

## Murder by Omission

### *Concetta Decelis u Jason Decelis vs Il-Ministru tal-Gustizzja et<sup>1</sup>*

GIANELLA FARRUGIA

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The following case deals with the proceedings held in front of the Civil Court First Hall in its Constitutional Jurisdiction following a claim by Concetta Decelis and her son Jason Decelis that the Criminal Court had years prior violated their fundamental right to a fair hearing, where it had found them guilty on the basis of the notion of ‘the duty of care’. This did not form part of Maltese law, but was instead found within English Law. They pleaded that the court could not establish guilt for a crime by omission and that there was a violation of the principle *nullum crimen sine lege*. Following a trial by jury in June 2006, Concetta Decelis and Jason Decelis were found guilty of wilful homicide by omission, thus making it the first instance and chilling landmark whereby a murder by omission was accepted by the Maltese courts.

This was the case of a young woman, Rachel Bowdler, who passed away at Mrs Decelis’ flat due to a drug overdose. Neither Mr Decelis nor Mrs Decelis who were accompanying the latter had sought medical assistance on the day. The Criminal Court had pointed out that they had left the girl for dead, in order to avoid getting into trouble. Their persistent omission lasted a total of twelve hours in all, a time lapse in which, the prosecution had insisted, the girl could have been saved.

The Civil Court First Hall (Constitutional jurisdiction) had, in 2010, dismissed the plea by the plaintiffs regarding the ‘duty of care’ issue, by putting forward that reference to this notion was made in the context of Article 211 of the Criminal Code, which deals with wilful homicide. The court in this case meticulously analysed the claims and concluded that the concept of recklessness in our law is equal to the positive indirect intent, more specifically the intention to put the life of another into manifest jeopardy.

In its judgement the court mentioned Professor Sir Anthony Mamo where he reiterates that, ‘The knowledge that the act is likely to kill, or the recklessness

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<sup>1</sup> Civil Court First Hall –Constitutional Jurisdiction, 9 December 2010

whether death, clearly foreseen as probable, shall ensue or not, is properly treated by the law on the same footing as the positive intention to kill'.<sup>2</sup>

It is noteworthy that the law, from the point of view of wickedness, regards the man who has the positive intent to kill and the man who inherently commits an act which is likely to kill and in fact causes death, on the same footing. The principle of *dolus indeterminatus determinatur ab exitu* kicks in, and here the courts have to follow the objective and subjective test of the ordinary reasonable man in its deliberations.

It is interesting that a landmark judgement that set forth the aforementioned principle is the British case of *R v Miller* where the failure on the part of the defendant to extinguish the fire in the house he was occupying, or at least the failure to ask for help was considered as reckless and found him guilty of arson, as it was reasonably foreseeable that extensive damage to the house would be caused if he did not act responsibly.<sup>3</sup>

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<sup>2</sup> *Ir-Repubblika Ta' Malta vs Jason Decelis U Concetta Decelis*, Court of Criminal Appeal, 25 September 2008

<sup>3</sup> *R v Miller*, 1982, UKHL 6