



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

**MAGISTRAT DR.
AUDREY DEMICOLI**

Seduta ta' l-20 ta' Lulju, 2012

Numru. 331/2009

**The Police
(Inspector Pierre Grech)**

vs

Miriam Helena Parmanand

The Court;

Having seen that the accused Miriam Helena Parmanand of 42 years, wife of Wim Jansen and daughter of an unknown father and Dewratti Parmanand, born in Paramaribo on the 22 of January 1967 and residing in Netherlands and holder of Dutch passport nr. NG2700071 was arraigned before it and charged with having:

On the 30th March 2009 at the Malta International Airport:

1. Failed to declare to the Comptroller of Customs whilst entering and/or leaving Malta that she was carrying a sum of or equivalent to ten thousand euros (10,000 euros) or more in cash.

2. Also of having on the 30th March 2009 and in the days preceding this date in these islands:

(a) Carried out acts of money laundering by:

i) Converting or transferring property knowing that such property is derived directly or indirectly from or the proceeds of criminal activity or from an act or acts of participation in criminal activity, for the purpose of or any person or persons involved or concerned in criminal activity;

ii) Concealing or disguising the true nature, source, location, disposition, movement, rights with respect of min or over or ownership of property, knowing that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity

iii) Acquiring property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

iv) Retaining without reasonable excuse of property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

v) Attempting any of the matters or activities defined in the above foregoing sub-paragraph (i, ii, iii and iv) within the meaning of article 41 of the Criminal Code.

vi) Acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i, ii, iii, iv & v).

The Court was requested to prohibit Miriam Helena Parmanand from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property in terms of article 5 (1b) of the Prevention of Money Laundering Act Chap 373 as well as to issue orders as provided for in articles 5(1) and 5(2) of the same Act.

The Court was also requested to appoint an expert to draw up an inventory of all properties as described in article 2 of Chap 373, belonging to the said Miriam Helena Parmanand.

Having seen all documents and records of the proceedings including the order (at folio 7) dated 1st April 2009 whereby in terms of Section 3(2A)(a) of Chapter 373 of the Laws of Malta the Attorney General ordered that the accused is arraigned before the Criminal Court accused with charges related to money laundering, as well as the Attorney General's consent in terms of Article 10 of Chapter 233 of the Laws of Malta and Regulation 3(6) of LN149/2007, and the counter order dated 18th November 2011 whereby by virtue of Article 3(2A)(b)(c) of chapter 373 of the Laws of Malta the Attorney General ordered that the accused be brought before this Court as a Court of Criminal Judicature regarding the charges brought against her for the breach of the provisions of Chapter 373 and the same note dated 18th November 2011 whereby the Attorney General transmitted the acts and records of the preliminary investigation to be heard and decided by this Court as a Court of Criminal Judicature and whereby he deemed that from the preliminary investigation there might result an offence or offences under the provisions of:-

- a) Articles 3, 4A, 5 of Chapter 373 of the Laws of Malta;
- b) Articles 23A(2), 23B of Chapter 9 of the Laws of Malta;
- c) Articles 17, 18, 31, 533 of Chapter 9 of the Laws of Malta;
- d) Article 10(1) of Chapter 233 of the Laws of Malta;

e)Article 3 of Subsidiary Legislation 233.07 (L.N. 149/2007) of the Laws of Malta.

Having seen that on the 19th April, 2012 (at folio 390) the accused answered that she had no objection that her case is heard summarily and decided by this Court as a Court of Criminal Judicature.

Having heard all evidence submitted in this case.

Having heard the final submissions made by the Prosecution and the Defence Counsel.

Having considered:

That the facts of the case are the following. On the 30th March 2009 the Police were investigating a case regarding drug importation by a Romanian national who had just arrived in Malta on a flight KM395 from Amsterdam. The said person, Fister Gabriel Alin, was subsequently arraigned in Court charged with trafficking and importation of drugs. It also transpired that the accused was travelling on the same flight and the police became suspicious because their attention was drawn to the fact that the accused booked a flight to leave Malta within twelve hours of her arrival. The accused was stopped by the Police at the Malta International Airport on the 30th March 2009 and a search was effected on her and in her luggage whereby she was found in possession of the sum of twenty thousand, eight hundred and thirty five Euros (€20,835) (Dok PG1). From Inspector Pierre Grech's evidence it transpires that the accused herself indicated that she had the sum of more than €20,000 in her possession. The accused informed the police that she had brought the money with her to Malta where she had come on a five day holiday and she intended buying expensive clothing and other luxury goods with the said money. The Investigating Officer Inspector Pierre Grech (vide his evidence at folio 15 et sequitur of the acts of these proceedings) explained that the accused was informed that it was against the law to import that amount of money into Malta without duly declaring it to The

Comptroller of Customs and he explained that since the Police deemed that the explanation given by the accused regarding the amount of money found in her possession was unjustified and unacceptable she was kept under arrest and arraigned in court charged with money laundering offences and also with failing to declare to the Comptroller of Customs whilst entering on leaving Malta that she was carrying a sum of more than €10,000. From the evidence brought forward in this case it resulted that the accused had a ticket booked for departure from Malta on the 5th April 2009 but upon being informed by her husband that their thirteen year old son had an accident at school and was suffering from a concussion she went to the airport to book a flight to return home immediately. From the evidence brought forward by the Prosecution in this case it also transpired that the Romanian national collaborated with the Police in the course of the investigations and he agreed to effect a controlled delivery. From Inspector Dennis Theuma's evidence (vide transcription of evidence exhibited at folio 375 et sequitur) it results that the controlled delivery was successful and that two people were arrested. It also emerges that no link whatsoever was established by the police between the said two persons who were arrested and the accused. Inspector Theuma also explained that after the Romanian national's mobile phone was examined by court expert Martin Bajada no evidence of any form of communication between the Romanian and the accused could be found.

The accused released a statement to the Police (Doc PG exhibited at folio 32) whereby she explained that within a few hours of her arrival in Malta she was informed by her husband that their son had had an accident at school and was injured and she therefore decided to interrupt her stay in Malta and return immediately to Holland to assist her son. She explained that she had come to Malta for a five day holiday and was staying at the Alexandra Hotel and she also specified that she was well off since she ran several businesses with her Dutch husband and that therefore it was normal for her to bring over the amount of money which was found in her possession to spend while on holiday. The accused explained that she was not

aware of the legal obligation imposed by Maltese Law whereby one had to declare that they were in possession of any amount exceeding €10,000 to the Comptroller of Customs. The accused also explained that she did not know the Romanian national who had been travelling on the same flight with her when she came to Malta. The Romanian national in fact gave evidence in these proceedings on the 22nd April 2009 whereby he confirmed that he did not know the accused and that he had never communicated with her in any manner. It is also relevant to note that from an examination made of the two mobile phones found in the possession of the accused (Doc PG2) no evidence was found of any contact made between the accused and the Romanian national. The accused stated that her husband is a financial advisor and property negotiator and has his own business in Holland whilst she also has her own business in catering. The accused also explained that she had a credit card in her possession but she did not have much credit available on the said card because she had just travelled to New York with her husband in March and used up a lot of the available credit. She stated that for this reason her husband had given her the amount in cash to use as spending money in Malta.

Having considered:

That the accused is being charged with on the one hand as per the first charge with the offence contemplated in Regulation 3 of Legal Notice 149/2007 and on the other hand as per the second charge with money laundering offences contemplated in Sections 3, 4A and 5 of Chapter 373 of the Laws of Malta.

The Court shall start by dealing with the first charge relating to the offence of carrying and bringing into Malta a sum of money in excess of ten thousand Euros (€10,000) without declaring it to the Comptroller of Customs. Regulation 3 of LN149/2007 reads as follows:-

'3. (1) Any person entering or leaving Malta, or transiting through Malta and carrying a sum

equivalent to €10,000 or more in cash shall be obliged to declare such sum to the Comptroller.

(2) The obligation to declare any such sum as in subregulation

(1) shall not be fulfilled unless such person has completed the applicable form, appearing in the Schedule, and has handed in such form to the Comptroller when entering or leaving Malta, or transiting through Malta.

(3) Where any cash has not been declared as provided in subregulation (1), the Comptroller shall seize the undeclared amount in excess of €10,000, or the whole amount when the cash is indivisible.

(4) A person who makes a false declaration for the purpose of these regulations or who does not fulfil the obligation to declare such sum in terms of subregulation (2), shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) equivalent to twenty-five per centum of the value, represented in local currency on the date of entry or leaving Malta or transiting through Malta, by the cash carried, but in any case not exceeding a fine (multa) of forty-six thousand and five hundred and eighty-seven euros and forty-seven cents (46,587.47).

(5) The court shall, besides the punishment to which it may sentence the person convicted of an offence under subregulation

(4), order the forfeiture in favour of the Government of the undeclared amount in excess of €10,000, or the whole amount when the cash is indivisible.

(6) No criminal proceedings for an offence under these regulations shall be commenced without the consent of the Attorney General.'

There is absolutely no doubt whatsoever that the Prosecution has managed to prove to a degree of beyond reasonable doubt that the accused effectively entered and was about to leave Malta whilst she was carrying a sum of money in excess of ten thousand euros (€10,000) without first making a declaracion to the Comptroller of Customs that she was carrying the said amount of money. The

Police Officers who conducted the search¹ gave evidence and explained that they found the amount of €20,835 in the accused's possession whereby the sum of €2,785 was found in her handbag and the remaining amount was found in her luggage. The Police Officers indicated that the money found in the accused's luggage was placed in the pockets of two jackets and in a side compartment in her luggage but was not concealed. They also indicated that the accused herself indicated to them that she had more money in her luggage. Furthermore the accused herself in the statement she voluntarily released to the Police indicated that she was carrying an amount in excess of €20,000 which she had brought with her to Malta as spending money. Moreover Carmel Muscat a customs officer at the Malta International Airport gave evidence on the 18th June 2009 whereby he indicated that the accused had not submitted a declaration to the Comptroller of Customs indicating that she was carrying into Malta a sum of money in excess of €10,000.

There is therefore no doubt whatsoever that the Prosecution managed to prove the first charge brought against the accused. The defence counsel however maintains that the accused should be acquitted of this charge because in the note of remittal sent by the Attorney General on the 18th November 2011 he erroneously remitted the acts of these proceedings to be decided by this Court in terms of Section 370(1)(3)(a) of the Criminal Code when the remittal should in fact have been in terms of Section 433(5) of the Criminal Code. The defence is claiming that the money laundering charges are covered by the Counter Order issued on the same date and therefore since the remaining offence related to an offence which falls within the original competence of the Court of Magistrates as a Court of Criminal Jurisdiction indicated in Section 370(1) the remittal had to be made in terms of Section 433(5) and not in terms of Section 370(3).

¹ Vide evidence of PS891 Oscar Baldacchino, WPC127 Carmen Gauci and PC1319 Matthew Xuereb who all gave evidence on the 20th April 2009.

In a judgment of the Court of Criminal Appeal of the 7th December 2001, Police vs Michael Carter, the Court of Criminal Appeal made a clear distinction between a remittal in terms of Section 370(3) and a remittal under Section 433(5) whereby the Court said as follows:-

'Jinghad mill-ewwel li l-Avukat Generali m'ghandux ragon la fuq l-ewwel punt u lanqas fuq it-tieni punt. Jekk wiehed jaqra sew is-sentenzi ta' Barbara u ta' Degiorgio isib li r-rinviju ghall-gudizzju li ghalih hemm referenza f'dawk iz-zewg sentenzi ma hux rinviju skond l-Artikolu 370(3) tal-Kodici Kriminali izda rinviju skond is-subartikolu (5) ta' dak li llum huwa l-Artikolu 433 tal-imsemmi Kodici. Fi kliem iehor, f'dawk iz-zewg kazijiet, l-Avukat Generali kien qed jiddeciedi li ma kienx hemm cirkostanzi li jgibu reat ta' kompetenza tal-Qorti Kriminali izda li mill-provi seta' johrog reat jew reati ta' kompetenza (originali) tal-Qorti tal-Magistrati (cioe' l-kompetenza kif delineata f'dawk li llum huma s-subartikoli (1) u (2) ta' l-Artikolu 370 u s-subartikolu (2) ta' l-Artikolu 371 tal-Kodici Kriminali). Huma biss meta r-rinviju ghall-gudizzju jsir skond l-imsemmi subartikolu (5) ta' l-Artikolu 433 li l-Qorti tal-Magistrati tista' ssib htija ta' reat li ma jkunx wiehed minn dawk indikati fin-nota ta' rinviju (basta, naturalment, ikun reat ta' kompetenza originali tal-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali, u purche' li l-imputat jinghata zmien biex jiddefendi ruhhu fuq l-imputazzjoni gdid li tkun zdiendet mill-pulizija a bazi tal-provi li jkunu instemghu). Huwa propju ghalhekk li s-subartikolu (6) ta' l-Artikolu 433 jipprovdi li f'kaz ta' rinviju simili, il-Qorti Inferjuri tista', qabel ma ssib htija jew tillibera jew qabel ma taghti provvedimenti ohra ta' kompetenza taghha, tisma' provi ohra sew kontra kif ukoll favur l-imputat. Meta, invece, ir-rinviju ghall-gudizzju jsir skond is-subartikolu (3) tal-Artikolu 370 (u allura wiehed qed jitkellem fuq ghall-inqas reat wiehed, fost dawk imputati, li huwa ta' kompetenza tal-Qorti Kriminali), in-nota ta' rinviju ghall-gudizzju tassumi rwol simili ghal dak ta' l-att ta' akkuza quddiem il-Qorti Kriminali. Fin-nota ta' rinviju ghall-

gudizzju skond l-Artikolu 370 (3) ma jistghux jizdiedu reati li dwarhom ma tkunx saret il-kumpilazzjoni; l-Avukat Generali, naturalment, jista' jnaqqas reat jew reati u anke izid skuzanti. Bhal fil-kaz tal-att ta' akkuza, jekk fin-nota ta' rinviju ghall-gudizzju taht l-imsemmi Artikolu 370(3) l-Avukat Generali jakkuza lil xi hadd bhala awtur ta' reat, il-Qorti tal-Magistrati, wara li tkun akkwistat il-kompetenza bil-kunsens ta' l-akkuzat (Art. 370(3)(c)), tista' ssibu hati ta' tentattiv ta' dak ir-reat, jew ta' reat iehor anqas gravi izda kompriz u involut f'dak ir-reat, jew bhala komplici f'dak ir-reat. In fatti din it-tielet ipotezi kien il-punt principali fis-sentenza ta' Seisun et. (cioe' li l-Qorti tal-Magistrati, wara rinviju ghall-gudizzju skond l-Artikolu 370(3), tista' ssib lill-akkuzat hati bhala komplici flok bhala l-ezekutor materjali; ghandu jinghad ukoll, pero', li f'din is-sentenza din il-Qorti, diversament presjeduta, ma jidhirx li apprezzat id-differenza bejn rinviku skond l-Art. 370(3) u rinviju skond l-Art. 433(5)). Issa, fil-kaz in dizamina, l-Avukat Generali rrinvija mhux skond l-Artikolu 433(5) izda skond l-Artikolu 370(3); ghalhekk ma jistax jippretendi li l-Qorti Inferjuri setghet issib lill-appellant hati ta' xi reat iehor, salv, naturalment, dak li ghadu kif inghad dwar it-tentattiv, ir-reat anqas gravi izda kompriz u involut, u l-komplicita'.

The defence referred to a judgement given by the Court of Criminal Appeal on the 5th March 1997 in the case Police vs Michael Pace whereby the accused in that case was acquitted of the charges brought against him because the Attorney General erroneously sent a remittal in terms of Section 433(5) instead of in terms of section 370(3). In the said judgement the Court said as follows:-

'Pero' l-appellant jilmenta wkoll li r-rinviju ghall-gudizzju dwar l-imputazzjonijiet li ma jaqawx taht il-Kap. 101 sar hazin mill-Avukat Generali, ghax dan ma sarx taht l-Artikolu 370(3)(a) tal-Kap. 9 . Hawnhekk l-appellant ghandu ragun. Ir-rinviju ghall-gudizzju riferibbilment ghall-imputazzjonijiet ta' serq aggravat u hsara volontarja sar, evidentement bi zvista, a tenur tal-Artikolu 433(5) tal-Kodici Kriminali. Dan l-artikolu

jirreferi ghal meta, fil-fehma tal-Avukat Generali, ma' jkun jirrisulta mill-kumpilazzjoni xi reat ta' kompetenza tal-Qorti Kriminali (i.e. bhala regola reat li jgib piena ta' aktar minn sitt xhur prigunerija) izda jkun jirrisulta jew ikunu jirrisultaw reati ta' kompetenza originali tal-Qorti Inferjuri bhala Qorti ta' Gudikatura Kriminali, jigifieri reati imsemmija fil-paragrafi (a), (b) u (c) tas-subartikolu (1) tal-Artikolu 370. Issa, fil-kaz odjern, l-Avukat Generali kjarament qed jinvoka l-Artikolu 433(5) tal-Kap. 9 izda fl-istess waqt jikkwota l-Artikoli (i) tas-serq kwalifikat bil-mezz, valur, hin u xorta tal-haga misruqa u (ii) tal-hsara volontarja li teccedi l-hamsin lira, zewg reati li huma barra mill-kompetenza originali tal-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali. Il-konsegwenza Prattika (u f'dan il-kaz ta' pregudizzju ghall-appellant) hi li peress li r-rinviju sar taht l-Artikolu 433(5) flok taht l-Artikolu 370(3)(a), l-appellant qatt ma gie mistoqsi jekk ghandux oggezzjoni li hu jigi ggudikat mill-Qorti Inferjuri ghar-reati ta' serq kwalifikat u hsara volontarja imsemmija; u ghalhekk l-ewwel qorti ghaddiet biex sabitu hati ta' reati li kienu ta' kompetenza tal-Qorti Kriminali minghajr ma kienet kompetenti li tiggudikah, liema kompetenza kienet tinghata lilha biss bil-kunsens tal-imputat moghti u registrat kif provvdut fl-Artikolu 370(3)(c) tal-Kodici Kriminali.'

The Court does not agree with the submissions made by the defence in relation of the first charge for two reasons, first and foremost because in his note of remittal the Attorney General in fact indicated both Sections, i.e. he indicated that he was sending all the acts to this Court to decide in terms of Section 370(1)(3)(a) but later on in the same note after indicating the sections of the law upon which he deemed that the Court could find guilt he also indicated that he was transmitting the acts in accordance with Section 433(5) of the Criminal Code so that the Court could decide upon such offence or offences independently of all other circumstances. Moreover the Court noted that in the Michael Pace case the Court of Criminal Appeal decided on the acquittal of the accused because of a

wrong remittal because in that case once the remittal was sent in terms of Section 433(5) the accused in that case was never asked to give his consent for the proceedings to be heard by the Court of Magistrates as a Court of Criminal Judicature and therefore the Court of Magistrates in that case did not have competence to hear and decide those charges. The same argument does not apply to this case because apart from the fact that as explained above in this case the Attorney General indicated both sections of the Criminal Code in his note of remittal, but also because in this case the consent of the accused was not required to give competence to the Court to hear and decide the case. The fact that such consent was in fact requested and granted by the accused because the remittal was sent in terms of both Section 370(3)(a) and Section 433(5) does not in the opinion of this Court deprive it from competence to hear and decide on the first charge brought against the accused.

For the reasons abovementioned the accused is therefore going to be found guilty of the first charge brought against her.

The Court is now going to consider and determine the money laundering charges brought against the accused. Sections 3, 4A and 5 of Chapter 373 of the Laws of Malta read as follows:-

'3. (1) Any person committing any act of money laundering shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding two million and three hundred and twenty-nine thousand and three hundred and seventy-three euro and forty cents (2,329,373.40), or to imprisonment for a period not exceeding fourteen years, or to both such fine and imprisonment.

(2) Where an offence against the provisions of this Act is committed by a body of persons, whether corporate or unincorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any

such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(2A) (a) Every person charged with an offence against this Act shall be tried in the Criminal Court or before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the Attorney General may direct, and if he is found guilty shall be liable-

(i) on conviction by the Criminal Court to the punishment of imprisonment for a term of not less than three years but not exceeding fourteen years, or to a fine (multa) of not less than twenty-three thousand two hundred and ninetythree euro and seventy-three cents (23,293.73) but not exceeding two million three hundred and twenty-nine thousand three hundred and

seventy-three euro and forty cents (2,329,373.40), or to both such fine and imprisonment; or

(ii) on conviction by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) to the punishment of imprisonment for a term of not less than six months but not exceeding nine years, or to a fine (multa) of not less than two thousand three hundred and twenty-nine euro and thirty-seven cents (2,329.37) but not exceeding one hundred and sixteen thousand four hundred and sixty-eight euro and sixtyseven cents (116,468.67), or to both such fine and imprisonment.

(b)Notwithstanding that the Attorney General has directed in accordance with the provisions of paragraph (a) that a person be tried in the Criminal of indictment or at any time after filing the bill of indictment before the jury is empanelled, and with the consent of the accused, direct that that person be tried before the Court of Magistrates, and upon such direction the Court of Magistrates as a court of criminal judicature shall become competent to try that person as if no previous direction had been given.

Where the Attorney General has given such new direction after the filing of the bill of indictment, the registrar of the Criminal Court shall cause the record

to be transmitted to the Court of Magistrates, and shall cause a copy of the Attorney General's direction to be served on the Commissioner of Police.

(c) Notwithstanding the provisions of article 370 of the [Criminal Code](#) and without prejudice to the provisions of subarticle (2), the Court of Magistrates shall be competent to try all offences against this Act as directed by the Attorney General in accordance with the provisions of subarticle (1).

(3) In proceedings for an offence of money laundering under this Act the provisions of article 22(1C)(b) of the [Dangerous Drugs Ordinance](#) shall mutatis mutandis apply.

(4) Where the person found guilty of an offence of money laundering under this Act is an officer of a body corporate as is referred to in article 121D of the [Criminal Code](#) or is a person having a power of representation or having such authority as is referred to in that article and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this Act be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) of not less than one thousand and one hundred and sixtyfour euro and sixty-nine cents (1,164.69) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70).

(5) (a) Without prejudice to the provisions of article 23 of the [Criminal Code](#) the court shall, in addition to any punishment to which the person convicted of an offence of money laundering under this Act may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of subarticle (4), order the forfeiture in favour of the Government of the proceeds or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said subarticle (4) and any property of or in the possession or under the control

of any person found guilty as aforesaid or of a body corporate as mentioned in this subarticle shall, unless proved to the contrary, be deemed to be derived from the offence of money laundering and liable to confiscation or forfeiture by the court even if in the case of immovable property such property has since the offender was charged passed into the hands of third parties, and even if the proceeds of property, movable or immovable, are situated in any place outside Malta: Provided that, for the purposes of this subarticle, "proceeds" means any economic advantage and any property derived from or obtained, directly or indirectly, through criminal activity and includes any income or other benefit derived from such property.

(b) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate in solidum, as the case may be, to the payment of a fine (multa) which is the equivalent of the amount of the proceeds of the offence. The said fine shall be recoverable as a civil debt and for this purpose the sentence of the court shall constitute an executive title for all intents and purposes of the [Code of Organization and Civil Procedure](#).

(b) Where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that person, that property shall be liable to forfeiture.

(6) Without prejudice to the provisions of article 5 of the [Criminal Code](#), the Maltese courts shall also have jurisdiction over any offence of money laundering under this Act in the same circumstances as are mentioned in article 121C of the [Criminal Code](#).

(7) The provisions of article 248E(4) of the [Criminal Code](#) and those of article 22(3A)(b) and (d) of the [Dangerous Drugs Ordinance](#) shall apply mutatis mutandis to the offences under this Act.

4. (1) Where, upon information received, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as "the suspect") is guilty of the offence mentioned in article 3, he may apply to the Criminal Court for an order (hereinafter referred to as an "investigation order") that a person (including a body or association of persons, whether corporate or unincorporate) named in the order who appears to be in possession of particular material or material of a particular description which is likely to be of substantial value (whether by itself or together with other material) to the investigation of, or in connection with, the suspect, shall produce or grant access to such material to the person or persons indicated in the order; and the person or persons so indicated shall, by virtue of the investigation order, have the power to enter any house, building or other enclosure for the purpose of searching for such material.

(2) Where an investigation order has been made or applied for, whosoever, knowing or suspecting that the investigation is taking place, discloses that an investigation is being undertaken or makes any other disclosures likely to prejudice the said investigation shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding eleven thousand and six hundred and fortysix euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation.

(3) An investigation order -

(a) shall not confer any right to production of, access to, or search for communications between an advocate or legal procurator and his client, and

between a clergyman and a person making a confession to him, which would in legal proceedings be protected from disclosure by article 642(1) of the [Criminal Code](#) or by article 588(1) of the [Code of Organization and Civil Procedure](#);

(b) shall, without prejudice to the provisions of the foregoing paragraph, have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise; and

(c) may be made in relation to material in the possession of any government department.

(4) Where the material to which an application under subarticle

(1) relates consists of information contained in a computer, the investigation order shall have effect as an order to produce the material or give access to such material in a form in which it can be taken away and in which it is visible and legible.

(5) Any person who, having been ordered to produce or grant access to material as provided in subarticle (1) shall, without lawful excuse (the proof whereof shall lie on him) wilfully fail or refuse to comply with such investigation order, or who shall wilfully hinder or obstruct any search for such material, shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not

exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment.

(6) Together with or separately from an application for an investigation order, the Attorney General may, in the circumstances mentioned in subarticle (1), apply to the Criminal Court for an order (hereinafter referred to as an "attachment order") -

(a) attaching in the hands of such persons (hereinafter referred to as "the garnishees") as are mentioned in the application all moneys and other movable property due or pertaining or belonging to the suspect;

(b) requiring the garnishee to declare in writing to the Attorney General, not later than twenty-four hours from the time of service of the order, the nature and source of all money and other movable property so attached; and

(c) prohibiting the suspect from transferring or otherwise disposing of any movable or immovable property.

(6A) Where an attachment order has been made or applied for, whosoever, knowing or suspecting that the attachment order has been so made or applied for, makes any disclosure likely to prejudice the effectiveness of the said order or any investigation connected with it shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation or the effectiveness of the attachment order.

(7) Before making an investigation order or an attachment order, the court may require to hear the Attorney General in chambers and shall not make such order -

(a) unless it concurs with the Attorney General that there is reasonable cause as provided in subarticle (1); and

(b) in the case of an investigation order, unless the court is satisfied that there are reasonable grounds for suspecting that the material to which the application relates -

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and

(ii) does not consist of communications referred to in subarticle (3)(a).

(8) The provisions of article 381(1)(a), (b) and (e) and of article 382(1) of the [Code of Organization and Civil Procedure](#) shall, mutatis mutandis, apply to the attachment order.

(9) An attachment order shall be served on the garnishee and on the suspect by an officer of the Executive Police not below the rank of inspector.

(10) Any person who acts in contravention of an attachment order shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment:

Provided that where the offence consists in the payment or delivery to any person by the garnishee of any moneys or other movable property attached as provided in subarticle (6)(a) or in the transfer or disposal by the suspect of any movable or immovable property in contravention of subarticle (6)(c), the fine shall always be at least twice the value of the money or property in question:

Provided further that any act so made in contravention of that court order shall be null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the suspect the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

(11) An attachment order shall, unless it is revoked earlier by the Attorney General by notice in writing served on the suspect and on the garnishee in the manner provided for in subarticle (9), cease to be operative on the expiration of thirty days from the date on which it is made; and the court shall not make another attachment order with respect to that suspect unless it is satisfied that substantially new information with regards to the offence mentioned in article 3 is available:

Provided that the said period of thirty days shall be held in abeyance for such time as the suspect is away

from these Islands and the Attorney General informs of this fact the garnishee by notice in writing served in the manner provided for in subarticle (9).

(12) In the course of any investigation of an offence against article 3, the Executive Police may request a magistrate to hear on oath any person who they believe may have information regarding such offence; and the magistrate shall forthwith hear that person on oath.

(13) For the purpose of hearing on oath a person as provided in subarticle (12) the magistrate shall have the same powers as are by law vested in the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) as a court of criminal inquiry as well as the powers mentioned in article 554 of the [Criminal Code](#); provided that such hearing shall always take place behind closed doors.

(14) It shall not be lawful for any court to issue a warrant of prohibitory injunction to stop the execution of an investigation order.'

'4A. The provisions of article 30B of the [Dangerous Drugs Ordinance](#) shall apply mutatis mutandis to proceeds within the meaning of article 3(5).'

'5. (1) Where a person is charged under article 3, the court shall at the request of the prosecution make an order -

(a) attaching in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and

(b) prohibiting the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property:

Provided that the court shall in such an order determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit, of thirteen

thousand and nine hundred and seventy-six euro and twenty-four cents (13,976.24) every year:

Provided further that the court may also -

(a) authorise the payment of debts which are due by the accused to bona fide creditors and which were contracted before such order was made; and

(b) on good ground authorise the accused to transfer movable or immovable property.

(2) Such order shall -

(a) become operative and binding on all third parties immediately it is made, and the Registrar of the Court shall cause a notice thereof to be published without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property; and

(b) remain in force until the final determination of the proceedings, and in the case of a conviction until the sentence has been executed.

(3) The court may for particular circumstances vary such order, and the provisions of the foregoing subarticles shall apply to such order as so varied.

(4) Every such order shall contain the name and surname of the accused, his profession, trade or other status, father's name, mother's name and maiden surname, place of birth and place of residence and the number of his identity card or other identification document, if any.

(5) Where any money is or becomes due to the accused from any person while such order is in force such money shall, unless otherwise directed in that order, be deposited in a bank to the credit of the accused.

(6) When such order ceases to be in force as provided in subarticle (2)(b) the Registrar of the Court shall cause a notice to that effect to be published in the Gazette, and shall enter in the Public Registry a note of cancellation of the registration of that order.'

Before determining whether the accused is guilty or otherwise of the money laundering charges brought against her the Court is going to refer to a recent judgement delivered by the Court of Criminal Appeal on

the 19th January 2012 in the case 'Police vs Carlos Frias Matteo' where the Court of Appeal gave a detailed and exhaustive explanation of the level of proof required to be brought forward by the Prosecution before the person charged with money laundering offences is required to prove that the money or assets in his possession do not come from a criminal activity. In the said judgement the Court of Appeal said as follows:-

'Ma hemmx dubju illi r-reat ta' money laundering huwa wiehed mir-reati l-aktar difficli u delikati biex jigu nvestigati. It-teknika u s-sofistikazzjoni tal-mod kif il-flus jigu girati u jinbew mill-provenjenza llecita taghom jaghmluha kwazi mpossibli illi l-investigaturi jsibu tracca tal-provinjeza tal-flus. Kien ghalhekk illi f'dawn ic-cirkostanzi l-ligi tal-Money Laundering Kap 373 ipoggi l-oneru fuq dak li jkun illi huwa jipprova ghas-sodisfazzjon tal-Qorti l-provenjenza lecita tal-flus illi jkunu nstabu fuqu. Dan il-bdil ta' l-oneru tal-provi m'hijjex wahda kapriccjuza u kif qalet il-Qorti fil-kawza "Il-Pulizija vs John Vella" "din hi ligi strordinarja li tintroduci kuncetti radikali fis-sistema nostrana u li tirrikjedi applikazzjoni fl-akktar skruplu u attenzjoni biex ma tigix reza xi sturment ta' ngustizzja, aktar reminixxenti taz-zminijiet ta' l-inkwizzjoni minn dak ta' l-era' moderna tad-drittijiet tal-bniedem. . . ."

Il-Qorti qieghda taghmel dan il-pronuncjament fl-isfond tad-dispost ta' l-Artiklu 2(2)(a) u l-Artiklu 3(3) tal-Kap 373 tal-Ligijiet ta' Malta illi ghandhom jinqraw fid-dawl ta' l-Artiklu 21(1c)(b) tal-Kap 101 tal-Ligijiet ta' Malta li jstipulaw li l-Avukat Generali jista' jakkuza persuna bir-reat ta' "money laundering" minghajr ma jkollu xi Sentenza b'referenza ghal xi offiza precedenti. Ma dan kollu, jibqa` l-fatt illi l-Avukat Generali ghandu jipprova n-ness bejn il-flus jew il-propjeta u l-attivita kriminali li tkun generat dawk il-flus.

Dwar il-livell ta' prova li jinkombi fuq l-Avukat Generali, l-Qorti taghmel referenza ghall-kawza "Il-Pulizija vs Paul Borg" deciza mill-Qorti ta' l-Appell

Kriminali fis-sitta (6) ta' Ottubru ta' l-2003. F'din il-kawza l-Qorti kienet qalet illi meta l-Avukat Generali jakkuza lil xi hadd bl-offiza ta' money laundering taht il-Kap 101 tal-Ligijiet ta' Malta, l-Avukat Generali ghandu jipprova "prima facie" n-ness bejn il-flus jew il-propjeta u l-attivita kriminali li tkun generat dak il-flus jew propjeta "minn ezami u qari akkurat ta' din id-dispozizzjoni din il-Qorti thoss li una volta li l-prosekuzzjoni tiddeciedi li tipprocedi skond l-Ordinanza Kap 101 u mhux taht id-dispozizzjonijiet tal-Kap 373 ossia l-Att tan-1994 kontra "Money Laundering", fejn l-attivita kriminali sottostanti tista' tkun varja u tirreferi ghall-ksur ta' diversi ligijiet kif indikat fit-tieni skeda ta' l-istess Att, irid almenu jigi "prima facie" pruvat li l-akkuzat ikun qed jagixxi bi hsieb li jahbi jew jikkonverti flus jew ir-rikavat ta' flus u jkun jaf jew ikollu suspett li dawk il-flus ikunu miksuba bhala rizultat ta' ksur ta' xi dispozizzjoni ta' l-Ordinanza Kap 101 u dana qabel ma tiskatta l-inverzjoni ta' l-oneru tal-prova fuq l-akkuzat."

F'din il-kawza, l-appellat qed jigi akkuzat bil-ksur ta' provvedimenti tal-Kap 373 tal-Ligijiet ta' Malta izda dan il-Kap jaghmel referenza wkoll ghall-Artiklu 21(1c)(b) tal-Kap 101 tal-Ligijiet ta' Malta li wkoll jitfa' l-piz li juri l-origini lecita tal-flus, propjeta jew rikavat fuq il-persuna akkuzata. Ghalhekk, dan il-livell ta' prova "prima facie" japplika kemm ghall-persuna li tkun akkuzata b'money laundering taht il-Kap 101 kif ukoll taht il-Kap 373. Issa, peress illi l-Artiklu 2(2)(a) ta' l-istess Att jezimi mir-responsabilta' l-prosekuzzjoni illi tipprova xi htija precedenti in konnessjoni ma xi attivita` kriminali, kull ma ghandha tipprova l-prosekuzzjoni huwa illi l-flus illi nstabu fil-pussess tal-persuna li kienux konformi ma l-istil ta' hajja tal-persuna, liema prova tkun tista' tigi stabbilita anke minn provi indizzjarji. Dana jfisser illi l-prosekuzzjoni m'ghandix tipprova lill-Qorti l-origini tal-flus, lanqas jekk il-flus kienu illegali. Kull ma trid tipprova huwa fuq grad ta' "prima facie" illi ma hemm l-ebda spjegazzjoni logika u plawsibbli dwar l-origini ta' dawk il-flus. Darba ssir din il-prova fil-grad

imsemmi, jkun imiss lill-akkuzat sabiex juri illi l-origini tal-flus ma kienx illegali.

Forsi f'dan l-istadju ikun opportun illi jigi kwalifikat il-prova "prima facie" u fiex din tikkonsisti.

Ikkunsidrat :

Hu ben saput illi l-Qrati generalment jirrikonoxxu erba' tipi ta' prova, dak li huwa possibli, l-probabbli, minghar dubju dettat mir-raguni u c-certezza. Izda l-prova "prima facie" hija wzata mill-Magistrat Inkwirenti meta jirredici l-Process Verbal u l-Magistrat Istruttur fl-gheluq tal-Kumpilazzjoni. Fl-opinjoni tal-Qorti din hija livell ta' prova illi tidhol bejn il-possibli u l-probabbli.

L-awtur Blackstone (At D 6.21) jghid fost affarijiet ohra, "Thus, the standard of proof the prosecution are now required to satisfy at committal proceedings is very low, lower than that resting on a plaintiff in civil proceedings. It is commonly expressed as establishing a prima facie case or a case to answer." Il-probabbli huwa l-livell uzat f'proceduri civili. Ghalhekk skond dan l-awtur "prima facie" huwa anqas minn hekk u jista' jigi definit bhala "a case to answer", haga li ghandha tigi nvestigata aktar fil-fond.

Fil-kuntest tal-provi illi l-proskuzzjoni gabet f'dan il-kaz, intlahaq dan il-livell ta' "prima facie"? Kien hemm "a case to answer"?'

After having examined the evidence brought forward by the Prosecution in this case the Court deems that the said Prosecution has failed to prove on a level of prima facie that the money found in the accused' s possession could be linked to some form of criminal activity or underlying criminal activity. The Prosecution did not bring forth any evidence to indicate that the lifestyle and level of income of the accused did not justify the fact that she could have been in possession of the sum of €20,835. The accused in fact told the Police that she ran a catering business,

that her husband was a property negotiator and financial adviser, that she had brought the money to spend on expensive clothing and jewellery and that she had brought this amount in cash because she had just travelled to the United States where she had used up most of the credit which she had available on her credit card. Moreover the accused gave a plausible reason why she had to book a flight to return back to Holland within twelve hours of her arrival in Malta and she also provided documentary evidence that she had intended to stay in Malta for five days and had in fact a ticket booked to leave on the 5th of April 2009. The Prosecution cannot be deemed to in any way have managed to prove any form of link whatsoever between the drug deal which the Romanian national was involved in and the accused. The said Romanian national in fact denied any connection with the accused and after the mobile phones found in the accused's possession were examined by the court expert Martin Bajada no form of communication whatsoever was established to have been made between the accused and the Romanian. The Court deems that in these proceedings the Prosecution did not manage to prove even on a prima facie basis that there was a link between the money found in the accused's possession and the underlying criminal activity and therefore the shift of onus of proof on the accused to prove that the money did not in actual fact originate from a criminal activity need not take place. The Court however deems that through the documents brought forward by means of letters rogatory the accused has managed to prove that her social standing, lifestyle and assets justify the fact that she was in possession of the amount of money in question and that therefore the said money did not originate from a criminal activity. For these reasons the accused is being declared not guilty of the money laundering charges brought against her.

For the abovementioned reasons and after having seen Section 10(1) of Chapter 233 of the Laws of Malta and Regulation 3 of Legal Notice 149/2007 and after having seen the Attorney General's note dated 18th November 2011, the Court finds the accused guilty of the first charge brought against her and condemns her to a fine of five

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thousand two hundred and eight Euros and seventy five cents (€5208.75) and furthermore orders the forfeiture in favour of the Government of Malta of the sum of ten thousand eight hundred and thirty five Euros (€10,835). The Court orders that the fine inflicted shall be deducted directly from the remaining balance of ten thousand Euros (€10,000) which amount was deposited in these proceedings and orders that the then remaining balance of five thousand six hundred and twenty six Euros and twenty five cents (€5626.25) is released in favour of the accused. The Court declares the accused not guilty of the other charges brought against her and consequently acquits her of the said charges.

< Sentenza Finali >

-----TMIEM-----