



**Court of Magistrates (Malta)
As a Court of Criminal Judicature**

Magistrate Dr. Doreen Clarke LL.D.

**The Police
(Inspector Louise Calleja)**

VS

Guohong Rekkers

Today the 17th September 2018

The Court

Having seen the charges against Guohong Rekkers bearer of Maltese Identity Card number 37867A.

Charged with having in these islands in Novembru 2013 and in the preceding months, through several acts committed by her, even if at different times, constituting violations of the same provision of the law and 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, and the giving or receiving of payments or benefits to achieve the consent of the person having control over another person trafficked a person of age, that is Omissis 1, for the purpose of exploiting that person in the production of goods or provision of services, and for prostitution;
2. kept or managed or shared with others in the management of a brothel or of any house, shop or other premises or any part thereof which is or are, or is or are reputed to be resorted to for the purpose of prostitution or other immoral purposes;

3. knowingly lived, wholly or in part, on the earnings of the prostitution of other persons of a foreign nationality;
4. as a person responsible kept any shop, lodging-house or hotel or any private apartment and suffers or permits 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;
5. used the premises Beijing Bella Beauty and Culture Centre in Triq l-Akwadotti Fleur De Lys Birkirkara, for purposes other than those for which it was licensed and consequently in contravention of the license.

The Court was requested to apply the provisions of section 23A of Chapter 9 of the Laws of Malta and to take all the necessary measures in terms of the said section 23A with regard to the accused, this in view of the fact that the accused is being charged with offences of a voluntary nature which carry a penalty of more than a year's imprisonment.

The Court was also requested to revoke any license issued in relation to the abovementioned premises and the business therein carried out.

Furthermore the Court was asked to provide for the security of the abovementioned Omissis 1 and her family in accordance with the provisions of section 412C of the Criminal Code by issuing a Protection Order.

The Court was also requested, in case of a conviction in terms of Chapter 63 of The Laws of Malta, to revoke any license issued in the name of the accused.

The Court was also requested to order the accused, in case of conviction, to pay the expenses incurred in relation to the employment of experts.

Having seen the note of the Attorney General whereby the acts were transmitted to this Court for this case to be tried summarily for the offences contemplated in the following provisions of Law:

- i. Sections 7(1), 8(1), 8(3), 9 and 14 of Chapter 63 of the Laws of Malta;

- ii. Regulations 7, 18 and 23 of Legal Notice 128 of the year 2002;
- iii. Section 43 of Chapter 409 of the Laws of Malta;
- iv. Sections 23B, 23C, 382, 384, 385 and 386 of Chapter 9 of the Laws of Malta;
- v. Sections 17, 31 u 533 of Chapter 9 of the Laws of Malta.

Having seen that the defendant had no objection to the case being tried summarily.

Having heard the evidence and the submissions of the parties.

Having seen the acts of the proceedings.

Having considered

The charges initially brought against the accused included that of human trafficking (the first charge in the writ of summons). However on transmitting the acts of the proceedings to this Court for the accused to be tried summarily, the Attorney General omitted this first charge from the list of offences for which the accused was to be tried. It is a well established principle that the accused can only be tried for those offences listed by the Attorney General on transmission of the acts to this Court. Consequently the Court will not take further cognisance of the first charge listed in the writ of summons.

The other offences with which the accused is being charged are based on the allegation that the premises Beijing Bella Beauty and Culture Centre in Triq l-Akwadotti Fleur De Lys Birkirkara was being used for the purpose prostitution or other immoral purposes in November 2013 and the preceding months.

Having considered

Beijing Bella is a massage and beauty parlour owned by the accused through the limited liability company LJR Limited of which she was director. In November 2013 and the preceding months there were two persons somehow employed in that premises: a Chinese national -- Omissis 1; and a Bulgarian national -- Omissis 2.

In her testimony Omissis 1 explained in considerable detail how arrangements were made for her to come to work in Malta and she gave details about her working conditions. Regarding her pay Omissis 1 explained that she and the accused used to divide the income earned in equal shares between them. Omissis 1 (and Omissis 2) used to be alone at the salon for most of the day since the accused used to pop in only for a short time usually once a day although not necessarily every day. In fact she (i.e. Omissis 1) used to charge the clients, according to rates pre-established by the accused; it was also Omissis 1 who used to receive payment. The income would then be split between Omissis 1 and the accused on a daily basis or whenever the accused went to the salon. Regarding the work carried out by her, Omissis 1 explained that she was employed as a masseuse and that the majority of the clients at the salon were males. She also said that some of the men who went for a massage also asked her to masturbate them, something which she used to do for an extra charge over and above the pre-established rates. Omissis 1 also specified that she accepted to this after obtaining the approval of the accused and that all earnings were split with the accused, even the payment received for this extra “service”.

A magisterial inquiry was held regarding this case and a number of experts were appointed¹. In the course of this inquiry Omissis 1 gave her testimony in which she practically gave the same version as that when she testified before this Court². In the course of her testimony given during the inquiry a number of handwritten papers³ were exhibited by the prosecuting officer Inspector Louise Calleja. Omissis 1 claims that these papers were written partly by her boss, the defendant, and partly by herself. They showed words and expressions in English (with their Chinese translation) which Omissis 1 had to learn to help her in basic communication with third parties. There were some other expressions however e.g: “you are handsome”, “you are strong”, (which were written by defendant) and “you are a very good man/boy”, “I love you”, and “do you like good / strong hand massage” which were written by Omissis 1.

Omissis 2 was also produced to give her testimony; the Court feels that it should point out that Omissis 2 was a rather reluctant witness. Whilst agreeing that she used to work at the Beijing Bella Beauty Salon she claims that she was there as a student for a three month course and that she

¹ The acts of the inquiry are exhibited at page 399 et seq.

² Deposition at page 408 et seq of the acts.

³ Docs LS2 to LS7 at page 417 et seq of the acts.

performed massages merely as the practical part of the course. She gave no details as to the type of massage she used to perform and what services were offered to the clients at the salon; she did confirm that during her time at the salon there was a chinese girl working whom she could not identify. She did also say that this Chinese girl did not know how to talk in English and that it was very difficult for them to communicate because of the language barrier. Omissis 2 also claims that whenever she performed a massage she would not charge the client herself and that she has no knowledge as to how that client would pay for the services received.

Four men who had frequented the salon as clients were produced as witnesses. Of these two⁴ admitted that the message, given by an asiatic female, included masturbation.

Various police officers involved in the investigation which led to the arraignment of defendant were also produced as witnesses:

- WPS33 Ben Valletta⁵ was present when the defendant releasing a statement on the 20th January 2014⁶, and when defendant was informed of her rights at Law regarding consultation with a lawyer prior to the release of that and an other statement⁷.
- PS1176 Kurt Zahra⁸ stated that in the course of their investigation a number of male clients were seen entering and leaving Beijing Bella Beauty Salon; each one of theses men were stopped on leaving the salon and taken to the police head quarters. On entering the premises the police found two women: Omissis 1 and Omissis 2. Omissis 1 was at the reception whilst Omissis 2 was in a cubicle with a client, a male, who was naked on a couch. Eventually defendant's husband (Jurgen Rekkers) came to the salon and the search continued in his presence. Amongst other items found in one of the wardrobes there were seventy four condoms; in the course of the search varoius items were seized from the salon. A search was also conducted in the Jurgen Rekker's car, where nothing relevant was found, and in the Rekkers' residence from where a tablet, laptop and CPU tower were seized. PS 1176 was also present

⁴ Omissis 3, deposition at page 654 et seq of the acts; Omissis 4 deposition at page 659 et seq of the acts;

⁵ Deposition at page 60 et seq of the acts.

⁶ Doc LC1 at page 13 et seq of the acts.

⁷ Doc LC3 and Doc LC4 respectively at page 20 and 20 of the acts.

⁸ Deposition at page 63 et seq of the acts.

when the defendant was formally informed of her rights regarding legal assistance⁹.

- PS 153 Lydon Zammit¹⁰ gave basically the same version regarding the observation and search conducted at Beijing Bella Salon. He also exhibited most of the items seized from Beijing Bella Salon¹¹. The witness also stated that nothing of relevance was found in Jurgen Rekkers' car. The witness proceeded to explain what items were seized from the residence; of these he exhibited a file containing documents¹². PS 153 was also involved in the search conducted in two other salons run by defendant: Mona Lisa Health and Beauty Salon in Naxxar and Beijing Rose in Saint Julians'; various items were seized from both these premises¹³. The witness also exhibited a list of the items seized¹⁴; He was also present when the defendant was officially informed of her rights regarding legal assistance¹⁵.
- WPC 308 Kimberly Cachia¹⁶ was the police officer who (together with WPC 60) conducted a search on the person of Omissis 2 at Beijing Bella Salon; of particular note was a condom found in Omissis 2's back pocket of the jeans she was wearing. The witness had been given orders to observe Beijing Bella Salon in the days prior to the search conducted and she noted that the clients were all male.
- WPC 60 Grace Bianco¹⁷ was present for all the searches that were conducted, and WPC186 Dorianne Tabone¹⁸ and WPC 278 Sherona Buhagiar¹⁹ were present when the search was conducted at Beijing Bella Salon. The witnesses corroborated the version of events given by their colleagues.
- WPS261 Donna Frendo²⁰ was present when the defendant released her second statement on the 27th January 2014²¹.

⁹ Doc LC4 at page 20 of the acts.

¹⁰ Deposition at page 80 et seq of the acts.

¹¹ Docs LZ1 to LZ4.

¹² Doc LZ5.

¹³ Docs LZ6 to LZ12 from Mona Lisa salon and Docs LZ13, LZ 15 and LZ16.

¹⁴ Doc LZ14 at page 101 et seq of the acts.

¹⁵ Doc LC3 at page 20 of the acts.

¹⁶ Deposition at page 104 et seq of the acts.

¹⁷ Deposition at page 120 et seq of the acts.

¹⁸ Deposition at page 126 et seq of the acts.

¹⁹ Deposition at page 539 et seq of the acts.

²⁰ Deposition at page 129 et seq of the acts.

²¹ Doc LC2 at page 18 et seq of the acts.

- The searches conducted in the salons were documented photographically by the scene of crime officers appointed in the course of the inquiry: PS122 Arthur Borg and PC910 Sean Pace²².
- Inspector Louise Calleja, the prosecuting officer, gave evidence²³ and gave an overview of the investigations that were conducted following the report received regarding illicit activity in a massage parlour. She explained that the police established that the trading license for Beijing Bella was issued in the name of Guohong Rekkers on behalf of LJR Limited²⁴ of which limited liability company the defendant was a director²⁵. The clients who were observed leaving the salon were questioned and they all confirmed that the massages offered included masturbation. On the basis of this information search warrants were obtained and executed. She confirmed that during the searches various items were seized however she did not specify what these items were. Inspector Calleja went on to state that she questioned all the parties involved including the defendant who released two statements.

Dr Martin Bajada was one of the experts appointed in the course of the inquiry; he was also appointed in the course of these proceedings²⁶. In his testimony before this Court he stated that in the course of the inquiry he had been given a number of items by Inspector Louise Calleja, namely two mobile phones, a tablet, a laptop, and a desktop computer. During these proceedings he was given a sim-card and two pendrives which had been exhibited by PS153 Lydon Zammit²⁷. From his report²⁸ it appears that relevant information was retrieved from one of the mobile phones he was handed over; this is a samsung mobile phone which in the report is referred to as Doc MB2²⁹. From the messages retrieved many were exchanges whereby one person requested information about services offered and the other person offered some information in return. Following are very few of the relevant exchanges:

²² Doc AB at page 428 et seq of the acts and Doc SP1 at page 482 et seq of the acts.

²³ Deposition at page 377 et seq and page 405 of the acts.

²⁴ This information was confirmed by a representative of the Trading Licenses Unit, Keith Caruana; deposition at page 473 et seq if the acts.

²⁵ This information was confirmed by representatives of the MFSA: Dr Amanda Poole (deposition at page 565 et seq of the acts) and LP Quentin Tanti (deposition at page 953 et seq of the acts).

²⁶ Deposition at page 149 et seq of the acts.

²⁷ These had been exhibited as Doc LZ10 and had been found in a brown luggage in a bedroom at the Mona Lisa Salon.

²⁸ Dok MB1 at page 153 et seq of the acts.

²⁹ The information retrieved from this mobile is at 238 et seq of the acts.

..... the message include all type of body touch or just normal message
We do what you like (tergo page 261)

You do extras and more
You can come and talk face to face (page 262)

U work Sundays? And its body to body both naked?
Sunday we work, should be ok \
Ok then I come at 10 ok? You do extras?
OK (page 262)

How much is the price for 30 min back message including hand relief or 1hr
full full body message including hand relief?
Please call (tergo page 264)

U will do tantra
Will you come today? Now
Later r u free
I have nine³⁰ Chinese lady, we can do for you together
She will undress
Yes no more questions please when you come we talk face to face (tergo fol
268)

Good so you blow me and then sex right?
No sex other ok (tergo fol 271)

I wish something sensual
Ok
OK? Will she be able to remove clothes for hand relief please?
Yes 20 euro more thanks (page 310)

The defendant released two statements³¹ and testified before this Court³². Defendant explained how she started her business in Malta, confirming that at the time when these proceedings commenced she had three salons. She explained that she could not be present at the three salons so she entrusted her employees to manage the salons; she used to help them out when required and she used to visit regularly bringing whatever they required in

³⁰ Possibly that should have been “nice”.

³¹ Docs LC1 and LC2 at page 13 and 18 of the acts.

³² Deposition at page 765 et seq of the acts.

the course of the business. She confirmed that Omissis 1 was her employee for a short time. The defendant stated in her testimony that Omissis 1 was a very popular masseuse and that she had many clients and earned a lot of money. She also stated that Omissis 1 worked very long hours and even during the weekend but she did this of her own free will and because she wanted to earn a lot of money to be able to send money to her family in China. Defendant also specified that the clients were charged by and paid Omissis 1; then when she (defendant) visited the salon they would divide the income according to their prior agreement. Defendant insisted that she never asked Omissis 1 to do anything of a sexual nature for the customers; on the contrary she insisted with her employees not to do anything that was contrary to law. She also stated that when she was starting out in this business and she was serving clients herself there were male clients who asked for “extra services” but she always refused. When she opened more salons and began employing other persons to do massages she insisted that they do not give these “extra services” because she did not think it was right and because she did not think it was hygienic. In her statements defendants basically made the same assertions adding however that the condoms found in the salon were hers (for personal use) and she left them at the salon because they were in her car and as she was going abroad she left them at the salon.

The defendant also brought evidence to show that Omissis 1 used to transfer significant amounts of money to China³³, as well as evidence purporting to show that pending these proceedings Omissis 1 visited one of her salons³⁴.

Having considered

By virtue of the second, third and fourth charges in the writ of summons defendant is being imputed offences under Chapter 63 of The Laws of Malta --- The White Slave Traffic (Suppression) Ordinance:

- having kept or managed or shared with others in the management of a brothel or of any house, shop or other premises or any part thereof which is or are, or is or are reputed to be resorted to for the purpose of prostitution or other immoral purposes; the offence contemplated in section 8.

³³ Deposition of Dr Noel Cutajar obo Fexserv Finacial Services (page 823 et seq of the acts) and Mark Gatt obo Euro Change Finacial Service (page 829 et seq of the acts).

³⁴ Deposition of Juregn Rekkers at page 837 et seq of the acts.

- having knowingly lived, wholly or in part, on the earnings of the prostitution of other persons of a foreign nationality; the offence contemplated in section 7.
- having, as a person responsible, kept any shop, lodging-house or hotel or any private apartment and suffers or permits 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; the offence contemplated in section 9.

These three charges depend on the prosecution showing, beyond reasonable doubt, that the beauty salon Beijing Bella was being used for the purpose of prostitution or other immoral purposes³⁵.

What constitutes prostitution for purposes of these offences has long been established in our jurisprudence. In fact in the judgement given in the case *The Police vs Duncan Fenech u Daniel Schembri*³⁶ the Court of Criminal Appeal (citing foreign doctrine) confirmed that:

The essence of prostitution is the making of an offer of sexual services for reward, and that is immaterial that the person making the offer does not intend to perform them and does not do so. Prostitution does not necessarily involve that the woman offers full sexual intercourse. A person who, for example masturbates clients, falls within the definition. Nor is prostitution confined to the case where the person offers his or her body passively.

From the evidence brought before this Court there can be no doubt that at least one masseuse (Omissis 1) at the Beijing Bella beauty salon was participating in sexual activity (masturbation) with clients against payment. This has in fact been confirmed by Omissis 1 herself, as well as some of the clients. Consequently neither can there be any doubt that Beijing Bella was being used for purposes of prostitution as defined above.

From the evidence brought before this Court it has also been shown that, whilst it was Omissis 1 who charged the clients and received payment, all income, including that received as payment for sexual acts, was divided

³⁵ In the case of the offence under section 7 the Law mentions only prostitution.

³⁶ Decided on the 2nd October 2014.

between her and the defendant. Consequently it has also been sufficiently proven that the defendant was, in part, living on the earnings of prostitution.

However for these offences to subsist the Law requires an other important element: defendant's knowledge that her salon was being used for purposes of prostitution and that consequently the earnings she was receiving were being derived from that illicit activity. The requirement of proof of knowledge was confirmed in a judgement given in the case *The Police vs Alfred Attard*³⁷. The defendants in that case, a case which had many similarities to this present one, were charged with the same offences under Chapter 63. The Court in that case, after having established that massage parlours were being used for prostitution, proceeded to discharge the defendants because no sufficient evidence had been produced to show that they had knowledge of what was going on. The Court in that judgement stated that:

Illi kkunsidrati r-rizultanzi processwali, ma hemmx dubbju li dak li kien qed issir gewwa l-massage parlours kien jammonta mhux biss ghall-skopijiet immorali izda ghal prostituzzjoni.

Illi pero` dan mhux bizzejjed ghas-sejbien ta' htija tieghu peress li l-imputazzjonijiet kontestati lill-akkuzat jirrikjedu l-konsapevolezza, ix-xjenza u l-gharfien tieghu tal-attivita` ta' prostituzzjoni li kienet qed issehh fil-hwienet licenzjati f'ismu.

In these present proceedings the only admissable evidence brought to show that defendant knew that her salon was being used for purposes of prostitution was Omissis 1's testimony and the hand written notes exhibited in the course of the inquiry.

Omissis 1 states that whatever services she gave clients (even those of a sexual nature) had been approved by defendant. This allegation however is strongly contested by defendant who repeatedly stated that she had no such knowledge. In reality defendant goes a step further in that she also states that she specifically told her employees (including Omissis 1) that they should not do anything contrary to law. As to Omissis 1's popularity with their clients, defendant stated that this popularity was not cause for concern since Omissis 1 was a very good and very well trained masseuse who (on account

³⁷ Judgement given on the 1st March 2018 by this Court per Magistrate Dr D Frendo Dimech

of her desire to earn as much money as possible) was always available to her clients at all hours of the day, even in the weekend.

The hand written notes showing certain expressions translated from Chinese to English were intended to help Omissis 1 in communicating with clients. Some of the words and expressions appearing in those notes (e.g. “you are a very good man/boy”, “I love you”, and “do you like good/strong hand massage”) might be considered indicative of the extra services Omissis 1 was offering however, *ex admissis* these were written by Omissis 1 on separate sheets, or on different parts of those sheets written by defendant. The words/expressions written by defendant were of a completely different nature: numbers, the time, greetings, etc.

It is to be noted that from the acts it appears that defendant used to go to the salon for a very short time and she used to do this to collect her share of the income and to take supplies required for the business. Furthermore there is no admissible evidence to show that defendant was involved in bookings for the salon.

In the Court’s opinion the evidence produced does not constitute proof beyond reasonable doubt of defendant’s knowledge of the sexual activity going on at the salon.

In this regard the Court feels that it should make reference to the sms’s retrieved, by the Court expert Dr Martin Bajada, from one of the mobile phones he examined; very few of the more relevant messages were reproduced above. It is the Court’s view that these messages can leave hardly any doubt that the whoever was using that mobile phone not only knew exactly what was going on in the salon, but was also very active in the business and in the procuring of clients for purposes of prostitution in the sense above. However these sms’s and all information retrieved from that mobile phone are inadmissible as evidence in that there is no information in the acts regarding any of the following:

- by whom the mobile phone was seized;
- from whom it was seized;
- whether it belonged to the person from whom it was seized or any other person;
- in whose name it was registered and who actually used it.

Dr Martin Bajada states in his testimony that the said mobile phone was one of a number of items passed on to him by the prosecuting officer Inspector Calleja; he mentions five items: a tablet, a laptop a desktop computer and two mobile phones. Inspector Calleja in her testimony merely states that searches were carried out and that in the course of these searches some items were seized and that these items had been exhibited in Court prior to her testimony³⁸; she does not give any information as to what was seized and from where. The police officers who conducted the searches and seized those objects they deemed relevant, did specify what those items were; the only electronic items mentioned were the tablet, the laptop, and the desk top computer taken from the Rekkers' residence, and the sim card and two USB's taken from a luggage in Mona Lisa Salon. They do not mention mobile phones³⁹. Neither are mobile phones listed in the receipt (of items seized) given to Jurgen Rekkers⁴⁰.

In these circumstances i.e. the complete absence of any information which can legally tie this mobile phone to the defendant, and in the absence of any other shred of concrete evidence that can show beyond reasonable doubt that defendant knew what services were given by Omissis 1 in the salon, defendant cannot be found guilty of the second, third and fourth charges

By virtue of the fifth charge brought against her defendant is being charged with having used the premises Beijing Bella Beauty and Culture Centre in Triq l-Akwadotti Fleur De Lys Birkirkara, for purposes other than those for which it was licensed and consequently in contravention of the license.

It has already been established that Beijing Bella was being used for purposes of prostitution. Prostitution was not, and could not have been, listed as one of the purposes for which the trading licence was issued in respect of that premises⁴¹. The business carried out therein was therefore clearly in contravention of the license.

³⁸ The testimony was given in Maltese; she stated: *Ma ghamilna l-ebda tfixxija qabel ma gie Jurgen Rekkers Kif ghedt sar t-tfixxijiet fil-post in kwistjoni, kienu gew elevati diversi oggetti li gew esebieti wkoll il-Qorti* (page 380 of the acts).

³⁹The only witness (other than Dr Bajada) in whose testimony mobile phones are mentioned is PS 153 Lydon Zammit; when asked whether he had any knowledge that mobile phones were seized he replied that he did not (page 98 of the acts).

⁴⁰ Doc LS14. In reality neither are the tablet, laptop and desk top computer listed in this document.

⁴¹ Ref trading licence Doc KC1 at page 475 of the acts.

However it has also been established that no sufficient proof was brought of defendant's knowledge of this fact. In these circumstances neither can defendant be found guilty of this last charge.

Wherefore, the Court, whilst abstaining from taking cognisance of the first charge brought against defendant in the writ of summons, finds the defendant not guilty of the other charges brought against her and discharges her there from.

DR. DOREEN CLARKE
MAGISTRAT