



MALTA

**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

MAGISTRATE DR IAN FARRUGIA LL.D

Today the 15th day of July 2016

**THE POLICE
(Inspector Joseph Busuttill)**

Vs

ALEXANDRU ONOFREI

Comp. No. 841/2014

THE COURT;

Having seen the charges brought against **Alexandru Onofrei, holder of Romanian identity card number TC240142**, accused of having on the 7th September 2014 and in the preceding months, on these islands, by several acts committed by him, even if at different times, which constitute violations of the same provision of the law, committed in pursuance of the same design:

1. By means of violence or threats, including abduction, deceit or fraud, misuse of authority, influence or pressure, by giving or receiving payments or benefits to achieve the consent of persons having control over another person, and by abuse of power or of a position of vulnerability trafficked persons of age named Pilaf Anisoara for the purpose of exploiting this person in the

production of goods, and provisions of services and also for prostitution, in breach of articles 248A, 248B and 248D of Chapter 9 of the Laws of Malta;

2. To gratify the lust of any other person, by the use of violence, induced a person of age namely Pilaf Anisoara and Mariaca Daresco for prostitution, which offence was committed habitually or for gain, in breach of articles 205 of Chapter 9 of the Laws of Malta;
3. Without a lawful order from the competent authorities, and saving the cases where the law authorizes private individuals to apprehend offenders, arrested, detained or confined Pilaf Anisoara and Mariaca Daresco against their will and this was committed by forcing Pilaf Anisoara and Mariaca Daresco into prostitution, in breach of articles 86 and 87 of Chapter 9 of the Laws of Malta;
4. Knowingly lived, wholly or in part, on the earnings of the prostitution of other persons, of foreign nationality in breach of article 7(1) of Chapter 63 of the Laws of Malta;
5. As a person responsible for a shop, lodging-house or hotel or any private apartment suffered or permitted such shop, lodging-house, hotel or apartment or any part thereof to be used as a place of assignation for the purpose of prostitution or any other immoral purpose in breach of article 9 of Chapter 63 of the Laws of Malta;
6. Used violence in order to compel Pilaf Anisoara and Mariaca Daresco do something, which is prostituting themselves, in breach of article of 251 of Chapter 9 of the Laws of Malta;
7. Uttered insults or threats against Pilaf Anisoara and Marica Daresco

The Court is being humbly requested on reasonable grounds, to provide for the safety of any vulnerable witnesses including Pilaf Anisoara and Mariaca Daresco and their family, and forthwith apply the provisions of Section 412C of Chapter 9 of the Laws of Malta and thus issue a protection order against the accused with all the necessary restrictions or prohibitions;

The Courts is also being humbly, requested to apply *mutatis mutandis* the provisions of Article 5 of Chapter 373 of the Money Laundering Act of the Laws of Malta, in accordance with Article 23A(2) of Chapter 9 of the Laws of Malta and on conviction apply the provisions of Article 23B of Chapter 9 of the Laws of Malta;

The Court is finally being humbly requested in pronouncing judgement or in any subsequent order, sentence the person convicted to pay the costs incurred in connection with any experts and this in accordance to Article 533 of Chapter 9 of the Laws of Malta.

Having seen the referral issued by the Attorney General dated 14th March 2016 for the case to be proceeded with and be decided upon summarily (vide folio 1039);

Having seen that the accused declared that he finds no objection for this case to proceed summarily and be decided upon by the Court of Magistrates (vide folio 1040);

Having examined all testimonies of witnesses produced, including the testimony tendered by the accused;

Having seen all the documents exhibited in the acts of these proceedings;

Having heard final submissions made by the prosecution and the defence;

Having examined the extensive note of submissions, in the maltese language, together with documents attached, filed by the defence in terms of its undertaking during the sitting of the 24th June 2016. The Court would like to point out that it was the duty of the defence to file said note in the English language. For practical reasons however, this Court will not throw out said note of submissions for not being filed in the English language – on the contrary, the Court has examined it in its fine detail and declares that said note forms part of the acts of these proceedings;

Considers;

That, while initially the prosecution charged the accused with the crime relating to human trafficking in terms of Articles 248A, 248B and 248D of Chapter 9 of the Laws of Malta, among other charges as they clearly transpire from the original charge sheet found at folios 3 and 4 of the acts of the proceedings, at the final stages of the prosecution's case, the Attorney General decided, within his powers according to law, to drop the principal charge relating to the crime of human trafficking, but however held on to the subsidiary charges as they are set out in his referral of the 14th March 2016 found at folio 1039.

This Court must therefore address the charges as set out in the Attorney General's referral abovementioned. The charges, mostly considered as a continuing offence in terms of Article 18 of Chapter 9, are mainly the following :

Art 205(b) of Chapter 9 – habitually or for gain, compelling or inducing a person of age to prostitution;

Art 251(1)(2) of Chapter 9 – use of violence to compel another person to do something;

Art 86 & 87(1)(c)(g) of Chapter 9 – illegal arrest, detention or confinement;

Art 339(1)(e) of Chapter 9 – to utter insults or threats;

Art 7(1)(3) & Art 9 of Chapter 63 – living on the earnings of prostitution and the keeping of an apartment for the purpose of prostitution;

Considers;

That the evidence (documentary and testimony of witnesses) produced by both the prosecution and the defence (including the testimony tendered by the accused) has been thoroughly examined by this Court. The acts of these proceedings are extensive, and as is customary with this Court, there will definitely be no full reproduction, in this judgement, of all that is extensively and adequately compiled in these proceedings.

Many witnesses were brought forward to testify, and all their testimonies were examined in detail. But the main witnesses in these proceedings were Izabele Gabriel Costantin, her mother Pilaf Anisoara Costantin, and Maricica Daresco. And

the accused himself, whose version of events derives from his interrogatory to the police during investigations and his testimony before this Court.

Considers;

That, after an indepth analysis of the acts of these proceedings in their entirety, it clearly transpired that in the weeks preceeding the 7th of September 2014, Pilaf Anisoara Costantin, together with her fifteen year old daughter Izabele Gabriel Costantin, was in Malta and residing in an apartment in Qormi, with the accused and Maricica Daresco, also known as Mona. The Constantin's came to Malta from Romania, only however, in transit to Italy.

This apartment in Qormi was rented out by the accused. Only he had the keys to this Qormi apartment. Another apartment in San Gwann was rented out by Maricica Daresco (Mona), but it was the accused who had real and effective control over the said apartment; he also paid the rent. The accused did not have any employment in Malta. He had four mobile phones belonging to him, but were mainly used by Mona and Anisoara. Mona and the accused were partners, as in boyfriend and girlfriend. About a year before, the accused had a relationship with Pilaf Anisoara Constantin. This relationship eventually finished but both remained friends.

The flat in San Gwann was used mainly so that Pilaf Anisoara Constantin could meet up with male clients for sexual encounters against payment. It was always the accused who used to drive her to San Gwann from Qormi and back.

She used to get calls herself on a mobile phone. Clients knew of this mobile number through the particular internet site called 'Escort Europe'. It was the accused who created this site. On this particular site one could see, among others, photos of Pilaf Anisoara and Mona, both posing in underwear or swimwear, or even showing intimate parts of the female body. There were obviously the contact numbers on the same site. Both Pilaf Anisoara and Mona did not approve of this site. However, they could offer little resistance to the said site. The accused reverted to physical violence when they offered resistance.

Pilaf Anisoara Constantin had only three or four encounters of a sexual nature with clients in the flat in San Gwann. This 'activity' did not last for more than a week, at which point the police intervened, albeit, for other reasons. Actually, on the night of the 7th of September 2014, while the accused, together with his girlfriend Mona, and Pilaf Anisoara Constantin and her daughter Izabela, were at a barbeque, the said Mona got very drunk and somehow she managed to call the police (earlier on in that same day the accused had hit Mona for not having money to give him). It was due to this call to the police that all the structure within which the accused was operating came to light.

Pilaf Anisoara Constantin was actually forced to go to the flat in San Gwann and have these sexual encounters with clients. It was the accused who used to force her by verbally threatening her that if she did not comply, she will be beaten up and would not be allowed out of the country. She did not have the keys for either apartment. It was normally Mona who would have the keys to open the flat in San Gwann; and when she was not available, it would have been the accused who would open the flat for her to go in and carry out the sexual encounters. She was not free to leave any of the flats in question. She could only venture out if and when she was accompanied by the accused or by Mona, his girlfriend. Pilaf Anisoara Constantin was kept under control.

For a half hour sexual activity, including sexual intercourse, Pilaf Anisoara Constantin used to be paid the sum of €80. Maricica Daresco used to go to the flat in San Gwann as well.

Pilaf Anisoara Constantin used to pass on 40% of the earnings from her sexual activity to the accused. She was constantly wanting to leave Malta because she did not like doing what she was doing and did not want her daughter to know what her mother was actually engaged in. However, she still kept the money or part thereof to herself. She however felt trapped by the accused. She was very afraid to even try to run away, especially since her daughter was most of the time in the flat in Qormi, which flat was controlled by the accused.

Maricica Darescu, also known as Mona, was also having trouble with the accused. She explains how the nightmare started. He told her that he needed money. He

started to beat her up and tried to force her into prostitution. He provided the mobile phones. He kept her under his control all the time. Although she did not want to give sexual services, she had to give in because he became physically violent. In fact she had to go to a hotel for about three times to give sexual services to clients. Mona used to receive phone calls directly. However, it was the accused who used to drive her to meet the client, and pick her up again when the service was ready. He used to threaten her and beat her up if she refused to comply to his demands to give sexual services to clients. She used to charge €300 for two hours of activity, including being out for dinner with the client. She used to give him (the accused) all the money, and she had to do this in the car as soon as she is picked up. He used to tell her that it is only difficult in the beginning, but then she will get used to it. It was the accused who used to provide for her food and cigarettes. She confirms that the accused had actually told her that he has the flat in San Gwann purposely for prostitution. She was also taken to the flat in San Gwann for prostitution. She was not free to go anywhere on her own; she could only move in the presence of the accused. She felt that she couldn't leave any of the apartments because she was afraid of the accused, so afraid of his threats that he would find her and kill her. On the night of the barbeque, the 7th of September 2014, the accused was very physically violent towards Mona.

Asked why she would not just leave the flat and escape, given she was so unhappy in doing all this, Maricica Daresco, also known as Mona, answered : **If you would be in my place and all of you would be in my place none of you would do that, none of you would actually leave because you don't know how he can threaten you and offend you. He is a very very dangerous person. And he does not joke.....; Even in this moment I am stil afraid that he will come out one day and he will do something to me in the future.....; (vide folio 208). You don't know the terror that I was feeling;** (vide folio 209).

Considers;

That in the flat in San Gwann, the police found, upon a search in the bedroom, a number of items – durex condoms, red vibrator dressed with condom, durex play intimate lube massage – amongst others. All these items were eventually exhibited in court (vide folio 289).

Joseph Attard (vide folio 315 et seq) was the owner of the flat in San Gwann. He had his flat rented out by an agent. **But after some days he did not like the activities that he could see unfolding – many men coming and going to the flat.** He confirmed the presence of two women in the flat. And confirmed the ongoing presence of the accused in the area of the flat. So he then had the flat returned back to him.

As regards the apartment in Qormi, witness Brian Sciberras (vide folio 323 et seq) confirms that he had met with the accused, who was accompanied by another person, and the agent, to discuss the renting of the apartment. The witness confirms that it was actually the accused who was in charge of the decisions relating to the renting of the apartment. On the first two occasions, the witness received the money for the rent from the accused, and after, for another two payments, he had received the money from a woman.

Considers;

That the accused had the right to remain silent. However, he decided that he did not want to remain silent and he actually gave his version of events (in the interrogatory to the police during the investigations and during his testimony on the witness stand).

The accused's version of events, obviously in his defence, is a very weak attempt at shifting the blame or responsibility onto 'the prostitutes', as he refers to Pilaf Anisoara and Mona, and does not (his case as presented by him, including his statements, his testimony, and documents exhibited) in any way destabilise the prosecution's case, which in turn is strong and sustainable at law.

Considers;

That from an analysis of these resulting facts within the context of the charges brought against the accused, this Court declares that the prosecution managed to prove its case in terms of law with respect to charges (2), (3), (4), (5), (6) and (7).

It clearly transpired that the accused, over a period of time, even if it was a brief period of time, lived or was, habitually, in the company of Pilaf Anisoara Constantin and Maricica darescu . During this particular period of time the accused did exercise control and definitely had a margin of influence over the said Pilaf Anisoara Constantin and Maricica Darescu – and this was done in a way which clearly showed that the accused was compelling their prostitution with others. He used to receive 40% from the earnings of Pilaf Anisoara Constantin, and took all monies that Maricica Darescu earned, both from prostitution. The accused therefore did knowingly, either wholly or in part, live on the earnings of prostitution. The accused used both physical and pshycological violence, through fear, over Anisoara Pilaf Constantin and Maricica Daresco to promote their prostitution, and this for the gratification of the lust of others. To attain his aims, the accused did, on a number of occasions, detain or confine both victims against their will. He was the person in control of the apartment in San Gwann and made such apartment available for his victims' prostitution. During this nightmare, which didn't seem to last for long, the accused did use violence and did use threatening words, all actions aimed at his victims and aimed at compelling them into prostitution.

For technical and procedural reasons, as explained further above, the Court finds and declares accused not guilty of the first charge.

Considers;

That in terms of punishment or sanction to be meted out to the accused, this Court is considering that the crimes of which the accused is being found guilty are of a hideous nature; they are particularly loathsome and despicable.

Efforts to tackle and address such horrendous crimes – the exploiting of the vulnerable, sometimes with the use of physical and pshycological violence, to satisfy one's greed for financial power – must be sustained and intensified.

It is this Court's opinion that in all cases of living on the earnings of prostitution, a sentence with an effective deterrant is necessary. In this case therefore, an immediate custodial sentence is appropriate.

However this Court is inclined to believe, from a general feel of the case, that Pilaf Anisoara Constantin and Maricica Darescu were not knew to the world of prostitution. Nevertheless, there is sufficient evidence to show that the accused did exert violence on both of them, so that he could finally live, even if for a very short period of time, off the earnings of prostitution.

THEREFORE, THE COURT, having seen Articles 17, 18, 23, 23A, 23B, 31, 86, 87(1)(c)(g), 205(b), 251(1)(2), 339(1)(e), 382A, 383, 384, 386, 412C and 533 of Chapter 9 the Laws of Malta, and Articles 7(1)(3) and 9 of Chapter 63 of the Laws of Malta, **finds and declares offender Alexandru Onofrei (A) not guilty of charge number (1) and is consequently being therefrom acquitted in terms of law; (B) guilty of charges (2), (3), (4), (5), (6) and (7) and consequently condemns him to imprisonment for a term of two (2) years.**

Futhermore, in terms of Article 533 of Chapter 9 of the Laws of Malta, offender Alexandru Onofrei is ordered to pay to the Registrar, the following sums :

- a. the sum of €135.39 representing costs incurred for the report 'Compendium of Assets' (document MD at folio 384);
- b. the sum of €1681.03 representing costs incurred for the report Doc SFS at folio 928;
- c. the sum of €808.94 representing costs incurred for the report Doc SFS1 at folio 1014.

The Court orders that a copy of this judgement be communicated to the Registrar of Courts.

Dr Ian Farrugia LL.D
Magistrate

Marica Mifsud
Deputy Registrar