



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
MICHAEL MALLIA**

Sitting of the 3rd October, 2013

Criminal Appeal Number. 219/2011

**Appeal Number: 219/2011
The Police
Vs
Anton Herbert Franz Paul**

Today 3rd October, 2013

The Court,

Having seen the charges proffered against the appellant [holder of identity card no. 22859A] in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature with having:

As a registered person with the Commissioner of Value Added Tax as per act of 1998 regarding Value Added Tax (Act No: XXIII of 1998) and Regulations imposed by the said Act, failed to submit within (6) weeks, to the Commissioner of Value Added Tax (3) VAT declaration for the periods ending 31st December, 2007 till 31st December, 2008 thus being in breach of articles 27(1), 66, 76(c) and 82(2) of Act No. XXIII of 1998.

The Court was requested to order the accused to conform within the stipulated time frame, which time frame cannot exceed three months, under the penalty of not less than

€4.66 and not more than €23.29 for every day which penalty commences on the first day after the lapse of the period stipulated by the Court.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 5th May, 2011, which Court, after seeing articles 27(1) and 76(c) of Chapter 406 of the Laws of Malta found the accused guilty of the charge brought against him and condemned him to a fine (multa) of seven hundred Euros (€700). The Court, by the application of article 76 of the said Chapter 406 ordered the accused to conform to the Law within three months, with an additional fine of fifteen Euros (€15) for every day of default following the lapse of the three months until he so conforms.

Having seen the appeal application presented on the 13th May, 2012 whereas he requested this Court:

1. To declare the said judgment null and void, and quash the judgment,
2. Alternatively to reverse the judgment delivered against the appellant.

Having seen the aggravations brought forward by the appellant as follows:

1. Of nullity
 - a. Any act and its subsequent decisions not having a reproduction or annex according to sec. 5(5) Chapter 319 LoM is null. It consequently does not even set any time-barr in motion. It is irrelevant if the addressee of any such act accidentally is in the position to apply for a translation and receives such translation.
 - b. The principle of detailed accusation has been violated by the prosecution. In fair interpretation of the accusation the appellant – and any average person in his stead – could not avoid understanding that he had been accused of not filing an accurate return for a period being the calendar year 2007 and for a period being the calendar year 2008. Main defect of the accusation is the need to interpret the accusation before being able to understand its contents. Without intensive interpretation the accusation does not make sense. Although English words had been used the sentence's composition is in

violation of the accusation of the principle of 'adequate facilities for the preparation of one's defence' cannot have been met.

c. Due to the fact that every infringement of VAT Act maybe immediately noted by the VAT Department, an infringement certainly noted on the 15th February, 2009 which had not been proceeded in any way further, but had become object of accusation in April 2010 is in violation of the acceleration principle laid down in Chapter 319 LoM.

2. For reverse

a. Three subsequent periods in the meaning of art. 17 VAT Act of different length and different to the regular period determined in Art. 17(2) VAT Act should have been taken into consideration by the appellant without him having been served with a notice of the varies. According to the prosecution's intentions the first period should have had a length of twelve months, the second a length of five and the third a length of seven months. This deliberate change of the periods' lengths are consequently in violation of the VAT Act, because no notice of variation was served on the appellant.

b. Maltese law does not determine color or texture of the VAT return forms. The VAT Department insists without justification that the forms distributed by their Authority are used by the taxpayer in the manner determined by the VAT Department but without determination by the legislator.

c. The ratified version of Maltese law in English determines no specific language to be used in the VAT return form, which shall reach the VAT Department. The Appellant therefore cannot have infringed the law by amending the form distributed in Maltese language, and which he believed to be a translation of the English version used in the Fourth Schedule of S.L.406.09. On the 12.5.2011 and the 13.5.2011 it was further impossible to download S.L.406.09 from the Maltese version of the laws published. Therefore there was not even access to a part of Maltese law in Maltese language on that day. The person in need of access to Maltese justice could therefore not detect, if any version of ratified Maltese law

in Maltese was colliding with Maltese law ratified in English, and refer to the Interpretation Act accordingly.

d. The Appellant has met the requests in the VAT returns filed according to the contents of Art. 27 (4) VAT Act. No material aspects are in dispute. According to the opinion of the prosecution the Appellant however did not manage to comply with formal respects of the return. He files in one return the yearly tax for the year 2008, which by opinion of the prosecution should have been divided in a return covering five months and a return covering seven months of that same year. Maltese law allows such deliberate undertaking only after service of the appropriate notice. No such notice has been served on the Appellant. The manner Maltese law is applied in this case results into incrimination after unsuccessful active-participation in an administrative act being requested by a governmental Authority. This inappropriate manner of applying the law becomes even more severe after it was the undersigned as a legal professional, who in helping the appellant to meet his duties amended a VAT return form prepared by the VAT Department, because he also was misled by the contents of the accusation.

e. The reasons laid down in this appeal can only have precautionary relevance. It is not possible to accurately reason a remedy, if the judgment subject to the remedy carries no reasons.

Having seen an updated conduct sheet of the appellant.

Considers,

By means of a note verbal entered on the 25 of October, 2012 (page 33) the Attorney General filed a preliminary plea in the sense that the application for the appeal is null and void because it was signed by a person who is not a warranted lawyer in terms of Article 418 (3) of Chapter 9 of the Laws of Malta. The lawyer in question Kyle Johansson brought to the attention of the Court that according to Legal Notice 273/2002 the directive of the European Union authorising all warranted European lawyers to freely exercise across the European Union could make him eligible to appear before this Court and file the necessary pleas. After hearing the necessary submissions by the prosecution and Mr. Kyle Johansson

and reviewing the written submissions the Court put off the case for decision on this preliminary plea to the 3 of October, 2013.

Considers that this issue has already been dealt by this Court by means of a Judgment given on the 5th of December, 2012 *The Police vs Kyle Jochimsen* where the Court came to the conclusion:

1. That one cannot only practice the profession of a lawyer in a Court of Law in Malta if one has a warrant issued in accordance of Section 79 of Chapter 12.
2. Regulation 6 of LN 273 of 2002 has to be complied with.
3. As to proceedings in Court, legal professionals practicing under their home country professional titles, have to work in conjunction with legal professionals who practice before the Maltese Court and who are necessarily answerable to such Courts. (vide Regulation 7 (3) of LN 273/2002 above). This Legal Notice distinguishes between the functions which an office lawyer can carry out and those of a Court Lawyer. Hence as the present case is connected with criminal appeal proceedings in a Court of Law the appellant has to follow Regulation 6 and 7 (3) of Legal Notice 273/2002 and work with professionals who practice before the Maltese Courts.”

Furthermore, this Court observes that in terms of Article 4 of Directive 249/77/EEC any lawyer contemplating to exercise his activities relating to the representation of a client in legal proceedings or before public authorities irrespective of whether he intends to do so permanently or otherwise, must, in every case, satisfy the conditions laid down for lawyers established in the relevant member state in which he contemplates to exercise the above mentioned activities. The conditions laid down for lawyers by the Maltese State are found in Articles 79 and 81 of Chapter 12 of the Laws of Malta which respectively provide that:

79. No person shall exercise the profession of advocate without the authority of the President of Malta granted by warrant under the Public Seal of Malta;

81. No person shall be entitled to obtain the warrant referred to in Article 79 unless There is no point in going into the requirements of Article 81 because it results that Mr. Kyle Johansson does not have a warrant granted under the authority of the President of Malta. Suffice it to say that Mr. Johansson cannot obtain a warrant from the President of Malta because he has not satisfied the requirements of Article 81F of Chapter 12 of the Laws of Malta, namely that he has been duly examined and approved by two Judges who shall issue under their signature and seal a certificate attesting that they have found applicant to possess the qualifications mentioned and that he is competent to exercise the profession of advocate in the Courts of Malta.

For the reasons above mentioned this Court upholds the preliminary plea raised by the Attorney General, declares the appeal null and void once it was signed by a person who is not a warranted layer in terms of Article 418 (3) of Chapter 9 of the Laws of Malta.

< Final Judgement >

-----END-----