The Police
(Insp. Louise Calleja)**

v

**Peter Zelenak, Slovak national, s/o
Emrgec Zelenak and Anna nee Bobolova,
Born 24/09/1970 at Kosice, residing
Velka Ida 198, Slovakia and holder of Slovak
Passport number 4179308 and Slovak ID
SJ 929337**

**Gabriela Zelenak, Slovak national d/o I/Costantin
Balogh & Anna nee Matyasova Balaghova, born
17/07/1958, at Cierna nad Tisou, Trebisov, Slovakia,
And holder of Slovak Republic ID no. SJ 928495**

The Court,

Has seen the charge against the above mentioned Peter Zelenak and Gabriela Zelenak charged with having on the 19th August, 2003 and in the following years, on these islands, by several acts committed by them, even if at different times, which constitute violations of the same provision of the law, committed in pursuance of the same design, having the responsibility of their daughter Lucy Skriniarova, under twelve years of age, by means of persistent acts of commission or omission ill treated same Lucy Skriniarova or caused or allowed the ill treatment of said minor.

Seen that both accused respectively entered a plea of 'not guilty' to the charges aforesaid.

Seen the articles sent by the Attorney General under which same thought that accused can be found guilty, that is:

Section 18 and 247A of Chapter 9
Section 533 of Chapter 9

Seen that at a later sitting both accused gave their consent to summary proceedings (folio 200)

Seen all records of the case and having heard all submissions tendered.

Considers

This case revolves around the alleged abandonment of a child Lucy Skriniarova. In fact Lucy testified at length aided by the video conference procedure and is one of the main witnesses in this case, at least as the Prosecution opined.

First and foremost reference must be made to the birth certificate of the minor Lucy exhibited by the Consuls to the Slovak Republic Mr Godwin Bencini, Dok LS folio 159

and 160, as duly translated by Mr Damien Kovak, Court appointed interpreter and translator, dok DP folio 172, 174. The documents establish that the minor Lucy Skriniarova is the daughter of Robert and Gabriela.

Thus the minor Lucy testified that her parents' name were Gabriela and Peter as also that she was born in Slovakia. She recalled in her testimony that her parents, thus the accused, were to tell her that they were going to leave her in Malta but she did not know when this would occur. The she was nine years old, she was twelve when testifying. She did not ask her parents why at the age of nine she would be left alone in Malta, this because she did not believe them “.. ma bdejtx nemminhom” (folio 36).

She recalls that together with her parents they went to a police woman friend, left Lucy at her house with the understanding that they will pick her up (Lucy) at 7.00 p.m. The minor Lucy recalled that her parents failed to pick her up at the established time. Thus the police woman took her where she used to leave with her parents and there they found her packed suitcase. She also said that she did not know that her parents were not coming back for her.

She also recalled that she had not spoken to her parents for the last three years but she had spoken to them the year she was testifying, 2006 in September, this because they phoned her up at Appogg.

Lucy also recalled another occasions when her parents had left to run an errand and left her alone in their flat in Malta. She also remembered that previously before Angela House, she was institutionised in Slovakia. She said that she was taken to this institute by her mother Gabriela. Lucy opined so about the reason why she was institutionalised in the Slovak Republic “Because I think, not she did not want to leave me in her house because I think she was always drinking, I think so and she ...used to drink when angry.”

Lucy also said that when she was left with the police woman, her mother gave her three Maltse liri. She also confirmed that her first father Robert and her mother Gabriela, had taken her to the Slovakian institute describing it as a place where parents leave their children instead of taking care themselves of the children. She recalled that when she left the institute she had changed her clothes, brought over by her mother in the taxi. The child was in fact "kidnapped" from the said institute by her parents.

Back to the issue of the abandonment, she confirmed that over the last three years she was being taken care of by the nuns of Angela House.

Under cross examination she confirmed that the social worker had told her that over the last three years her parents were in prison in Slovakia. She recalled that as from September her parents had spoken to her twice. She confirmed that on hearing her mother's voice on the phoned she failed to ask her why it took her three years to pick her up. She testified that however during these three years she had received letters form her mother, which letters were shown to her by psychologist Dorothy Scicluna. She negated that during these three years her mother had ever told her that she was in prison.

She also confirmed under cross examination that her mother must have called her up in the month of August or September (folio 77).

Although with a certain degree of confusion, she denied what was suggested to her that her parents though letting her know that they were going to leave her behind, assured her that they were going to leave her with a certain Phyllis Zerafa who was to care for her in their absence. She recalled only that her parents had told her they would pick her up at 7.00 p.m., a fact they failed to do.

She denied being left with jewellery intended for her maintenance or that Zerafa had told her that her parents had done so.

She confirmed that she was in Malta at least left twice on her own in Malta, recalling that this was done so that they got her used to the fact of being alone, a fact of which she was afraid (fol 88).

She also stated that her parents showed her a lot of care and attention.

About her mother's drinking problem, she testified that her mother used to get drunk on wine and this because of psychological problems and arguments with her husband. The child also remembered that there were times when she accompanied her mother to drink at the bar. She confirmed that her mother used to lose control when drinking and that this used to happen often. She recalled or rather led a vague notion that though rich her parents had encountered financial difficulties. She confirmed that when they lived in Slovakia as a family they had a normal family life, recalling swimming outings and playing football with her father.

Philippa Zerafa confirmed that Gabriela asked her a favour to keep her daughter for two hours because she necessitated to go to Gozo. She said that she had just got to know Gabriela due to the fact that she had leased a flat to her. Zerafa agreed for this favour on the condition that the mother would not be long. Gabriela assured her that this would not occur. Zerafa testified that about 8.30 – 9.00 p.m. seeing that Gabriela had not returned to pick her child, she phoned her up but her telephone was not in a position to respond.

Together with her husband they went over to the accused's flat and here found the cupboards to be empty except for a case full of Lucy's clothes. At this stage Lucy told her that her parents had left for New Zealand. Zerafa decided to report the fact to the police and subsequently the minor was taken to Angela House.

She recalled that later on a Wednesday, Gabriela had phoned her, and on being induced by Zerafa to pick her daughter, she answered that she left her on the island of God and that she would pick her up within six months. She confirmed a second phone call from Gabriela that she would pick her daughter within 6 months.

From Zerafa's notes exhibited on Dok PZ folio 119, 120, it results that Lucy was left with her on the 19th of August, and that Gabriela had phoned Zerafa on Wednesday, the day after.

Major Garzia was the police officer who had received Zerafa's report about the incident in question, Dok G 140-141. He confirmed that he had acceded to Zerafa and here took a verbal statement, here he had seen a child who was crying. He stated that they could not communicate with the child because she spoke the Yugoslavian language.

Colette Farrugia Bennett testified that she spoke to the minor about the events that had occurred. The minor told the psychologist about her mother's drinking problem, and her experience in the mental asylum. She said that today though the minor would like to meet her parents, she wanted nothing more than this at the point and that she was happy at Angela House.

Be it also premised that from the passports of the accused it transpires that they entered Malta on the 26 Feb 2003 departed on 24 May 2003 and re entered on the same date.

Again on the 19th August, 2003 they re arrived in Malta on the 17th September, 2006 where they were arrested on their arrival from Prague at the Malta International Airport (vide evidence of PS 225 Joseph Mercieca fol 142).

The accused chose to give evidence viva voce in front of the court. They also respectively released statements to the investigating police. Because of the laws of procedure governing co-accused, the court is going to

deal with their evidence individually, in the sense that nothing one co-accused says in respect of the other has any probatory value.

Peter Zelenak in his statement declared that he was a child physiologist and that he was married to Gabriela Zelenak. He denied that he was involved in Lucy's adoption. He stated that when he married Gabriela he signed papers and became responsible for Lucy as well. He admits that he has full responsibility of Lucy together with Gabriela.

He admits that back in 2003 he and his wife flew out of Malta to Prague and here they stayed for 8 months or more.

He said that once he reached Prague, Phyllis (Zerafa) contacted him and in turn he used to contact her everyday for the first ten days. He said that Phyllis asked him for money because of Lucy. He said that even other Maltese friends refused to speak to him. He reiterated that after eight months in Prague he was arrested. Asked why he did not return to Malta for Lucy during these months before his arrest in Prague, he answered that he needed to work in Prague to get the ticket money. After two months in Prague he had called a friend in Slovakia and was informed that the Slovak authorities had issued an international arrest warrant for him and his wife. He was subsequently arrested in Prague and detained for eighteen months and then after being deported to Slovakia arrested for another five months there.

He insisted that he did not abandon his daughter without food, clothes, shelter and protection, he replied he left Lucy all things, 2 luggages one black, one green, he left Lm 150 in the flat for Phyllis. He reiterated that the best they could do for Lucy was to leave her in Malta. He also said that he left 500 dollars for Lucy with a friend Manuel Cassar.

He explained that Lucy was detained in a mental institution because of pressure from the Slovak

government, Slovak Mafia and the social worker. He said that he was blackmailed for money with the result that Lucy was taken away. His wife, himself with the help of friend decided to abduct Lucy from this institute, which they did. He explained that they stole Lucy through a window. They left Slovakia for Hungary, here they stayed for about a week then left for Vienna, took a flight to Tunisia, to Switzerland, Rome then Malta.

About his wife's drinking problem, he admitted that she did drink alcohol but not on a daily basis.

Under oath Peter Zelenak confirmed that once he left Malta for the Czech Republic he was arrested months later, then spend eighteen months in prison. Once released he was then detained for three months in the Slovak Republic. At this stage of the proceedings he denied having any legal relationship with Lucy. In fact he testified that he had not adopted Lucy. Asked why the child was left in Malta, he answered that this was done to protect her from discrimination in the Slovak Republic because of the colour of her skin since the child was a Rom, a gypsy. He also testified that once in prison he sent toys letters and clothes to Lucy through the Ministry for Family in Malta. In this regard he exhibited a letter addressed to him from the Ministry for Justice and Internal Affairs Dok PZ fol 233. He also confirmed document PZ1 fol 234. He also confirmed that he had written to the Minister as early as 2003.

Gabriela Zelenak also released a statement to the investigating police as well as gave evidence viva voce under solemn declaration.

In the statement (Dok GZ folio 18-23) Gabriela Zelenak stated that Lucy was her adopted daughter, she was adopted at the age of ten months, in Autumn 1995.

She recalled that together with her husband the co accused Peter and Lucy, (whom she calls their daughter), they ran away from Slovakia because of persecution by members of the mafia who wanted their property. She

states that she was a rich woman having many properties, cars, monies. She talked about Lucy and the problems they faced because of her gypsy origin, to the extent that she was persecuted at school both from children and teachers. The child was also physically abused. She stated that her first husband hated Lucy and after their divorce went so far as stealing her money and jewellery. He threatened her that Lucy would be re sent to an orphanage. Eventually Lucy was taken to a mental home. The accused stated that Lucy was taken away from Peter's parents house by force. She explained that the police went to their house, to take Lucy away because of allegations that she was beaten. Instead of taking the girl to the doctor she was taken away through the help of a corrupt social worker. Zelenak said that this social worker also refused to talk to her because she was living with a lover Peter, thus they got married, still Lucy was not given to them.

She described the condition Lucy was being kept in, no good clothing, dirty and infested with lice. It was for this reason that they decided to abduct Lucy (steal as the co accused said) out of the institution. They thus sold their property, stole Lucy from the insititute and ran away to Tunisia, from here to Switzerland, then Tunisia, Hungary, Rome and Malta. Here she stated that they tried to find a job, to no avail. They also sought permission to stay on our island and sought to put Lucy to school. She explained that they could not seek police help due to their having abducted Lucy. After three months in Malta, they left for a one day stay in Sicily to obtain another three months stay in our island. Failing to obtain a permission to stay in our islands, it is here that Gabriela Zelenak together with her husband decided to protect Lucy by leaving her in Malta and then obtaining asylum for her here. She explained that they also explained this to Lucy, who was in agreement with them. They left her with Phyllis Zerafa under the assumption that they were to pick her up later on that day. She confirmed that she later spoke to Zerafa and explained everything to her asking her to use the money already paid to her for the flat's lease for Lucy's upbringing promising to pay her

back on her return. They had promised Lucy and Phyllis that they would return to Malta in a year's time. She admitted that she sent no money to Lucy. Her return to Malta was the desire to be reunited as a family. She recalled that in Prague she was imprisoned for fifteen months, during which time they wrote applications for asylum in Malta. Three applications were ignored by the Czech. They were then handed over to the Slovak Police and here imprisoned for 6 months. She confirmed that she had spent nearly a year in Prague before being there arrested.

She negated that she had abandoned her daughter, reiterating that the minor though only nine years of age was prepared to be left behind, believing that she was better off alone in Malta, then living in the horrible conditions of gypsies and mental home. According to Gabriela Zelenak the child agreed with them. She also denied having an alcoholic addiction calling these accusations false. She admitted to drinking in front of Lucy in Malta due to her psychological state.

Under oath Zelenak Gabriela admitted that she left Malta for the Czech Republic on the 19th August 2004. The immediate reason she gave for leaving her daughter Lucy was "...to get her asylum and protection of Malta and protect in front of Slovakia that she was actually discriminated because of her origin, she is my only adopted daughter" (folio 286).

She said that once in Prague she was imprisoned she had tried to contact Philippa Zerafa in whose care and protection she had left her daughter Lucy.

She evidenced that during her imprisonment as aforesaid she sought asylum in Malta, to no avail. From the Czech Republic she was eventually extradited to the Slovak Republic, here she spent another six months in prison. In both cases the charges were abandonment and neglect of her daughter Lucy.

The reason she gave for her return to Malta, after being released from prison was to be reunited with her daughter. She testified that once she had reached Prague, she had contacted Philippa and asked her to arrange for Lucy to obtain asylum in Malta. She said that Philippa asked her for money and disallowed her phone contact with Lucy.

As in her statement Gabriela Zelenak explained at length the discrimination little Lucy suffered at the hands of the Slovaks. According to Gabriela Zelenak this started as early as kindergarten school. Gabriela recalled how her daughter was bitten and called a gypsy. She recalled changing her daughter's school three times in one year because of this problem. Again the accused mentioned that she was blackmailed by the mafia, her money or Lucy's life. Due to this she sold her house and escaped from Slovakia.

Zelenak also testified that not only had she tried to keep in touch with Philippa Zerafa, but that further to her release from her last imprisonment, she had tried and managed to contact Appogg's representative Colette Farrugia and Mrs Bonello.

Under cross examination she denied Prosecution's suggestion that Lucy was in fact taken away from her. She reiterated the reason why she left Lucy in Malta, to obtain protection and asylum, adding that she did not leave Lucy with strangers knowing that Philippa Zerafa was an ex policewoman and her husband a headmaster at St Paul's Bay School. Under crossexamination she emphasised the blackmail she received at the hands of the mafia, at the expense of her daughter's life.

About leaving only Lm 3 to her daughter when she left her in Malta, she answered that when she escaped from Slovakia she escaped with proceeds of what property she had sold and her precious jewels. She continued that since Philippa betrayed her and did not allow her to speak to Lucy, moreover put Lucy in Angela House, albeit all the time asking for money, then she did not trust people

because of money! She in fact blames Philippa's greed as the cause for the fact that she lost her daughter.

The reason Gabriela Zelenak gave for the fact that for the first six months whilst still free in Prague she failed to contact her daughter was that she was waiting for the Maltese final decision that her daughter would obtain asylum and protection.

Considers

First and foremost be it premised that it is the Court's opinion that the facts as outlined in Prosecution's note of submissions surmised correctly the events of this case. The arguments therein outlined stand their ground to a certain extent. In fact the court agrees with Defence's contention with regard to co accused Peter Zelenak.

As afore summarized Peter Zelenak admitted to assuming responsibility for Lucy on marriage to co accused Gabriela, at least in his statement. Viva voce he denied any such responsibility. Obviously what co accused wife said in this regard has no bearing in this matter.

As aforementioned Peter Zelenak as charged with the continuous offence deduced under section 247A of Chapter 9 of the Laws of Malta.

Section 247A reads:

(1) Whosoever, having the responsibility of any child under twelve years of age, by means of persistent acts of commission or omission ill treats the child or causes or allows the ill-treatment by similar means of the child shall, unless the fact constitutes a more serious offence under any other provision of this Code, be liable on conviction to imprisonment for a term not exceeding two years.

(2) For the purposes of subarticle (1) ill-treatment includes neglecting the child's need for adequate nutrition, clothing, shelter, and protection from harm persistently offending the child's dignity and self esteem in a serious manner and persistently imposing upon the child age-inappropriate tasks or hard tasks and or hard physical labour

(3) The provisions of article 197(4) shall also apply in the case of an offence under this article, when the offence is committed by any ascendant or tutor

Thus the first requisite necessary to constitute the crime under examination is any person, the law says whosoever, having the responsibility of any child under twelve years of age.

The age of the child, Lucy in this case, satisfies the second requisite in view of the fact that it has been well established that the minor was nine years of age when she was left in Malta.

However, it is the opinion of the Court that Peter Zelenak has no legal responsibility with regards to Lucy, even if he so professed in his statement, a fact negated in his evidence viva voce. Lucy's birth certificate makes no mention of Peter Zelenak. Furthermore no proof of such responsibility was produced by the Prosecution. It is the opinion of the Court that Peter Zelenak definitely had a moral responsibility to ensure the well being of Lucy Skriniarova but this does not suffice at law due to the fact that no legal relationship exist between him and the minor.

The situation is quite different with respect to co accused Gabriela Zelenak. As already premised when summarizing the evidence it is proven that the minor Lucy was Gabriela's daughter. The same Mrs Zelenak stressed the point in her testimony and emphasized that it was her love for her daughter that led her to the drastic move of leaving Lucy in Malta whilst she and her husband left for Prague. Her reasons were exhaustively mentioned. Ex admissis Gabriela Zelenak stated that Lucy Skriniarova was her adopted child, which adoption she insisted was legal though in her case through contacts, very much expediated.

The Court has no reason to doubt the legality of such an adoption, so in this case Gabriela Zelenak definitely had a

legal responsibility towards the minor Lucy as any natural mother would have to her natural born daughter.

Therefore it is the opinion of the Court that in Gabriela Zelenak's case no doubt exists at law as to her having responsibility of a child, Lucy, under twelve years of age (nine at the time she was abandoned).

Subsection (2) of section 247A defines ill treatment as including but not first being, neglecting the child's need for adequate nutrition, clothing, shelter and protection from harm, persistently offending the child's dignity and self esteem in a serious manner, amongst other things.

The ill treatment has to be the result of persistent acts of omission or commission.

Considers

That Gabriela Zelenak left Malta and left behind her daughter Lucy is not in dispute, her motives are!! Sad and true as it may be that Rom children (and adults if it comes to that) are discriminated against, do not justify that a child is abandoned in a foreign island, consequently having a foreign language, foreign traditions and with complete strangers! Prosecution pointed out that PS Garzia deposed that he met a child who could speak only Yugoslavian language and who was crying. No surprise! No nine year old child can be expected to understand even if told ad nauseam that her beloved parents have left her with a stranger in a foreign country. One need only imagine a lost child in a crowd and the sense of distress that befalls that child, a situation one must have encountered. Imagine then the sense of loss and abandonment inflicted on this child, who according to her mother had already been through quite a lot of hardship in her very young life.

The Court also questions how was this child to be catered for?? By leaving her three Maltese liri?? By expecting a stranger Philippa to use her rent money, a mere one

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hundred and fifty Maltese lira, to cater for this child's needs?

It is the opinion of this Court that this child suffered unnecessary psychological cruelty, also considering the fact that for the first few months of her stay in Prague Mrs Zelenak was not in prison and therefore quite able to reunite with her daughter.

It is also the opinion of the Court from the documents exhibited by both accused Dok PZ, PZ1 (fol 233, 234) and Dok GZ (folio 255), that co accused rekindled their interest in Lucy when they realized the problems they were facing because of them having abandoned her, this considering the date in the said documents.

Thus as aforesaid the Court cannot for reasons premised find any guilt on Peter Zelenak's part and thus acquits him of the charges proffered against him. However, finds Gabriela Zelenak guilty as charged after having seen section 18 and 247A of Chapter 9 of the Laws of Malta.

Considers that Gabriela Zelenak up to date has been under preventive arrest for a period over a year and thus deems the appropriate punishment to be a year imprisonment suspended for two years after having seen Section 28A of Chapter 9.

Seen also section 197(4) of Chapter 9 and orders the forfeiture of very authority and right granted by law to Gabriela Zelenak over her daughter Lucy Skriniarova.

< Sentenza Finali >

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