

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

Magistrate Dr. Claire L. Stafrace Zammit B.A. LL.D.

**The Police
[Inspector Elton Taliana]**

vs

Natalia Menshova

Case Number: 1117/2012

Today, the 4th of October, 2018

The Court,

Having seen that the accused Natalia Menshova holder of Maltese Identification Document Number 18943A was accused of having;

On the 26th October 2012, at 10:00 hrs, in Triq Santa Klara, Bahar ic-Caghaq:

- 1) Wilfully committed any spoil, damage or injury to or upon any movable or immovable property belonging to Raphael

Asciak, which amount of damage does not exceed one thousand and one hundred and sixty-four Euros and sixty-nine cents (€1,164.69);

- 2) Without the intent to steal or to cause any wrongful damage, but only in the exercise of a pretended right, shall, of his own authority, compel another person to pay a debt, or to fulfil any obligation whatsoever, or shall disturb the possession of anything enjoyed by another person;
- 3) Even though without the intent of committing another offence, enters into the dwelling-house of another person, against the express warning of such person, or without his knowledge, or under false pretences or by other deceit.

Moreover for having on the same date, time and in the previous months, in the same place and in other places in Malta:

- 4) Pursued a course of conduct which amounts to harassment of Raphael Asciaq and his family;
- 5) Pursued a course of conduct which caused Raphael Asciaq and his family to fear that violence will be used against him

or his property or against the person or property of any of his ascendants or descendants.

The Court was requested to issue a protection order against the accused under Article 412(C) of Chapter 9 of the Laws of Malta to provide for the safety of Raphael Ascias and his family or for the keeping of public peace or for the purpose of protecting the injured persons from harassment or other conduct which causes fear of violence.

Having seen all documents.

Having seen the conviction sheet of the accused who on the 13th May 2002 was found guilty and awarded a reprimand and admonition for having failed to stop her vehicle and provide her particulars.

Having seen the examination of the accused who replied not guilty to the charges brought against her.

Having seen the note of the Attorney General dated twenty-ninth (29th) April of the year two thousand and fourteen (2014) whereby

the Court was asked to find guilt under the following Articles of the Law:–

- Article 325 (1)(b) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Article 85 of the Criminal Code, Chapter 9 of the Laws of Malta;
- Article 339(1)(o) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Article 251A of the Criminal Code, Chapter 9 of the Laws of Malta;
- Article 251B of the Criminal Code, Chapter 9 of the Laws of Malta;
- Articles 383, 384, 385, 386, 387 and 412C of the Criminal Code, Chapter 9 of the Laws of Malta; and
- Articles 17, 18, 31 and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

Having seen that the accused did not object that this Court hears and decides these proceedings summarily.

Having seen all the acts of the case.

Having seen the notes of submissions of the parties.

Considers:

This case deals primarily with the alleged arbitrary exercise of pretended rights by the accused on the 26th October 2012 over a property, namely No. 8, Triq Santa Klara, Bahar ic-Caghaq, limits of Naxxar. It transpires evident from the acts of the proceedings that the accused and the parte civile were in a long-term relationship and that for several years they lived together in the above-mentioned property.

That the Court heard **Inspector Elton Taliana** testify that on the 26th October 2012 he was informed by PS 950 Alan Buhagiar that a report came in from Raphael Asciak due to the fact that the front main gate of his residence was locked with a chain and three padlocks and thus he couldn't access his residence. Inspector Taliana explained how with the help of the Civil Protection Department the padlocks were cut and they made their

way through the gate. This was at about noon. He also explained that the front door wasn't locked and therefore the officers accessed the farmhouse without any force. He added that the lock was broken. Inside they found the accused in the kitchen who claimed that the farmhouse is her residence. The accused produced a rent agreement to the investigating Inspector (exhibited as Doc. ET6). Inspector Taliana said that the parte civile claimed to have never signed "an agreement for thirty years with a strange person". Inspector Taliana spoke to parte civile at 13:30 at Birkirkara police station wherein he produced a contract dated 30th April 2002 (marked Doc ET4) to show that he is the sole owner of said property;

This Court took note of Doc. ET4 which consists of a contract of sale dated 30th April 2002 whereby Propinvest Limited, represented by Raphael Ascjak as company director, acquired the property namely No. 8, Triq Santa Klara, Maghtab, limits of Naxxar. It is evident that the owner of said property is Propinvest Limited and not the parte civile in his personal name;

This Court also took note of Doc ET6 consisting of a rental agreement effective from 1st January 2011 wherein Camelot Properties Limited (represented by Raphael Asciak) as the owner leased the property No. 8, Triq Santa Klara, Maghtab, limits of Naxxar unto tenants Raphael Asciak and Natalia Menshova. Said lease was for a period of 30 years;

That Inspector Taliana stated that while at the police station the parte civile said that he was left outside and couldn't enter his own residence because the residence was locked. Thus Inspector Taliana informed the Magistrate on duty and obtained a warrant to enter said premises (Doc. ET5);

That the Court heard that parte civile in these proceedings, **Raphael Asciak**, who stated that on the 26th October 2012 he got a call from his neighbour (Florence Tabone) who informed him that his gate and door were open. The Prosecution chose not to produce the testimony of Florence Tabone. At that point the parte civile stated that he left his office in Valletta and called the police. Once he arrived at his residence he found the police there who had already entered the property and spoke to the accused

who was inside. The parte civile stated that he knew the accused very well. They had “an on and off relationship over a number of years”. He stated that the accused had her own residences but she used to sleep over sometimes and there was a period where she lived at his residence until her apartment was ready.

The parte civile confirmed to have two civil spoliation cases pending with the accused over the same property. According to the parte civile the accused had stolen the keys to this property from him in September 2011. Mr. Asciak also stated that he changed the locks a number of times but the accused kept on coming in. Mr Asciak also stated that he had seen the rental agreement exhibited as Doc ET6 before and the accused had asked him to sign it but according to him the signatures on said document are not his. He said that it didn't make sense to sign such an agreement.

As regards damages the parte civile stated that the door was smashed down and the locks were broken. The Court notes that officers who went on site did not say that the door was smashed down but simply that the lock was damaged from the inside. The

parte civile exhibited an estimate of the alleged damages caused to the door (Doc RA1) which estimate was prepared by a handyman (Simon Jones) amounting to €710.00. The parte civile also exhibited a CD marked as Doc RA2.

That the witness **PL Quentin Tanti** produced by the Prosecution and representing the MFSA, exhibited the Memorandum and Articles of both Propinvest Limited wherein he confirmed that Raphael Asciak is director and also of Camelot Properties Limited wherein Raphael Asciak and Vanessa Asciak are directors and shareholders.

The Court also heard **PS 905 Alan Buhagiar** who on the 26th October 2012 at about 11.00am was informed that a person had entered a residence in Maghtab. He went on site and found the accused and noted that she locked herself in since there was a chain and a padlock on the gate. PS 905 added that on site he spoke to the parte civile who said that he didn't want the accused inside the house. PS 905 stated that there were similar reports filed before this date where the accused claimed that she had a right to reside in said property. PS 905 was not aware of what

happened after said reports since to his knowledge the parties spoke to their respective lawyers.

Under cross-examination the sergeant stated that he had been stationed in the area for over 18 years and that he knows the parties as a couple living together. There was a previous incident where the same sergeant arrested the accused for other matters and he found her to be living in said property. According to PS 905: “she used to live there for a long time” (folio 159).

That PS 905 also exhibited two police reports concerning the parties to this case, one dated 2nd May 2009 where it transpires that the parties were living together at No. 8, Triq Santa Klara, Bahar ic-Caghaq and an argument between them ensued. It was noted by the officer entering the report that Mr. Asciak asked that no proceedings be instituted against Natalia Menshova. The second report states that on the 23rd August 2012 Ms Menshova went knocking on Mr Asciak’s door and started shouting “Let me in” where Mr Asciak told her to go away or else he’d call the police. Ms. Menshova had produced a rental agreement to the police and Mr. Asciak said that he didn’t want to press charges

against her however he asked that the police talk to her so that she doesn't approach said property.

The Court took note of the report presented by court nominated expert **Dr. Martin Bajada**, wherein the stills produced contradicted certain details, especially the chronology of events, provided by the witnesses of the prosecution.

The Court also took note that **Simon Jones** confirmed that the estimate at folio 101 was prepared by him and also that the works listed in said estimate were in fact carried out. He stated that he was paid by Mr. Raphael Asciak. The parte civile exhibited the receipt provided to him by Simon Jones which is marked as Doc RAX at folio 402 which receipt is addressed to Ralph Asciak.

The Court took note of the graphic analysis report exhibited by court appointed expert **Dr. Juliana Scerri Ferrante** at folio 307 et sequitur who was nominated to examine the document at folio 40 and verify whether the signatures referring to Raphael Asciak are in fact his since the parte civile is alleging that he never signed the rental agreement marked as Doc. ET6. Dr. Scerri Ferrante

testified that there are too many possibilities and too many variables of which he could be the author and she could not be the author. As a result court expert concluded that in this particular case the extremes of variation were immense and thus a conclusion is impossible.

Under cross examination by defence counsel Inspector Elton Taliana confirmed that he did not see the accused force open the door and nor did he see her chaining the gate. He also confirmed that the when the accused was arrested she had in her possession two sets of keys. Inspector Taliana does not contradict defence counsel on being told that he did not investigate whether those keys were the keys to the front door of the said property (folio 415). The keys were exhibited by Inspector Taliana while under cross examination and marked as Doc ETX.

Under cross examination of the parte civile, defence counsel exhibited receipts for works carried out at No. 8, Triq Santa Klara, Naxxar, which receipts were issued in the name of the accused (Doc NM11 and NM 12). Said receipts contradict what the parte civile stated in his testimony that the accused just slept over a

few nights but didn't live in the property. Court also notes that Docs NM1 to NM10 contradict what the parte civile told Inspector Taliana about his relationship with the accused. Inspector Taliana in his testimony stated that the Mr. Asciak said: "I'm not that stupid to sign an agreement for thirty (30) years with a strange person" (folio 32). It is evident that Mr. Asciak wasn't telling the truth when it came to his relationship with the accused as from the photos exhibited it transpires that she was no stranger at all to him.

It also transpired from the parte civile's cross examination that between December 2011 and August 2012 his wife spent a few nights in the Naxxar property whereas he would spend nights between the Naxxar property and his wife's residence in Sliema. The Court notes that while under cross examination the parte civile avoided as much as possible answering defence counsel's questions.

The Court also heard the accused, **Natalia Menshova**. The accused stated that Raphael Asciak was her life partner; she had known him for 18 years, they lived together, had a child together and

also a business together. The accused stated that they lived together from 1993 up till 2012 when according to her she was dragged out of her home by Inspector Taliana. She confirmed living at No. 8, Triq Santa Klara, Naxxar, together with the parte civile and their daughter for the last 10 years until she was dragged out. The accused under oath denied having put a chain and a padlock around the gate leading to the property and also denied having damaged the main door. The accused also denied having threatened or harassed the parte civile's family.

In her testimony the accused pointed out that prior to being arrested she was abroad for some days and when she returned she went home to No. 8, Triq Santa Klara, Naxxar. She explained that she entered the gate and the front door by using her keys. She stressed that she always had keys to the property since the year 2002 and they never changed the locks. She explained that there are two doors, one metal and one wooden and she always had two keys on a chain. The accused also explained the circumstances behind the rental agreement and why the same was signed. According to her the parte civile used to smoke 10 packets of cigarettes a day and one day he was lying on the floor

unconscious. That day the accused claimed to have saved his life. Because of his state of health and since the accused had nothing to prove why she was living in the same house with the parte civile, the parties signed a rental agreement and this according to the accused was done by mutual agreement (folio 488).

The accused also exhibited a contract of sale dated 12th May 1998 in the acts of Notary Antoine Agius whereby the accused sold her property namely a semi-detached villa in Tal-Ibragg to Raphael Asciak who was appearing on behalf of his company Propinvest Limited for the price of Lm80,000. According to the accused said money was used to acquire the property namely No. 8, Triq Santa Klara, Naxxar. The accused also exhibited a police report (Doc NM3) dated 6th November 2011 wherein she called for police assistance since she was afraid of Mr. Asciak. According to said report Mr. Asciak stated that he had been trying to convince Ms. Menshova to leave the house and on the 6th November 2011 he decided to go there and once there he found the door locked. The Court notes that Mr. Asciak did not file a report in this sense. **In the same report it was stated that Inspector Taliana instructed the police to warn the parties to keep public peace but not to take**

out Ms. Menshova from the residence (folio 505). Another report was filed by the accused on the 15th December 2011 wherein she alleged that Mr. Asciak threatened that he was going to kill her and thus she locked herself in the bedroom. The Court notes that in said report Mr. Asciak stated that when he saw that Ms. Menshova did not want to open the bedroom door he decided to go sleep in his office in Valletta so as to avoid further arguments. The Court notes yet again that no report was filed by the parte civile despite the fact that both parties stated in the report that their relationship had ended. This leads the Court to conclude that it was normal practice for Ms. Menshova to reside in No.8, Triq Santa Klara, Naxxar, and her presence in said property was accepted by Mr. Asciak so much so that he decided to go sleep at his office in Valletta.

On having seen the accused's statement at folio 11 et sequitur, the Court notes that *a tempo vergine* the accused stated that she used her key to enter the house and that she pushed the door and it opened. She stated that she didn't damage the door and that it goes back in its place. On being asked "who put the chains on the gate?" the accused replied "Me". She stated that Mr. Asciak

had obstructed her from accessing the property in February so she wanted him to feel what she felt. In this sense the Court notes the contradiction between the accused's statement and her testimony. Whilst under interrogation she also stated that from last February up till the night before the 26th October 2012 she was living at her office in Msida. The Court noted that the accused did not sign her statement.

The Court also heard **Marianne Galea**, who was produced by the defence. The witness stated to have worked as a babysitter and even as a maid. She worked for the accused and the parte civile for circa 14 years. According to this witness the accused used to live with the parte civile and their daughter Gabriella. She knew them living together both in Tal-Ibragg and also in Gharghur. The witness confirmed that she whenever she went to the parties' house in Gharghur it was the accused or the parte civile that let her in.

The defence also produced witness **Zvetlana Roukhiada** who stated to have known the accused since 1999. Said witness said that the accused and parte civile were life partners and that they

lived together in St. Julians. The witness also visited the parties at their Gharghur home and confirmed that they lived together. The Court noted that said witness was with the accused on the date of incrimination. She stated that the day before the incident the accused arrived from Sweden where she was on a family visit. The accused called her late at night to ask if she can sleep at her house for that night since she preferred going to her house in Gharghur in the morning. The next morning the accused asked the witness to go with her since she was afraid to go there on her own since the parte civile had threatened her before. The witness stated that they went with separate cars and that the accused brought a gentleman with her. Once parked they proceeded to the door and according to the witness the accused had a bunch of keys and she opened the first door which was a metal door and then she started opening the second door and according to the witness after she heard a click the door opened with some help since it was an old door and according to the accused the door used to get stuck very often.

The witness went on to state that she went with the accused as a friend and also to collect some oils for aromatherapy. As regards

the gentleman the witness stated that she had never seen him before. She stated that the man left straight away since Mr. Asciak wasn't there and thus there was no need for him to protect the accused. Under cross examination the witness stated that: "nothing was broken. She opened one door and then she opened the second door". The witness also stated that she didn't feel the need to ask Ms. Menshova why she brought a man along to the property.

The Court also heard **Olga Spiteri** who was produced by the defence. She stated that she used to work in the accused's house in 2006 and also for the accused's company. She testified that she used to clean the accused's house, namely No. 8 Triq Santa Klara, Gharghur, and even wash the clothes of Natalia, Ralph and the daughter. The witness stated that the parties lived together for a long time, approximately 18 years and in the house there were many photos of the family in frames. While she worked in the house she confirmed that both the accused and the parte civile lived there together with the daughter Gabriella.

Defence counsel also produced the accused's niece, **Larissa Zaretskaja**, who stated that the accused and parte civile had been in a relationship for many years. She used to visit them at their house in Gharghur every year where she spent quite some time during her summer holidays. She stated that they behaved like a normal family. The witness exhibited photos in this sense. The last time she saw her cousin Gabriella living in the Gharghur house (through Skype) was in September 2012. The witness states to have recognized the same walls of the accused's study and the view from the window.

The defence also produced **Anthony Tonna** who stated that he worked for Ralph Ascjak as a carpenter. He testified to have prepared doors, windows and other wooden furniture in the farmhouse in Bahar ic-Caghaq. He stated that sometimes the accused would open the door and on other occasions the parte civile would let him in. He stated that he took orders from both Nathalia and Ralph together and sometimes from Nathalia alone, especially as regards the daughter's bedroom. He also stated that Ralph used to pay him.

The Court also heard the testimony of **George Mifsud** who stated that every time the accused had electrical problems she would call him and he would go to the property in Bahar ic-Caghaq. He would sort out electrical problems with the pool. He stated that he cannot say who lives in the property however he said that Nathalia used to open the door and let him in the house. He also stated that he had met the parties together on the ferry to Gozo. The witness stated that it was Nathalia who used to pay him for his services.

The last witness produced by the defence was that of **Tatjana Filina** who claimed to have known the accused for over 25 years. She said that the accused and parte civile lived together and she would attend their house in Madliena for parties. She stated that they lived together for about 19 years as a family and that all this period of time she had known them together. She stated that Nathalia was not a guest in the Madliena property. She stated that she went to the parties' house many times especially since her son was a friend of Gabriella.

On having considered:

That the first charge brought against the accused speaks of damages caused to the immovable property of Raphael Asciak (Article 325 of the Criminal Code). That the Court immediately notes that there is conflicting evidence as regards who in effect owns the immovable property under discussion namely No. 8, Triq Santa Klara, Naxxar. This Court, as a Court of Criminal Judicature, is not competent to determine who the real owner of the said property is, but from what has been produced by the Prosecution, this Court has before her a contract of acquisition wherein Propinvest Limited acquired the property in question and a rental agreement wherein Camelot Properties Limited leased this same property to the parte civile and the accused. In this regard this Court may take cognisance of the contract of acquisition since this has been attested as a certified true copy by Notary John Spiteri whereas on the other hand this Court was only provided with a photocopy of the rental agreement exhibited as Doc ET 6 which thus does not serve as sufficient evidence in the Criminal Courts; even more so, when the veracity of said document is being contested by the parte civile. Having said this, what is of relevance to the Court is that the property in question was not owned by Raphael Asciak, but by Propinvest Limited. In

fact, the contract of acquisition clearly states that Raphael Asciak is appearing on behalf of Propinvest Limited.

As a result the Court need not delve into the issue as to whether damage was caused by the accused, because even if damage was caused this would have been caused to Propinvest Limited and not to Raphael Asciak personally as indicated in the charge brought against the accused. Therefore the Court concludes that since the first charge attributed to the accused refers to damage caused to Raphael Asciak and not to Propinvest Limited then the first charge cannot be upheld.

That as regards the second charge, the Court again points out the conflicting evidence that emerges from the acts of these proceedings. The parte civile portrays a picture that is very different from that portrayed by the accused where the parte civile aims at directing the Court towards believing that the accused never lived at said property but only slept over on occasions. The relationship that the parties to this case had is not of the Court's interest however this Court is convinced that the accused lived for many years in the property under discussion

together with the parte civile based on the different testimonies produced before the Court and also circumstantial evidence such as photos, receipts and police reports.

That this Court is not going to examine the title the accused held over such immovable property and whether said title of lease that she testified on oath is valid or not. This is a civil matter. Again, what is relevant to this Court as a Court of Criminal Judicature, especially as regards the third charge, is whether the accused had the right of enjoyment of said property. This is important to establish since it determines whether the accused had the right to enter said property in the first place.

Some form of enjoyment by the accused over said property, whether under a particular title or not, definitely existed however it was definitely made clear to her by civil party that he did not want her there anymore because their relationship was finished.

The Court notes that in the past, similar reports to the case under examination were filed with the Police. What is interesting is that previous reports were never followed with criminal proceedings

and it was the parte civile himself who would instruct the police not to proceed against the accused. However, all this shows the intent of the civil party who didn't want accused to enter the property. However, the said Raphael Axiaq has never done any external acts to exclude accused from property and thus this definitely goes against him.

That despite what has been said above, the Court notes that the right of enjoyment of the accused over the property in question does not give her the right to deny the right of enjoyment of the parte civile over the same property. This is why the Prosecution also charged the accused with the offence of arbitrary pretended rights under article 85 of Chapter 9 of the Laws of Malta.

The elements of this crime were very amply set out by Judge William Harding in the case "The Police vs Giuseppe Bonavia et" [Criminal Appeal 14.10.1944 Vol. XXXII part 4 page 768]¹. These include:–

¹ The Police vs Roger Ian Dobbyn (Criminal appeal no. 158/2010) decided by the Hon. Mr. Justice Michael Mallia on the 3rd June 2011

- a. an external act that impedes another person from exercising a right, which act would have been committed with the explicit or implicit consent of the accused;
- b. the accused would believe that he is acting within his rights;
- c. the knowledge that accused would be taking on his own initiative that which he should take through legal process;
- d. that the act does not involve a more serious crime.

According to local jurisprudence these elements must concur. In the case *Il-Pulizija vs Maris Dimech, Joseph Dimech, Ramona Zammit & Charles Zammit* (Criminal appeal no. 379/2011) decided on the 9th May 2012, the Court of Criminal Appeal upheld:

“Biex jikkonfigura ruhu r-reat ta’ ragon fattasi, iridu jikkonkorru dawn l-elementi:

(1) att estern li jispolja lil xi hadd iehor minn haga li jkun qiegħed igawdi, liema att ikun ezegwit kontra loppozizzjoni, espressa jew presunta, ta’ dan il-hadd iehor;

(2) il-kredenza li l-att qieghed isir b'ezercizzju ta' dritt;

(3) il-koxjenza fl-agent li hu qieghed jaghmel 'di privato braccio' dak li jmissu jsir per mezz ta' l-awtorita` pubblika (jew, fi kliem il-Crivellari, Il Codice Penale per il Regno d'Italia Interpretato ecc., Torino, 1895, Vol. VI, pagna 749, 'la persuasione di fare da se` cio` che dovrebbe farsi reclamando l'opera del Magistrato'); u

(4) in-nuqqas ta' titolu li jirrendi l-fatt aktar gravi (ara, fost diversi sentenzi, Il-Pulizija v. Salvatore Farrugia, Appell Kriminali 14 ta' Dicembru, 1957, Vol. XLI.iv.1506; Il-Pulizija v. Carmel sive Charles Farrugia, App. Krim. 17 ta' Frar, 1995; Il-Puliziia v. Carmelo Ciantar, 18 ta' Settembru, 1996; ara wkoll Falzon, G., Annotazioni alle Leggi Criminali (Malta), 1872, p. 123). Hu risaput - u dan, del resto, johrog mill-istess definizzjoni tar-reat in dizamina - li l-istess att materjali jista' jaghti lok ghar-reat ta' ragon fattasi jew ghal reat iehor (hsara volontarja, serq), u jekk ikunx hemm dana r-reat ta' ragon fattasi jew xi reat iehor ikun jiddependi mill-intenzjoni tal-agent. Hu rrelevanti jekk dina l-intenzjoni tikkwalifikax bhala intenzjoni specifika jew intenzjoni generika.

Ovjament huwa sufficjenti li jikkonkorru l-ewwel tliet elementi."

In the case under examination, just as the accused had the right of enjoyment over the property the parte civile too had such right and this was never contested by the accused. In addition, the accused stated in her statement that she wanted the parte civile to feel what she had felt when he locked her out of the property in question. Also, it has been established through several witnesses that both the accused and the parte civile had their residence established at No. 8, Triq Santa Klara, Naxxar and thus the parte civile too enjoyed rights over said immovable.

The fact that the accused put a chain and a padlock around the metal door of the property thereby denying the parte civile access is enough to disturb the possession of the property enjoyed by the parte civile. The act of spoliation was indeed committed when the accused intentionally put a chain and padlock around the metal door in order to prohibit the parte civile from accessing the property. Despite having denied this under oath the Court is of the opinion that the accused's version *a tempo vergine* is more credible. Also there is no doubt from the stills extracted by court nominated expert Dr. Martin Bajada that following the entry of the accused in said property no other person (other than the man and

woman who were with her and existed the property) can be seen approaching the property. It is therefore evident that the accused locked herself in the residence. The Court is thus convinced that the elements for the crime under Article 85 to subsist have been fulfilled.

That as regards the 4th and 5th charges brought against the accused, the Court notes that no evidence was brought forth by the Prosecution to sustain said accusations. Article 251A speaks of a course of conduct amounting to harassment in this case of Raphael Asciak and his family whereas Article 251B speaks of a course of conduct which caused Raphael Asciak and his family to fear that violence will be used against them or their property. In order to satisfy the requirements of the law, the Prosecution here had to produce evidence that goes beyond the date of incrimination. This has been emphasized by local jurisprudence as can be seen in the case *Pulizija vs. Raymond Parnis* decided by the Court of Criminal Appeal on the 24th April 2009 wherein the Court stated the following:

“Dan kollu – u cioe ` dawn l-affarijiet kollha li sehew fil-kuntest ta’ incident wiehed – ma jistghu qatt jammontaw ghar-reat kontemplat fl-Artikolu 251B imsemmi. Dan ir-reat gie evidentement ispirat mill-Artikolu 4(1) tal-Protection from Harassment Act, 1997 tal-Ingilterra, liema artikolu jipprovdi testwalment hekk:

“A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.”

L-Artikolu 251B taghna – u hawn il-Qorti ser tuza t-test Ingliz proprju biex wiehed ikun jista’ jara x-xebh u fejn saru t-tibdiliet – jipprovdi, fis-subartikolu (1) tieghu, hekk:

“A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in sub-article (1) of

article 222 shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions...” (sottolinear ta’ din il-Qorti).

Il-kliem “on each of those occasions” huma indikattivi li l-att materjali ma jistax isehh f’okkazjoni wahda izda jrid ikun hemm għall-anqas zewg okkazjonijiet – proprju kif jinghad fil-matrici Ingliza, “on at least two occasions”.

The same goes for harassment under Article 251A where the Court of Criminal Appeal on the 27th of February 2009 in the case *Il-Pulizija v. Massimo Tivisini* upheld the following:

“Illi ghalkemm, kif jissottometti l-appellant, it-terminu legali fastidju (bl-Ingliz ‘Harassment’) gie definit mill-Black’s Law Dictionary – (7th. edit.) bhala:- “Words, conduct or action (usu. repeated or persistent) that being directed at a specific person, annoys, alarms or causes substantial emotional distress in that person and serves no legitimate purpose”, dan l-element ta’ ripetizzjoni jew persistenza ma jridx jigi konsidrat “in isolation” b’riferenza biss għall-kaz mertu tal-kawza imma bil-fors li jrid

jitqies fl-isfond tar-retroxena u tal-agir precedenti tal-gudikabbli. Dan ghaliex kif gie ritenut minn din il-Qorti fl-Appell Kriminali: Il-Pulizija vs. Alan Caruana Carabez [21.6.07]:- "...f'kazijiet bhal dawn ir-retroxena ghal kull incident hija importanti biex il-Qorti tkun tista' tispigola l-incident izolat u accidental minn agir abitwali ta' fastidju fuq perjodu ta' zmien... Din il-Qorti zzid dan li gej. L-artikolu (251A tal-Kap 9) huwa msejjes fuq l-ewwel zewg artikoli tal-Protection of Harassment Act 1997 li jibda bil-kelmiet: 'A person must not pursue a course of conduct' li fil-ligi taghna hekk: 'Persuna li ggib ruhha'. Skont l-Archbold: 'Two incidents can constitute a 'course of conduct' but the fewer the incidents and the greater their separation in time, the less likely it is that they should be described as 'a course of conduct'. (Lau v DPP (2000) (1 F.L.R. 799 DC)."

In the case under examination, the Court noted that no course of conduct was proven and in fact no instances were mentioned other than the date of incrimination. The only dates that emerge were those of the previous police reports which reports weren't exhibited by the parte civile but by PS 905. The Court also notes

that the parte civile himself requested that no proceedings be taken following said reports.

With regard to the 4th and 5th charges the Prosecution's best evidence would have been the testimony of the parte civile and that his family members. In this case however the parte civile in his testimony only mentioned in passing a previous incident where the accused came knocking at his door shouting to let her in. The parte civile did not speak of feeling harassed and neither did he mention that he was afraid that Nathalia Menshova would exercise some form of violence. The only thing he did mention was that his wife, Vanessa Asciak, who at the time was in his residence, told him that she wasn't going to sleep there anymore since she was scared of the accused. The Court however noted that this amounts to nothing more than *detto del detto* and the best evidence, being that of Vanessa Asciak's testimony, was not produced by the Prosecution.

On the above basis and upon seeing Articles 325, 85, 339(1)(o), 251A, 251B, 383, 384, 385, 386, 387, 412C, 17, 18, 31 and 533 of Chapter 9 of the Laws of Malta finds accused Nathalia

Menshova not guilty of the first (1st), third (3rd), fourth (4th) and fifth (5th) charges and acquits her of the same whereas finds her guilty of the second (2nd) charge and condemns her to a fine (multa) of one hundred Euros (€100).

The accused is hereby in terms of Article 533 of Chapter 9 of the Laws of Malta being ordered to pay expenses incurred in relation to court nominated experts Dr. Martin Bajada and Dr. Juliana Scerri Ferrante amounting to one thousand one hundred and eighty-six Euros and ninety-six cents (€1186.96).

Ft./Dr. Claire L. Stafrace Zammit B.A. LL.D.
Magistrate

Benjamina Mifsud
Deputy Registrar