MALTA

# QORTI TA' L-APPELL KRIMINALI

## ONOR. IMHALLEF

## MICHAEL MALLIA

Seduta tad-29 ta' Jannar, 2015

Appell Kriminali Numru. 376/2014

Appeal Nr: 376/2014

The Police

[Inspector Rennie Stivala]

Vs

Thiam Serge Ronny

Elvis Achu Minang

Today the, 29th January, 2015

The Court,

Having seen the charges brought against Thiam Serge Ronny, holder of French Identity Card No. 121294300515, and Elvis Achu Minang holder of Camerun passport No. 01582413 before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having:

On these Islands, on the 23rd September 2014 and in the preceding days, in Malta:

1) For having, with intent to commit a crime, manifested such intent by overt acts which were followed by a commencement of the execution of such crime, in the crime with which 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 imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, tried to make a gain of more than five thousand euro (€5,000) to the detriment of various persons (Articles 308, 309 & 310 Chapter 9);

2) For having, been found in possession or had under his control any article for use in the course of or in connection with any fraud (Article 310 BA 1 Chapter 9);
3) For having made, adapted, supplied or offered to supply any article, knowing that it is designed or adapted for use in the course of or in connection with fraud, or intending it to be used to commit, or assist in the commission of fraud (Article 310 BA 2 Chapter 9);

4) And charge them with having on the 22nd September 2014, and on days before and after such date, in these Islands forged, altered or tampered with Passports, ID Cards and Residence Permit Cards or used or had in their possession Passports, ID Cards and Residence Permit Cards which they knew to be forged, altered or tampered with, in the name of Cassame Bambe bearing numbers AM 5522111C, 030300 respectively, and in the name of Johnathan Bagari bearing numbers AM 5522116C, IO1484490, and 030300 respectively (Art 5 Chapter 61);

5) And charge them also with having on the same date, time and circumstances committed any other kind of forgery, or have knowingly made use of any other forged document, in the mentioned documents (Article 189 Chapter 9);

6) And charge them also with having on the same date, time and circumstances forged any document or true copy of a document or an entry made in pursuance of this act (Section 32 (1d) Chapter 217);

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 25th September, 2014 whereby the Court, after having seen articles 308, 309, 310(1)(a), 310BA1, 310BA2, 189, 17, 31, 41(1)(a) of Chapter 9 of the Laws of Malta, article 5 of Chapter 61 of the Laws of Malta, article 32(1)(d) of Chapter 217 of the Laws of Malta, upon admission finds the accused guilty of the charges brought against them and condemns Thiam Serge Ronny to two

(2) years imprisonment and comdemns Elvis Achu Minang to two (2) years imprisonment.

The Court orders the forfeiture of all the objects exhibited in these proceedings.

The Court orders that this judgment and all acts of this case be notified to the Attorney General in accordance with the law.

Having seen the appeal application presented by Thiam Serge Ronny in the registry of this Court on the 6th October, 2014 whereby this Court was requested to revoke and annul the appealed judgement by declaring that the appealed judgment is null and void or alternatively to vary the appealed judgement as regards the punishment inflicted and instead applies a lesser and more appropriate punishment.
Having seen the appeal application presented by Elvis Achu Minang in the registry of this Court on the 6th October, 2014 whereby this Court was requested to revoke and annul the appealed judgement by declaring that the appealed judgment is null and void or alternatively to vary the appealed judgement as regards the punishment inflicted and instead applies a lesser and more appropriate punishment.
Having seen the acts of the proceedings;

Having seen the updated conduct sheet of the appellants, presented by the prosecution as requested by this Court.

Having seen the grounds for appeal of Thiam Serge Ronny:

1. That the first grievance consists in the fact that the appealed judgement is null and void and has no effect at law as the said judgement is not in conformity with the requisites listed *ad validitatem* in article 382 of Chapter 9 of the Laws of Malta. Article 382 of the Criminal Code provides that:

> *'The Court in delivering judgment, shall state the facts of which he has been found guilty, shall award punishment, and shall quote the articles of this Code or any other law creating the offence'*

Various judgments (Il-Pulizija vs. Graham Agius; Il-Pulizija vs. Generoso Sammut) have explicitly held that the lack of any one of these formalities regarded as necessary for the validity of the judgment, should lead to the nullity of the judgment as a result of a defect in formality.

The Court of Magistrates as a Court of Criminal Judicature in delivering the judgement against the appellant, did not state the facts of which the appellant has been found guilty. This results in a lack of one of the formalities regarded as

necessary for the validity of the judgment as rightly pointed out in the case of *Il-Pulizija vs Benjamino Camilleri et* whereby the Court of Criminal Appeal held that:

> *L-Artiklu 382 tal-Kap 9 jghid li l-Qorti meta taghti s-Sentenza kontra l-imputat, ghandha tghid il-fatti li taghhom dan ikun gie misjub hati, taghti l-piena u ssemmi l-Artiklu ta' dan il-Kodici jew kull Ligi ohra li tkun tikkontempla r-reat. Hija konsegwenza logika illi meta fis-Sentenza taghha l-Qorti tghid il-fatti li dwarhom l-imputat ikun gie misjub hati trid tirreferi ghall-imputazzjonijiet illi jkunu gew dedotti kontra tieghu u dawn il-fatti jridu jirreferu ghal dawn l-imputazzjonijiet.*

Reference is also made to the judgement in the names ***Il-Pulizija vs. Keith Pace*** delivered by the Court of Criminal Appeal whereby the court held that:

> *Issa kif gie ritenut f' gurisprudenza kostanti sentenza tal- Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali li ma jkunx fiha dikjarazzjoni ta' liema fatti sabet lill-imputat hati, jew meta minnha ma jirrizultax car ta' x'hiex lappellant gie misjub hati , jew meta f' kaz ta' imputazzjonijiet alternattivi , l-Qorti tiddikjara lill-imputat hati bla ma tghid ta' liema miz-zewg imputazzjonijiet hu hati u ghalhekk jigi li l-Qorti ma qalitx ta' x'hiex sabet lillimputat hati , jew meta ma tghid xejn dwar akkuza partikolari, hija nulla u jekk il-kawza tigi appellata, il-Qorti tal-Appell tiddikjara n-nullita' tas-sentenza . (App. Krim. "Il-Pulizija vs. Francis Aquilina"[26.11.1960]; "Il- Pulizija vs. Frans Portelli" [3.2.1992] ; "Il-Pulizija vs. Piju Gafa' " [18.4.1959] ; "Il-Pulizija vs. Generoso Sammut" [13.10.2004] u ohrajn.)*

Moreover in the same judgement the Court added that:

> *Ghalhekk in vista tad-diffikultajiet fuq ravvizati kemm fir-rikors tal-appell kif ukoll minn din il-Qorti "ex officio" , din il-Qorti ma ghandhiex alternattiva hlief li tannulla s-sentenza appellata u stante li jista' jaghti l-kaz li jkun hemm bzonn li jinstemghu il-provi ghall-ewwel darba kemm dwar lakkuza ta' serq li issa l-appellant qed jghid li ma gietx ammessa minnu , kif ukoll dwar ir-recidiva li hu qatt ma ammetta, w biex ma tipprivax lill-partijiet mill-beneficcju tad-doppio esame, qed terga tibghat l-atti lill-Ewwel Qorti ...*

Furthermore, in the case of ***Il-Pulizija v. Joseph Agius*** the Court of Criminal Appeal held that:

> *"Ovvjament la l-Qorti hija marbuta illi taghti l-fatti li taghhom l-appellant ikun gie misjub hati, ifisser illi ghandu jkun hemm id-dikjarazzjoni ta' htija ghax altrimenti huwa inutili li ssemmi l-fatti. In-nuqqas ta' dikjarazzjoni ta' htija iwassal ghal nuqqas ta' formalita` sostanzjali bhal ma wkoll huwa suggett ghall-istess censura n-nuqqas ta' dikjarazzjoni ta'x'hix l-akkuzat qed jinstab hati."*

2. That the **second grievance** consists in the fact that, without prejudice to the first grievance, the punishment meted out was disproportionate to the facts of the case. The Court of Magistrates did not take into consideration the early admission of the applicant for all the charges brought against him (thus saving time and money of the Court) when inflicting the punishment. Secondly, the Court of Magistrates in meting out the punishment failed to take into consideration the fact that the crime was not completed in consequence of some accidental cause independent of the will of the offender. The law with regards to the punishment to be inflicted differentiates between a completed offence and an attempted offence whereby the punishment for an attempted offence should be decreased by one or two degrees.

Thus, whilst it is not being contested that the punishment inflicted is one within the parameters of the law, however, when one considers the circumstances of the case in question, the punishment is definitely an exaggerated one taking also into consideration that the applicant has a family living abroad.

That the Court before inflicting the punishment should have taken into consideration the fact that

i) the applicant was charged with an attempted offence and thus the victim didn't suffer any financial prejudice,
ii) the guilty plea of the applicant at the very initial stages of the proceedings,
iii) his full co-operation with the investigative officials of the police which is clearly evidenced in his statement,
iv) the clean criminal record of the applicant and as a result he should be considered as a first time offender.

Moreover, various times the Court has accentuated the importance of punishment in having a rehabilitative effect rather than having a deterrent effect. In fact, in the judgment delivered by the Criminal Court of Appeal dated 22nd of September, 2013, in the names **Il-Pulizija vs. Stephen Spiteri**, the Court held that:

> *"Konsiderata l-piena bhala mezz ta' riforma tal-imputat fl-interess tieghu u tas-socjeta', izjed u izjed din il-piena karceraja tidher inadatta. Infatti, permezz taghha, tifel ta' kondotta sa issa tajba, u li diga', bil-fatti, wera' soghba tarreat li ghamel, ser jinxtehet ghal soggorn ma' nies li filmaggjoranza taghhom huma delinkwenti recidivi multipli. B'hekk minflok jigi riformat, hemm il-possibilta' illi huwa jiehu lezzjonijiet fid-delinkwenza ... tara illi huwa opportun illi inehhi l-impressjoni illi l- iskop tal-ligi kriminali u talpiena huwa biss illi jkun ta' deterrent biex jghallem lil dak li jkun illi 'crime does not pay'. Huwa certament kuncett illi ghamel zmien u kien il-kuncett predominanti, pero llum ilkuncett m'huwiex aktar ta' piena retributtiva, imma ta' sistema restorattiva,*

*fejn anke jekk hu possibbli u safejn hu possibbli, u tenut kont anki tac-cirkostanzi kollha tal-kaz, kif ukoll tal-precedenti kriminali tal-imputat, isir tentattiv biex mhux biss issir rikonciljazzjoni bejn l-agent tad-delitt u l-vittma li tkun sofriet danni u anke sofferenzi ohrajn, imma anki illi jkun hemm possibilita' illi dak li jkun jigi nformat u jikkonvinci ruhu illi ghandu jsegwi t-triq ittajba"*

Reference is also made to various judgments where even accused who were recidivists were given another window of opportunity since an effective term of imprisonment was seen as too harsh as a punishment. In fact, in the case of ***Il-Pulizija vs Charlot Aquilina***, decided by the Court of Magistrates (Malta) on the seventh (7) of November, 2008, the Court stressed the importance of giving the accused another chance and in fact the Court imposed a Probation Order notwithstanding that the accused was recidivist:

*Ghal finijiet ta' piena il-Qorti kkunsidrat bir-reqqa kollha dovuta is-Social Inquiry Report esebit a fol. 104 et sequitur tal-process minn fejn jirrizulta li l-imputat kellu trobbija instabbli**, li huwa kellu problema serja ta' abbuz mid-droga... u li huwa ilu ma jabbuza mid-droga b'mod kontinwu ghal dawn l-ahhar erba' snin**... li tul dawn l-ahhar erba' snin kienu qed isiru urine sample tests lill-imputat u dawn dejjem irrizultaw fin-negattiv**... Il-Qorti wara li kkunsidrat dan kollu jidrilha li ghalkemm mill-fedina penali tal-imputat jirrizulta li huwa inghata opportunitajiet rega' qabad it-triq il-hazina ghaliex kien ghadu jabbuza mid-droga, irrizulta wkoll li dawn l-incidenti jirrisalu ghal qabel is-sena 2003, u cioe' ghal qabel ma l-imputat beda u ttermina b'success il-programm residenzjali, **u ghalhekk l-imputat ghandu jinghata l-ahhar opportunita' sabiex jirriforma ruhu u jaqbad definittivament it-triq it-tajba specjalment meta wiehed jikkunsidra li llum il-gurnata l-imputat** oltre li ttermina b'success il-programm residenzjali **ghandu xoghol stabbli u anki hajja familjari wkoll pjuttost stabbli.***

In the case of ***Il-Pulizija vs Ritmar Hatherly u Justin Farrugia***, decided by the Criminal Court of Appeal on the ninth (9) of October, 2008, the Court whilst making reference to other judgments held that:

*"Issa, ghalkemm huwa veru li qorti ghandha dejjem toqghod attenta li ma tizvalutax il-mizuri mhux karcerarji a disposizzjoni taghha b'applikazzjoni taghhom bl-addocc u minghajr ma tiehu kont xieraq tal-antecedenti penali ta' dak li jkun, mill-banda l-ohra s-semplici fatt li persuna tkun precedentement inghatat probation jew conditional discharge ma jfissirx necessarjament li ma tkunx tista', jew li m'ghandhiex, fil-kazijiet li jikkwalifikaw terga' tinghata*

> *probation jew conditional discharge jew tigi applikata fil-konfront taghha xi mizura ohra taht il-Kap. 446. F'dan ir-rigward din il-Qorti taghmel referenza ghal dak li nghad fis-sentenza taghha tat-18 ta' Jannar 2001 fl-ismijiet Il-Pulizija v. George Farrugia: "Issa, huwa veru li l-appellat ghandu fedina penali li ftit din il-Qorti rat bhalha. Bizzejjed jinghad li dina l-fedina penali tiehu xejn anqas minn 42 faccata. L-appellat illum ghandu erbghin sena, u f'dawn l-erbghin sena huwa kellu xejn anqas minn 77 kundanna mill-Qrati ta' Gustizzja Kriminali. Kien hemm xi okkazzjonijiet fis-snin sebghin u fil-bidu tassnin disghin meta l-qrati applikaw fil-konfront tieghu sia l- Artikolu 5 kif ukoll l-Artikolu 9 tal-Kap. 152; il-bqija talkundanni, pero`, jinvolvu multi u habs…"Apparti li din il-Qorti ma tistax taqbel ma' l-Avukat Generali fejn dan jghid li s-sitwazzjoni ta' l-appellat hija "irriversibbli" – fil-fehma tal-Qorti hija l-mewt biss li ggib stat jew sitwazzjoni ta' irriversibilita` assoluta – anqas ma tista' din il-Qorti tikkondividi l-fehma ta' l-Avukat Generali li Ordni ta' Probation hu indikat biss ghal "first offenders" zghazagh.* ***Anke fil-kaz ta' persuna ta' eta` mhux zghira u li forsi hu recidiv, tista' titfacca fil-hajja ta' dik il-persuna a window of opportunity li permezz taghha jkun jista' jinkiser ic-ciklu ta' kundanni u ta' prigunerija.***

Having seen the grounds for appeal of Elvis Achu Miang:

1. That the first grievance consists in the fact that the appealed judgement is null and void and has no effect at law as the said judgement is not in conformity with the requisites listed *ad validitatem* in article 382 of Chapter 9 of the Laws of Malta. Article 382 of the Criminal Code provides that:

> *'The Court in delivering judgment, shall state the facts of which he has been found guilty, shall award punishment, and shall quote the articles of this Code or any other law creating the offence'*

Various judgments (Il-Pulizija vs. Graham Agius; Il-Pulizija vs. Generoso Sammut) have explicitly held that the lack of any one of these formalities regarded as necessary for the validity of the judgment, should lead to the nullity of the judgment as a result of a defect in formality.

The Court of Magistrates as a Court of Criminal Judicature in delivering the judgement against the appellant, did not state the facts of which the appellant has been found guilty. This results in a lack of one of the formalities regarded as necessary for the validity of the judgment as rightly pointed out in the case of *Il-Pulizija vs Benjamino Camilleri et* whereby the Court of Criminal Appeal held that:

> *L-Artiklu 382 tal-Kap 9 jghid li l-Qorti meta taghti s-Sentenza kontra l-imputat, ghandha tghid il-fatti li taghhom dan ikun gie misjub hati, taghti l-piena u ssemmi l-Artiklu ta' dan il-Kodici jew kull Ligi ohra li tkun tikkontempla r-reat. Hija konsegwenza logika illi meta fis-Sentenza taghha l-Qorti tghid il-fatti li dwarhom l-imputat ikun gie misjub hati trid tirreferi ghall-imputazzjonijiet illi jkunu gew dedotti kontra tieghu u dawn il-fatti jridu jirreferu ghal dawn l-imputazzjonijiet.*

Reference is also made to the judgement in the names ***Il-Pulizija vs. Keith Pace*** delivered by the Court of Criminal Appeal whereby the court held that:

> *Issa kif gie ritenut f' gurisprudenza kostanti sentenza tal- Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali li ma jkunx fiha dikjarazzjoni ta' liema fatti sabet lill-imputat hati, jew meta minnha ma jirrizultax car ta' x'hiex lappellant gie misjub hati , jew meta f' kaz ta' imputazzjonijiet alternattivi , l-Qorti tiddikjara lill-imputat hati bla ma tghid ta' liema miz-zewg imputazzjonijiet hu hati u ghalhekk jigi li l-Qorti ma qalitx ta' x'hiex sabet lillimputat hati , jew meta ma tghid xejn dwar akkuza partikolari, hija nulla u jekk il-kawza tigi appellata, il-Qorti tal-Appell tiddikjara n-nullita' tas-sentenza . (App. Krim. "Il-Pulizija vs. Francis Aquilina"[26.11.1960]; "Il- Pulizija vs. Frans Portelli" [3.2.1992] ; "Il-Pulizija vs. Piju Gafa' " [18.4.1959] ; "Il-Pulizija vs. Generoso Sammut" [13.10.2004] u ohrajn.)*

Moreover in the same judgement the Court added that:

> *Ghalhekk in vista tad-diffikultajiet fuq ravvizati kemm fir-rikors tal-appell kif ukoll minn din il-Qorti "ex officio" , din il-Qorti ma ghandhiex alternattiva hlief li tannulla s-sentenza appellata u stante li jista' jaghti l-kaz li jkun hemm bzonn li jinstemghu il-provi ghall-ewwel darba kemm dwar lakkuza ta' serq li issa l-appellant qed jghid li ma gietx ammessa minnu , kif ukoll dwar ir-recidiva li hu qatt ma ammetta, w biex ma tipprivax lill-partijiet mill-beneficcju tad-doppio esame, qed terga tibghat l-atti lill-Ewwel Qorti ...*

Furthermore, in the case of ***Il-Pulizija v. Joseph Agius*** the Court of Criminal Appeal held that:

> *"Ovvjament la l-Qorti hija marbuta illi taghti l-fatti li taghhom l-appellant ikun gie misjub hati, ifisser illi ghandu jkun hemm id-dikjarazzjoni ta' htija ghax altrimenti huwa inutili li ssemmi l-fatti. In-nuqqas ta' dikjarazzjoni ta' htija iwassal ghal nuqqas ta' formalita` sostanzjali bhal ma wkoll huwa suggett ghall-istess censura n-nuqqas ta' dikjarazzjoni ta'x'hix l-akkuzat qed jinstab hati."*

2. That the **second grievance** consists in the fact that, without prejudice to the first grievance, the punishment meted out was disproportionate to the facts of the case. The Court of Magistrates did not take into consideration the early admission of the

applicant for all the charges brought against him (thus saving time and money of the Court) when inflicting the punishment. Secondly, the Court of Magistrates in meting out the punishment failed to take into consideration the fact that the crime was not completed in consequence of some accidental cause independent of the will of the offender. The law with regards to the punishment to be inflicted differentiates between a completed offence and an attempted offence whereby the punishment for an attempted offence should be decreased by one or two degrees.

Thus, whilst it is not being contested that the punishment inflicted is one within the parameters of the law, however, when one considers the circumstances of the case in question, the punishment is definitely an exaggerated one taking also into consideration that the applicant has a family living abroad.

That the Court before inflicting the punishment should have taken into consideration the fact that

v) the applicant was charged with an attempted offence and thus the victim didn't suffer any financial prejudice,
vi) the guilty plea of the applicant at the very initial stages of the proceedings,
vii) his full co-operation with the investigative officials of the police which is clearly evidenced in his statement,
viii) the clean criminal record of the applicant and as a result he should be considered as a first time offender.

Moreover, various times the Court has accentuated the importance of punishment in having a rehabilitative effect rather than having a deterrent effect. In fact, in the judgment delivered by the Criminal Court of Appeal dated 22nd of September, 2013, in the names **Il-Pulizija vs. Stephen Spiteri**, the Court held that:

> *"Konsiderata l-piena bhala mezz ta' riforma tal-imputat fl-interess tieghu u tas-socjeta', izjed u izjed din il-piena karceraja tidher inadatta. Infatti, permezz taghha, tifel ta' kondotta sa issa tajba, u li diga', bil-fatti, wera' soghba tarreat li ghamel, ser jinxtehet ghal soggorn ma' nies li filmaggjoranza taghhom huma delinkwenti recidivi multipli. B'hekk minflok jigi riformat, hemm il-possibilta' illi huwa jiehu lezzjonijiet fid-delinkwenza ... tara illi huwa opportun illi inehhi l-impressjoni illi l- iskop tal-ligi kriminali u talpiena huwa biss illi jkun ta' deterrent biex jghallem lil dak li jkun illi 'crime does not pay'. Huwa certament kuncett illi ghamel zmien u kien il-kuncett predominanti, pero llum ilkuncett m'huwiex aktar ta' piena retributtiva, imma ta' sistema restorattiva, fejn anke jekk hu possibbli u safejn hu possibbli, u tenut kont anki tac-cirkostanzi kollha tal-kaz, kif ukoll tal-precedenti kriminali tal-imputat, isir tentattiv biex mhux biss issir rikonciljazzjoni bejn l-agent tad-delitt u l-vittma*

> *li tkun sofriet danni u anke sofferenzi ohrajn, imma anki illi jkun hemm possibilita' illi dak li jkun jigi nformat u jikkonvinci ruhu illi ghandu jsegwi t-triq ittajba"*

Reference is also made to various judgments where even accused who were recidivists were given another window of opportunity since an effective term of imprisonment was seen as too harsh as a punishment. In fact, in the case of ***Il-Pulizija vs Charlot Aquilina***, decided by the Court of Magistrates (Malta) on the seventh (7) of November, 2008, the Court stressed the importance of giving the accused another chance and in fact the Court imposed a Probation Order notwithstanding that the accused was recidivist:

> *Ghal finijiet ta' piena il-Qorti kkunsidrat bir-reqqa kollha dovuta is-Social Inquiry Report esebit a fol. 104 et sequitur tal-process minn fejn jirrizulta li l-imputat kellu trobbija instabbli,* ***li huwa kellu problema serja ta' abbuz mid-droga... u li huwa ilu ma jabbuza mid-droga b'mod kontinwu ghal dawn l-ahhar erba' snin*** *...* ***li tul dawn l-ahhar erba' snin kienu qed isiru urine sample tests lill-imputat u dawn dejjem irrizultaw fin-negattiv*** *... Il-Qorti wara li kkunsidrat dan kollu jidrilha li ghalkemm mill-fedina penali tal-imputat jirrizulta li huwa inghata opportunitajiet rega' qabad it-triq il-hazina ghaliex kien ghadu jabbuza mid-droga, irrizulta wkoll li dawn l-incidenti jirrisalu ghal qabel is-sena 2003, u cioe' ghal qabel ma l-imputat beda u ttermina b'success il-programm residenzjali,* ***u ghalhekk l-imputat ghandu jinghata l-ahhar opportunita' sabiex jirriforma ruhu u jaqbad definittivament it-triq it-tajba specjalment meta wiehed jikkunsidra li llum il-gurnata l-imputat*** *oltre li ttermina b'success il-programm residenzjali* ***ghandu xoghol stabbli u anki hajja familjari wkoll pjuttost stabbli.***

In the case of ***Il-Pulizija vs Ritmar Hatherly u Justin Farrugia***, decided by the Criminal Court of Appeal on the ninth (9) of October, 2008, the Court whilst making reference to other judgments held that:

> *"Issa, ghalkemm huwa veru li qorti ghandha dejjem toqghod attenta li ma tizvalutax il-mizuri mhux karcerarji a disposizzjoni taghha b'applikazzjoni taghhom bl-addocc u minghajr ma tiehu kont xieraq tal-antecedenti penali ta' dak li jkun, mill-banda l-ohra s-semplici fatt li persuna tkun precedentement inghatat probation jew conditional discharge ma jfissirx necessarjament li ma tkunx tista', jew li m'ghandhiex, fil-kazijiet li jikkwalifikaw terga' tinghata probation jew conditional discharge jew tigi applikata fil-konfront taghha xi mizura ohra taht il-Kap. 446. F'dan ir-rigward din il-Qorti taghmel referenza ghal dak li nghad fis-sentenza taghha tat-18 ta' Jannar 2001 fl-ismijiet Il-*

> *<u>Pulizija v. George Farrugia</u>: "Issa, huwa veru li l-appellat ghandu fedina penali li ftit din il-Qorti rat bhalha. Bizzejjed jinghad li dina l-fedina penali tiehu xejn anqas minn 42 faccata. L-appellat illum ghandu erbghin sena, u f'dawn l-erbghin sena huwa kellu xejn anqas minn 77 kundanna mill-Qrati ta' Gustizzja Kriminali. Kien hemm xi okkazzjonijiet fis-snin sebghin u fil-bidu tassnin disghin meta l-qrati applikaw fil-konfront tieghu sia l- Artikolu 5 kif ukoll l-Artikolu 9 tal-Kap. 152; il-bqija talkundanni, pero`, jinvolvu multi u habs…"Apparti li din il-Qorti ma tistax taqbel ma' l-Avukat Generali fejn dan jghid li s-sitwazzjoni ta' l-appellat hija "irriversibbli" – fil-fehma tal-Qorti hija l-mewt biss li ggib stat jew sitwazzjoni ta' irriversibilita` assoluta – anqas ma tista' din il-Qorti tikkondividi l-fehma ta' l-Avukat Generali li Ordni ta' Probation hu indikat biss ghal "first offenders" zghazagh.* ***Anke fil-kaz ta' persuna ta' eta` mhux zghira u li forsi hu recidiv, tista' titfacca fil-hajja ta' dik il-persuna a window of opportunity li permezz taghha jkun jista' jinkiser ic-ciklu ta' kundanni u ta' prigunerija.***

Considers:

It results from the evidence that on the twenty third (23rd) of September two thousand fourteen (2014) appellant Ronny and Minang were arrested from their room in the Dolmen Hotel at around 12:00 p.m. After searching the room the police found forged documents, fake Italian ID cards, small plastic bottles containing a transparent liquid substance, foil, white paper with Euro banknote images and a white mask, together with some nine hundred euro (€900) and a credit card.

In their statement to the police (fol 25 et sequitur) the appellants did not deny that they were in possession of false documents and fake identities. They used these fake document to register at the hotel where they were staying. The police then proceeded to file criminal proceedings against the appellants and were arraigned on the 25th of September two thousand fourteen (2014). On that very same day the appellants pleaded guilty to all the charges and the Court delivered judgement, found the appellants guilty as charged and condemned them to two years imprisonment each.

The appellants felt aggrieved by this judgement and filed an application for appeal claiming that the first judgement was null and void because of procedural irregularities and also claimed that in any case considering the fact that they had

registered a guilty plea early in the proceedings and co-operated with the police, they should not have been given such a long effective prison term.

Considers:

During submissions on this appeal the Defence informed the Court that it was not insisting on the nullity of judgement but was insisting on the reconsideration of the punishment awarded as it was too excessive. They were at any rate first offenders, they admitted to the charge during early stages of proceedings and co-operated with the police. Under such circumstances usually a suspended term is awarded and appellants have already spent four months in jail.

Considers:

That the first Court in its judgement had already considered the early guilty plea registered by the appellants and the fact that they co-operated with the police, yet deemed it fit to award an effective prison term. Appellants realize that the punishment awarded is in fact within the parameters prescribed by law but in any case they expected a shorter terms considering that they had a clean criminal record.

Considers:

That it is well established under our judicial system that the Appeal Court will not disturb the discretion of the Magistrates' Court if the punishment awarded lies within the parameters at law and there is no reason to suggest that the first Court should have awarded a lesser punishment. In this case, this Court feels that it should not disturb the discretion of the first Court who considered all the relevant facts, took into consideration the circumstances of this case and awarded a punishment which was within limits. This Court finds no reason to substitute this discretion and award a lesser punishment than that meted out by the first Court.

For this reason, therefore, this Court dismisses the appeal and confirms the first judgement.

## < Sentenza Finali >

----------TMIEM----------