



CRIMINAL COURT

**THE HON. CHIEF JUSTICE
VINCENT DE GAETANO**

Sitting of the 28 th November, 2007

Number 4091/2007

**The Police
Inspector Louise Calleja**

Vs

Gabriela Zelenak

The Court:

Having seen again the application filed by the Attorney General;

Having heard counsel for the applicant and counsel for the respondent in today's sitting;

Having seen section 416 (3) of the Criminal Code;

Considers:

In this case respondent, who was under preventive custody and undergoing proceedings on charges of ill-treatment of a minor (Section 247A), was sentenced on the 23rd November, 2007 to a year of imprisonment suspended for two years in terms of s. 28A of the said Criminal Code; the Inferior Court also ordered the forfeiture of every authority and right granted by law to the said Zelenak over her daughter Lucy Skriniarova. In view of this judgment, respondent should have been immediately released from prison, since her continued detention was no longer warranted by that judgment. Instead, for some reason, she was remanded back to prison, presumably because, in view of her declared intention to appeal, she requested, as required by law, the suspension of the execution of that judgment. Subsequently she filed (on the same day, i.e. on the 23rd November, 2007) a request in terms of section 409A to have her arrest declared illegal. The Duty Magistrate sitting in the Court of Magistrates allowed the request and, by decree also of the 23rd November, 2007, ordered the immediate release of Gabriela Zelenak

In the course of to-day's hearing, Assistant Attorney General Dr Anthony Barbara confirmed that Zelenak was being kept under arrest – preventive arrest – only in connection with the proceedings abovementioned, and that there were no other proceedings in connection with which she was under preventive or other form of custody.

This Court – the Criminal Court which has been called upon by the Attorney General to revise the decision of the Magistrates Court in line with what is provided in subsection (4) of section 409A of the Criminal Code – finds no reason, on the facts of the present case, to reverse the decision of the Court of Magistrates of the 23rd November, 2007, ordering the immediate release of the said Gabriela Zelenak. Needless to say, this will in no way affect appeal proceedings of which notice has been given so far only by the party convicted, that is by the same Zelenak.

Informal Copy of Judgement

For these reasons the Court dismisses the request made by the Attorney General for the revocation of the aforementioned decision and for the re-arrest of respondent.

< Final Judgement >

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