



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

Magistrate Dr. Doreen Clarke LL.D.

Today, the 12th August, 2020

**The Police
(Inspector Joseph Xerri)**

vs

**Nenad Anic
Nemanja Vucicevic**

Compilation Number 159/2019

The Court,

Having seen the charges

Nenad Anic, 39 years, son of Vladimir and Violetta nee' Milosevic born in Jogodina, Serbia on the 18th March 1979, residing at Flat 1, Billy's Apartments, Ġorġ Borġ Olivier street, Mellieħa and holder of Serbian Passport with number **012795653**; and

Nemanja Vucicevic, 31 years, son of Radoslav and Valentina nee' Marcete born in Novi Sad, Serbia on the 16th July 1987, residing at Flat 10, Teal Court, Santa Venera street, Msida and holder of Serbian Passport with number **013329639**.

Charged with having on the 10th March 2019, between one in the morning (01.00hrs) and half past one in the morning (01.30hrs), inside the Havana Club in St. George street, St. Julian's:

1. Without the intent to kill or to put the life of **Ervis Duraj** in manifest jeopardy, caused harm to his body or health, which bodily harm is considered grievous;

2. Attempted to use force against **Ervis Duraj** with the intent to insult, annoy or hurt him;
3. Wilfully disturbed the public good order or public peace.
4. Acted or were employed as private guards, specialised private guards, or private guards at a place of entertainment or as community officers without having the necessary licenses.

Nenad Anic, on his own, charged with having on the same date, time and circumstances:

5. Had in his possession a prohibited weapon, specifically a knuckle duster

Nemanja Vucicevic, on his own, charged with having on the 13th March 2019 and the previous months inside the Havana Club in St. George Street, St. Julian's and other places in these islands:

6. Produced, sold or otherwise dealt with the whole or any portion of the plant **Cannabis** in terms of Section 8(e) of the Chapter 101 of the Laws of Malta;
7. Supplied or distributed, or offered to supply or distribute the drug (**Cocaine**), specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101, of the Laws of Malta , to person/s, or for the use of other person/s, without being licensed by the President of Malta, without being fully authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939), or by other authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 6, of the Ordinance and when he was not duly licensed or otherwise authorised to manufacture or supply the mentioned drug, when he was not duly licensed to distribute the mentioned drug, in pursuance of the provisions of Regulation 4 of the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) as subsequently amended by the Dangerous Drugs Ordinance, chapter 101 of the Laws of Malta;
8. Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other person/s to import, sell or deal in drugs (Cannabis Grass), in these Islands, against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy;
9. Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other person/s to import, sell or deal in drugs (**Cocaine**), in these Islands, against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy;

10. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant Cannabis, or any other preparation of which such resin formed the base, which drug was found under circumstances denoting that it was not intended for his personal use;
11. Had in his possession the drugs (*cocaine*) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs was supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations, of the Internal Control of Dangerous Drugs (G.N.292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101, of the Laws of Malta which drug was found under circumstances denoting that it was not intended for his personal use;
12. Committed these offences in, or within 100 metres of the perimeter of, a school, youth club or centre, or such other place where young people habitually meet.

The Court was requested to issue a Protection Order against the accused to provide for the security of **Ervis Duraj**, or for the keeping of public peace or for the purpose of protecting the injured party or other individuals from harassment or other conduct which will cause a fear of violence in terms of article 412C of Chapter 9 of the Laws of Malta.

The Court was also requested to apply section 533(1) of Chapter 9 of the Laws of Malta, as regards to the expenses incurred by the Court appointed Experts.

Having seen the note of the Attorney General¹ whereby, in terms of section 370(3)(a) of Chapter 9 of the Laws of Malta, the acts were transmitted to this Court for this case to be tried summarily with regard to the accused **Nenad Anic** for the offences contemplated in the following provisions of Law:

- a) Sections 214, 215, and 218(1)(a)(b) of Chapter 9 of the Laws of Malta;
- b) Section 338(dd) of Chapter 9 of the Laws of Malta;
- c) Section 339(1)(d) of Chapter 9 of the Laws of Malta;
- d) Section 25(b) of Chapter 389 of the Laws of Malta;
- e) Section 3 (Schedule 1, Part II point 4) of Chapter 480 of the Laws of Malta;
- f) Sections 17, 31 412C, and 533 of Chapter 9 of the Laws of Malta.

¹ At folio 16.

Having seen the order of the Attorney General² whereby, in terms of section 22(2) of Chapter 101 of the Laws of Malta, it was ordered that the accused **Nemanja Vucicevic** be tried before the Criminal Court with regards to those charges brought against him for breach of the said Chapter 101 of the Laws of Malta.

Having seen the subsequent order of the Attorney General³ whereby, in terms of section 22(2) of Chapter 101 of the Laws of Malta, it was ordered that the accused **Nemanja Vucicevic** be tried summarily before this Court sitting as a Court of Criminal Judicature with regards to those charges brought against him for breach of the said Chapter 101 of the Laws of Malta.

Having seen the note of the Attorney General⁴ whereby, in terms of section 370(3)(a) of Chapter 9 of the Laws of Malta, the acts were transmitted to this Court for this case to be tried summarily with regard to the accused **Nemanja Vucicevic** for the offences contemplated in the following provisions of Law:

- a) Sections 214, 215, and 218(1)(a)(b) of Chapter 9 of the Laws of Malta;
- b) Section 338(dd) of Chapter 9 of the Laws of Malta;
- c) Section 339(1)(d) of Chapter 9 of the Laws of Malta;
- d) Section 25(b) of Chapter 389 of the Laws of Malta;
- e) Section 3 (Schedule 1, Part II point 4) of Chapter 480 of the Laws of Malta; and
- f) Sections 17, 31 412C, and 533 of Chapter 9 of the Laws of Malta.

Having seen that in the same note the Attorney General also listed the offences contemplated in the following provisions of Law:

- g) Sections 8(e), 9, 10, 22(1)(a)(f), 22(1)(1A)(1B), 22(2)(b)(i) and the second proviso of 22(2)(b)(i), 22(3)(3A), and 22A of Chapter 101 of the Laws of Malta; and
- h) Regulations 3, 4, 6 and 9 of Legal Notice 292 of the year 1939.

Having seen that the defendants 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

That this case refers to an incident which took place on the 10th March 2019 at 01.30hrs in the club called Havana in St George's Road, St Julian's; in this incident Ervin Duraj suffered some injuries.

The Evidence

² At folio 216.

³ Ref order at folio 217.

⁴ Incorporated in the order at folio 217.

The injured party **Ervin Duraj** was called to testify⁵ in the sitting held on Wednesday 10th April 2019. In that hearing he stated that on the night in question⁶ he was out with some friends at Havana Club and after about an hour the bouncers came and asked for identification documents; Duraj gave him his ID card and immediately found himself on the floor whilst being hit and punched; he remembered being punched on his face “*with metal*”. On being asked if he could recognise anyone in the hall where the sitting was being held, Duraj said that he recognised the defendant Vucicevic. However, he claimed that Vucicevic didn’t punch him, but just pushed him to go out. Duraj also recognised defendant Anic but he claimed that he never had any problems with Anic.

In a subsequent testimony⁷ Duraj claimed that when he first identified the accused as his s with the police he was not very sure. He also stated that he never had any problems with them and that “*this time I don’t know what happened*”. He also added that this was the first time he went with Albanians to Havana. During this testimony he confirmed that the accused were the persons who attacked him claiming that now he is sure of their identity. During this testimony Duraj also stated that he didn’t recognise his aggressors but his friends (the ones who were with him at the club) told him that the defendants had hit him.

Under cross-examination⁸ Duraj claims that when he first went to the police station he was sent to hospital on account of his injuries and he was kept there for a day and a half; he went back to the police on being discharged from hospital. Regarding the night of the incident he says that he was out with friends celebrating a birthday and that they went straight to the club (Havana). Regarding his identification of the accused he says that he knew where the incident took place, so he and the police went straight there; the accused were outside, and he pointed them out to the police.

Various police officers were called as witnesses:

- **PS 345 Mark Cremona**⁹ stated that at around 01.30hrs of the 10th March 2019 Ervis Duraj went to the St Julian’s Police Station claiming that he had been injured by two Serbians who work at Havana; he also asked for medical attention, so he was taken to hospital. Later that day, at around 14.00hrs, Duraj went back to the police station, he handed over a medical certificate, and he gave details of what had happened the night before. Duraj claimed that he was with some friends and they were taking photos with the Albanian flag symbol; after some time (they were on the right side of the club near the sofas) bouncers approached them and asked for their documents. When Duraj handed the documents, the bouncers realised they were Albanian and they (the bouncers) started hitting them (Duraj and his friends). According to PS 345 Duraj claimed

⁵ Deposition at folio 81 et seq.

⁶ It should be pointed out that the prosecuting officer asked Duraj to explain what happened on the 14th March 2019 but this is clearly a mistake because from the testimony of other police officers as well as documents exhibited (in particular the medical certificate and the PIRS report) there is no doubt that the incident took place in the early hours of the 10th March 2019.

⁷ At folio 211 et seq.

⁸ This was conducted in a separate sitting; deposition at folio 263 et seq.

⁹ Deposition at folio 45 et seq.

that several bouncers were hitting them, with their feet and punching them, and two of the bouncers had knuckle dusters; Duraj fell to the ground and they continued hitting him. Duraj also told PS 345 that he would be able to identify them because he goes to Havana frequently. Since at that time Havana was closed and wouldn't reopen before the following Wednesday Duraj was asked to go to the police station on Wednesday, which he did. PS 345 continued his testimony by explaining that two of his colleagues accompanied Duraj to Havana where he identified the two defendants who were arrested and taken to the police station. On a search being carried out Vucicevic had a small bag containing a green substance suspected to be cannabis, while Anic had a knuckle duster. PS345 also stated that both defendants admitted that they work at Havana but do not have a permit. On being taken to the police headquarters a further search was carried out and in Vucicevic's underwear ten sachets containing a green substance, four sachets containing white substance, and a sachet containing a blue pill were found. Vucicevic claimed that those sachets weren't his but were given to him by another person. A search was then carried out in the place where Vucicevic resides (with five other persons) and in one bedroom, in the wardrobe there was a bag in which there was substance suspected to be cannabis wrapped in various plastic bags, a resin block, and two black digital scales. They also found another weighing scale and a sachet containing white powder. In a drawer next to the bed they found what appeared to be cannabis wrapped in foil, a note with several names and amounts in Euros indicated next to each name; several empty plastic sachets were also found. On the finding these items Vucicevic claimed that they weren't his but of his flatmate, the same person who gave him the drugs that were found on his person: Aleksander Petrovski. Petrovski was later arrested and substances were found on his person. PS 345 exhibited the relative PIRS report¹⁰.

In a further testimony¹¹ PS345 he clarified that when Duraj first went to the police station he told Duraj to seek medical attention and to go back to the police station when he (the witness) is on duty again. PS345 also stated that when Duraj first went to the station he could not give any description of his s saying only that they worked as securities at Havana; however, he did say that he knew them because goes regularly to Havana. PS345 did not ask for a list of persons who were on duty on the night in question. When Duraj went the second time to the station, PS345 gave him instructions to go with two police officers near Havana to identify his s. The witness confirmed that no identification parade was carried out but that after the accused were arrested and taken to the police station, he asked Duraj whether he was sure that the accused were his s and he confirmed. Admitting that Havana always has a minimum of four security personnel at each door he repeated that he relied on what Duraj told him regarding the identity of his s.

¹⁰ Doc MC1 at folio 54.

¹¹ Deposition at folio 132 et seq.

- **PC803 Andrew Pullicino**¹² explained that on the 13th March, on instructions given by PS 345, he accompanied Ervin Duraj close to the club Havana and there he pointed out two persons, the defendants. PC803 approached them, asked for their identification documents and proceeded to arrest them. On defendants being taken to the police van, Duraj again identified them as his s. The witness also confirmed that at the police station a search was carried out and he also confirmed what items were found.
- **WPC 367 Emily Micallef**¹³ was on duty with PC 803 and she confirmed the version of events as stated by him in saying that Ervin Duraj pointed out the accused as his s. However, there were some details given by her colleague which she could not corroborate.
- **PC 923 Anthony Mackay**¹⁴ was duty at the police lock up and, together with PS 345, conducted a search on defendant Vucicevic. The witness confirmed that on removing defendant's underwear a plastic bag containing substances was found.
- **PC759 Alan Mercieca**¹⁵ stated he accompanied Inspector Scerri when he was called to Vucicevic's residence; the witness confirmed that when the search was being conducted Vucicevic was present.
- **Inspector Leeroy Balzan**¹⁶ confirmed that when he was informed of the incident (on the 10th March 2019 at about 13.00hrs) Havana was closed and that Duraj was asked to go back to the police station on the 13th March 2019 in order for him to go to Havana and identify his s.
- **Inspector Joseph Xerri**¹⁷ gave an overview of the investigation carried out and confirmed that he took a statement in writing from the defendants; both statements were exhibited. He also exhibited a medical certificate regarding injuries suffered by Ervin Duraj¹⁸, the brass knuckle¹⁹, and the substances found on the person of Ervin Duraj²⁰. On being asked, in cross examination, how the identification of the defendants took place Inspector Xerri said that they were identified inside the club when Duraj was accompanied there with two police officers; no identification parade was held. He also stated that CCTV's in the club monitor activity close to the cash registers. The witness specified that action was taken against Aleksander Petrovski with regards to the substance found in the apartment.

¹² Deposition at folio 115 et seq.

¹³ Deposition at folio 124 et seq.

¹⁴ Deposition at folio 85 et seq.

¹⁵ Deposition at folio 208 et seq.

¹⁶ Deposition at folio 221/222.

¹⁷ Deposition at folio 58 et seq.

¹⁸ Doc JX 7 at folio 69.

¹⁹ Doc JX13.

²⁰ Doc JX14.

- **Inspector Sarah Magri**²¹ stated that defendant Anic does not hold a licence to work as a security private guard. She also stated that defendant Vucicevic had applied for a permit to work as a private guard in December 2018, but this application was refused. The letter of refusal²² was exhibited in a subsequent testimony²³.

Other persons were called to give evidence:

- **Joseph Saliba**, on behalf of Jobsplus²⁴, stated that Jobsplus has no records pertaining to the two defendants. He confirmed this in a subsequent testimony²⁵.
- **David Attard**²⁶, a manager at Havana, stated that the defendants were working at the club as helpers, but they were on probation. He could not remember how long they had been there not even specifying whether they had been employed for days weeks or months. He also stated “*they are just another two there doing the same job as me*”. However, in cross examination this witness said that as helpers the defendants they sometimes pass out tickets as we put people in, sometimes they check ID cards, they collect glasses, and pass out flyers.
- **Dr Andrea Fenech**²⁷ confirmed the findings documented in the medical certificate he released. This shows that Ervin Duraj suffered a fracture of the ulna and had an abrasion over his nose and swelling on the left side of his head.

In the course of these proceedings an expert, **Gilbert Mercieca**, was nominated to analyse the substances that were found on the person of Vucicevic. Through his testimony²⁸ and his report²⁹ he ascertained that the herbaceous substance was cannabis with a total weight of 7.931 grams; the white powder was cocaine with a total weight of 1.941 grams; the blue pill tested negative for the presence of controlled substances.

Both the accused released a statement.

In his statement **Nenad Anic**³⁰ claims that he works at Havana as a cleaner and that he does not have a licence to work as security and asked if he has a contract he states: “*yes I make now*”. Asked about the incident Anic claims to have no knowledge of it, insisting that he does not work on Fridays, Saturdays and Sundays. Asked about the brass knuckle found in his possession he claims that he found it on a Syrian guy on Thursday explaining that this Syrian guy was causing problems at Havana and he (Anic) took it and kept it.

²¹ Deposition at folio 85 vet seq.

²² Doc SM1 at folio 164

²³ Deposition at folio 182.

²⁴ Deposition at folio 97/98.

²⁵ Deposition at folio 176

²⁶ Deposition at folio 100 et seq.

²⁷ Deposition at folio 104/ 105

²⁸ Deposition at folio 151 et seq.

²⁹ Doc GM at folio 157 et seq.

³⁰ Doc JX9 at folio 71.

In his statement **Nemanja Vucicevic**³¹ claims that he works as security at Havana but has no contract; he applied for a permit to work as security, but this is not yet finalised. Asked about the incident in question Vucicevic claims that he was at his position in the club at Bar 4 when on the radio they were informed that there was a fight and that it was at Bar 1. On approaching Bar 1 he saw a group of seven to twelve people; he tried to calm them down, but they ignored him, so he grabbed these persons and pushed them out of the club; whilst doing so he received a few light punches. Asked if he hit anyone, it was “*probably in self-defence*”. He confirms that there were other securities involved but cannot remember who. Regarding the drugs that were found on his person he admits that those were cannabis, cocaine and Viagra. He stated that his flatmate gave him those drugs to take to another guy and that for this he would be paid fifty Euros. He also explained that he didn’t meet this guy to give him the drugs because he was arrested before he had the time to do so.

Nemanja Vucicevic also gave evidence before this Court³². During this testimony he confirmed that he works as security at Havana. He gave a similar version regarding the fight that broke out insisting that the only thing he had in mind was to escort people out of the club. The following day he was at work again at Havana saying that he was one of the three securities in the club; no mention was made of the fight that had taken place the night before. He was on duty again on Wednesday (the club is closed on Monday and Tuesday) and this time he was on duty at the door. He had just reported for work when the police came and arrested him. Regarding the drugs he confirmed that on a search being effected on his person, when he was arrested, cannabis, cocaine and Viagra were found. When they went to his apartment the police did not find anything in his room but in another room the police found a bag full of weed. Vucicevic further claimed that initially he told the police that he found the drugs³³ in the street but when they were in the flat the police told him that they must say that Aleksander Petrovski gave him those drugs. He claims that that is why in his statement he said that Petrovski gave him the drugs, when in fact he bought them from some Africans in St Julian’s.

In cross examination Vucicevic claims that he consulted with the lawyer prior to giving his statement but he did not seek advice regarding what the police officer told him to say about Petrovski. He insisted that he brought the drugs from some Africans although he claims that he first told the police that he found them on the street. Vucicevic admits that when the flat was being searched the police did not know of Petrovski and he (Vucicevic) did not know his name but the police insisted with him that he must blame him.

The First Three Charges

Having considered

The first three charges brought against both defendants refer to events taking place within the club Havana and in the course of which Ervin Duraj suffered injuries; the

³¹ Doc JX10 at folio 73.

³² Deposition at folio 235 et seq.

³³ That were fund on his person.

charges are: causing Ervin Duraj grievous bodily harm; using force against Ervis Duraj with the intent to insult, annoy or hurt him; and wilfully disturbing the public peace.

The only witness, brought before the Court, as to what happened on the night in question was the injured party Ervin Duraj³⁴. Duraj claims that he was at Havana with friends when “*bouncers came*” asking for his ID Card; immediately on giving them the document Duraj found himself on the floor being hit and punched adding that he was hit in his face with metal. Asked whether he could identify any of his aggressors in Court he could not. He did recognise the defendants: Nemanja Vucicevic as the person who pushed him out, insisting that Vucicevic had not assaulted him; and Nenad Anic as a bouncer at the club with whom he never had any problems. In a subsequent testimony, given after he had spent some time in Albania, Duraj claimed that he was hit by the two defendants. However, he also stated that the “*guys who had been with me told me that those two who break my arm and they hit me, they recognise them very good. Because me I didn’t recognise them because they asked me for my ID Card, I just turned and they hit me with a metal in the head*”. He also said that when he went with the police officers to identify his aggressors, he “*was not very sure because I don’t remember I didn’t see them but now I am sure of both of them*”.

These multiple versions impinge negatively on Duraj’s reliability as a witness. It is worth noting that there are other factors which lead to questions regarding Duraj’s reliability as a witness. Under cross examination Duraj claims that he was kept in hospital for a day and a half on account of his injuries, however even this statement seems to be incorrect. The incident took place at about 01.00hrs of the 10th March 2019; immediately after Duraj went to the police station. From the police station he was taken to hospital with instructions to go back on leaving hospital; Duraj returned to the police station at about 14.00hrs of the same day. This can be confirmed not only from the PIRS report but also from the testimony given by PS345 Mark Cremona.

Both defendants claim to have had no involvement in the fight. In his statement Nenad Anic claims not to have been at work on the day of the incident. This allegation was not rebutted by any other evidence which the prosecution could have brought forward. Nemanja Vucicevic on the other hand, admits to being at the club, he also states that he was called to intervene via radio and that when he went near Bar 1 there was a fight going on between seven to twelve persons , he tried to calm them down and when he didn’t manage he pushed them out. This version, given by Vucicevic in his statement when he could not know what Duraj will eventually say in Court, is similar to the first version given by Duraj to the Court when he said that he recognised Vucicevic, not as one of his aggressors but as the person who took him outside.

It is worth noting that when Duraj went to the police station to report the matter to the police he claimed that he was attacked by several bouncers, seven or eight, and that he could identify them because he often goes to Havana. He did not offer a description of these persons and neither was he asked to give such a description. When, three days after, he was accompanied by two police officers to the club, not having gone in and on

³⁴ The only other evidence in this regard is what the defendants state in their statement and, in the case of Nemanja Vucicevic, also in his deposition.

seeing the two defendants outside Havana, he claimed that they were his aggressors; they did not go inside to try to identify the other four or five aggressors. Neither was any attempt made by the police to establish who was on duty at the time of the incident in order to try to establish who the other aggressors were.

In these circumstances and in view of the conflicting evidence it cannot be said that the prosecution showed beyond reasonable doubt that Ervin Duraj was assaulted by the defendants. Consequently, the first three charges have not been proven.

The Fourth Charge

Having considered

Both defendants are also being charged with having acted or being employed as private guards, specialised private guards, or private guards at a place of entertainment or as community officers without having the necessary license, the offence under section 25(b) of Chapter 389 of the Laws of Malta.

From the testimony given by the representative of Jobsplus it results that neither of the defendants was officially employed at Havana or anywhere else. From the testimony of Inspector Sarah Magri, it also results that neither of the defendants had a license to work as a private guard.

David Attard Jackson, a manager at Havana, stated that the defendants were employed as cleaners at Havana but were on probation. On being asked how long they have been so employed Attard could not give a reply; however in trying to justify why he didn't know how long the defendants had been employed at Havana he states that: "*m'ghandhiex idea cause they are another two of the, they are an other two doing the same job as me*". Under cross-examination and on an (incorrect) suggestion that he said that they were helpers, he confirmed this and then went on to specify that they help in the passing out of tickets, sometimes they check ID cards, they gather glasses, pass out flyers.

The Court finds this testimony very unreliable and hard to believe. Within minutes Attard Jackson changes his version three times, first claiming that defendants were employed as cleaners, then claiming that they "*do the same job as me*" which was that of manager, then accepting that they were helpers.

Whilst releasing their statement both defendants were asked what their employment was; both said they were employed at Havana. Nenad Anic claimed he was employed as a cleaner, whilst Nemanja Vucicevic admitted that he was employed as a security.

Vucicevic made the same admission during his deposition before the Court. Actually, he did more than just give a title to his job since during both his statement and his deposition he described what he did in the night of the incident. Vucicevic claims that he was positioned at one of the bars, he was provided with a radio and (together with other securities) was given instructions via radio to assist at another bar where there was a fight. His assistance consisted in trying to calm the situation and, failing that, pushing

the persons involved out of the club. This is definitely not the work entrusted to a cleaner, or a helper but is clearly that of security personnel. There can therefore be no doubt that Vucicevic was in fact employed to carry out the duties of a private guard.

As already pointed out, in the initial part of his statement, Nenad Anic claims to have been employed as a cleaner. However later on in the statement when being asked why he had a brass knuckle in his possession he said that he found it on a Syrian guy on Thursday, which would be Thursday 7th March 2019³⁵. He also explained the circumstances in which the knuckle duster was found, stating that the Syrian guy was causing problems at Havana and he (Anic) took it. However the Court finds it difficult to believe that intervening when clients cause problems, conducting searches and seizing objects from them is the work entrusted to “cleaners”; this type of conduct on the other hand falls very well within one would expect the work of a private guard to be.

In reality it is not the job title which defines the job entrusted to any given person but the actual work which that person is employed to carry out. Irrespective of the job title when a person’s duties fall within a definition of private guard services as set out in Chapter 389, and they carry out those duties then they are being employed as private guards and consequently should have a license.

In terms of the writ of summons the fourth charge³⁶ was based on facts which happened on a very specific day and time i.e. on the 10th March 2019 between one and half past one in the morning. Nenad Anic claims that he intervened with the Syrian guy on Thursday 7th March, moreover he claims that he was not present at Havana on the 10th March because he doesn’t work on Fridays, Saturdays and Sundays. No evidence was brought forward by the prosecution to rebut these allegations (made in the statement). In view of this, and in view of the fact that the Court cannot rely on the testimony of Ervin Duraj, in so far as the positive identification of Nenad Anic as one of the bouncers who were present at Havana on the 10th March 2019 is concerned, it cannot be said that the charge as brought forward in the writ of summons has been proven with regard to Nenad Anic. On the other hand, there is no doubt that defendant Nemanja Vucicevic was present at Havana on the 10th March 2019 at the time specified in the writ of summons and that on that day he was employed to carry out the duties of private guard.

The Fifth Charge

Having considered

The fifth charge is that based on section 3 of Chapter 480 of the Laws of Malta and is brought against the defendant Nenad Anic.

³⁵ Nenad Anic was arrested on Wednesday 13th March 2019, so he must have been referring to the prior Thursday.

³⁶ Like the first three.

From the evidence adduced it results that, following his arrest, a search was conducted on Nenad Anic and knuckle dusters were found³⁷ in his pocket.

The possession of knuckle dusters, listed in Part II of Schedule I of Chapter 480 of the Laws of Malta, requires a licence issued by the Commissioner of Police. However, no evidence was brought as to whether Anic had or didn't have such a licence. Consequently, neither this charge is sufficiently proven in his regard.

The Charges Under Chapter 101 of the Laws of Malta

Having considered

From the evidence adduced there is no doubt that when defendant Nemanja Vucicevic was arrested various illegal substances were found on his person. On an initial search a bag containing a green substance was found; on another more detailed search being carried out ten sachets containing a green substance, four sachets containing white substance, and a sachet containing a blue pill were found in his underwear. From the analysis carried out by the Court appointed expert it resulted that the green substance was cannabis (a total of 7.931 grams), and the white substance was cocaine (a total of 1.941grams); the blue pill on the other hand tested negative for the presence of controlled substances.

Vucicevic is not contesting the fact that these substances were found in his possession however has given conflicting versions as to how and why he came to have these drugs in his possession.

In his deposition PS345 Mark Cremona stated that on his arrest Vucicevic claimed that the drugs were not his but had been given to him by another person. When a search was then carried out at his residence (which he shares with five other persons) Vucicevic repeated that the drugs had been given to him by one of his flatmates, Aleksander Petrovski. When he was releasing a statement Vucicevic confirmed that he had been given those drugs by his flatmate in order to hand them over to somebody else; for this he was going to be paid fifty Euros. When he was giving evidence before this Court however, Vucicevic claimed that he had bought the drugs from an African person in St Julian's. He insisted that he had previously made allegations regarding Petrovski because he had been told to do so by one of the police officers. During his testimony he also said that on being arrested he told the police that he found the drugs in the street (although he is now saying that he bought them) and not that they had been given to him.

In spite of these conflicts, and after having had the opportunity of hearing and seeing Vucicevic testify, the Court is convinced that it can accept the first versions given by Vucicevic as correct. PS 345 Mark Cremona was a credible witness and the Court finds no reason to doubt his version of events.

³⁷ Doc JX13.

Vucicevic on the other hand tried to explain his conflicting versions by saying that he told the police that he found the drugs on the street rather than admitting that he bought them for himself because he did not want to admit being a drug user in order not to risk his job. However there is no logic to this argument. An allegation that he found almost eight grams of cannabis and two grams of cocaine, which happened to be lying around in the streets of Paceville, kept them in his underwear, and took them to his workplace, would probably be even more damning than admitting that he was a user.

Vucicevic is now also claiming that it was a police officer who, during the search in the flat, told him to say that the drugs were given to him by his flatmate. But neither does this allegation hold water. After the search was conducted in the flat and Vucicevic taken back to the St Julian's police station he consulted with a lawyer and therefore had every opportunity to voice his concerns with, and seek advice from his lawyer over what was happening; but he chose not to mention anything to the lawyer. When he then gave his statement, to a different, more senior police officer not only did he repeat that the drugs were given to him by his flatmate but he went on to give more detailed information, specifying that his flatmate offered to provide him with transport to Paceville whilst taking the drugs and also promised to pay him fifty Euros for his "service".

In view of the above, and having taken into consideration all the evidence adduced, the Court is convinced that Vucicevic had in fact been given the drugs by his flatmate in order to hand them over to somebody else.

Having considered

Through the charges now under consideration the defendant Nemanja Vucicevic is being charged with:

- trafficking in cannabis and cocaine (the sixth and seventh charges);
- having conspired with others to traffic in cannabis and cocaine (the eighth and ninth charges);
- having had in his possession cannabis and cocaine, in circumstances denoting that the drugs were not for his personal use (the tenth and eleventh charges); and
- having committed these offences in or within a distance of one hundred meters of a place where youths habitually meet (the twelfth charge).

As indicated above it results from the evidence adduced that defendant Nemanja Vucicevic had accepted to take a bag of drugs, from one of his flatmates, to Paceville where another person had to collect this bag; for this "service" Vucicevic was to receive fifty Euros.

In terms of section 22(1B) of Chapter 101 of the Laws of Malta "*dealing*" (with its grammatical variations and cognate expressions) with reference to dealing in a drug, includes, manufacture, exportation, distribution, production, administration, supply, the offer to do any of these acts, and the giving of information intended to lead to the purchase of such a drug contrary to the provisions of this Ordinance.

In terms of section 22(1)(f) of the same Chapter 101 *who with another one or more persons in Malta or outside Malta conspires for the purposes of selling or dealing in a drug in these Islands against the provisions of this Ordinance, shall be guilty of an offence against this Ordinance.*

The same provision of Law, section 22, through subarticle (1A) specifies that the conspiracy referred to in subparagraph (f) above quoted *shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons.*

Our Courts had ample opportunity to pronounce themselves on the crimes of trafficking (dealing in drugs) and conspiracy, not only setting out the elements required for these offences to subsist but also affirming that charges of dealing and conspiracy are not mutually exclusive but can both be successfully brought against the same person. In the judgement given in Republic of Malta vs Stephen John Caddick³⁸ in fact the Court of Criminal Appeal in its Superior Jurisdiction held that

*Under our law the substantive crime of conspiracy to deal in a dangerous drug exists and is completed "from the moment in which any mode of action whatsoever is planned or agreed upon between" two or more persons (section 22(1A) Chapter 101). Mere intention is not enough. It is necessary that the persons taking part in the conspiracy should have devised and agreed upon the means, whatever they are, for acting, and it is not required that they or any of them should have gone on to commit any further acts towards carrying out the common design. **If instead of the mere agreement to deal and agreement as to the mode of action there is a commencement of the execution of the crime intended, or such crime has been accomplished, the person or persons concerned may be charged both with conspiracy and the attempted or consummated offence of dealing, with the conspirators becoming (for the purpose of the attempted or consummated offence) co-principals or accomplices**³⁹.*

In another more recent judgement⁴⁰ the Court of Criminal Appeal in its Inferior Jurisdiction held that for the crime of conspiracy to be complete it is not necessary for the agreement to have specified the least detail provided that there is an agreement to deal and what mode of action is to be undertaken. It was said:

Huwa biżżejjed li jiġi ppruvat ftehim bejn mill-inqas żewġ persuni lokalment jew barra minn Malta jew it-tnejn, dwar il-modalitajiet tal-pjan li lanqas jinħtieġ li jkun pian sal-inqas dettal jew pian preċiż. In oltre l-pjan in kwistjoni irid jirrigwarda reat kriminali. Lanqas hemm għalfejn li r-rwoli ta' min ikun involut f' din l-assocazzjoni jkun definit bi preċiżjoni u lanqas hemm il-ħtieġa li dan il-pjan jiġi finalizzat jew jirnexxa.

³⁸ A judgement of the Court of Criminal Appeal on the 6th March 2003.

³⁹ Emphasis of this Court.

⁴⁰ Il-Pulizija vs Publius Micallef et decided on the 28th February 2018.

In another even more recent judgement this principle was reaffirmed by the same Court of Criminal Appeal⁴¹. In this judgement it was also emphasised that the term “dealing” for the purposes of the offence is very wide.

Illi r-reat tal-assocjazzjoni bil-ghan li jigi kommess delitt huwa mahsub mill-legislatur mhux biss fid-disposizzjonijiet generali tal-Kodici Kriminali fl-artikolu 48A tieghu introdott permezz tal-Att III tal-2002, izda ukoll fil-ligi specjali li tirregola r-reati marbuta mat-traffikar u pussess ta' droga u specifikatament fl-artikolu 22(1)(f) tal-Kapitolu 101 tal-Ligijiet ta' Malta fejn hemm dispost illi ikun hati ta' reat kull min: “jassoċja ruħu ma' xi persuna jew persuni ohra f'Malta jew barra minn Malta sabiex ibigh jew jittraffika medicina f'Malta kontra d-dispożizzjonijiet ta' din l-Ordinanza, jew li jippromovi, jikkostitwixxi, jorganizza jew jiffinanzja l-assocjazzjoni.” Din l-assocjazzjoni tibda issehh u allura r-reat ikun ikkunsmat skont l-artikolu 22(1A) hekk kif: “..... jigu kkumbinati jew miftehma l-mezzi, ikunu li jkunu, li bihom daww il-persuni ghandhom jimxu.” Dan maghdud ghandu johrog illi l-elementi kostituttivi tar-reat ta' assocjazzjoni kontemplat fil-Kapitolu 101 huma erba u senjatement:

- 1. iz-zmien li fih ikun sar ir-reat;*
- 2. li jkun hemm mill-inqas persuna ohra, kienet minn kienet f'Malta jew barra minn Malta, li tkun involute;*
- 3. sabiex tigi traffikata d-droga; u*
- 4. li jkun hemm il-ftehim dwar il-mod kif din id-droga ser tigi traffikata. It-traffikar ghandu definizzjoni wiesgha u din tinkludi mhux tfisser kwalsiasi movement ta' droga minn id ghal id kemm versu korrispettiv kif ukoll b' mod gratuwitu.” Indubbjament allura r-reat huwa ikkunsmat hekk kif ikun hemm il-ftehim dwar il-mezzi li ghandhom jigu adoperati ai fini biex jigi kommess id-delitt.*

The principle that an offer to supply drugs falls within a definition of dealing in drugs as set out in section 22(1B) was also reaffirmed in the judgement in the names *Police ve Eric Lawani*⁴² where it was held that

In terms of Section 22(1B) of the Dangerous Drugs Ordinance, even an offer to supply drugs amounts to dealing in drugs and since it is irrelevant whether any such substance is actually supplied following such offer, the offer in itself being sufficient to constitute the completed offence of dealing in drugs,

The Court in that judgement went on to refer to another judgement in the names *Il-Pulizija vs Ronald Psaila*⁴³, which was subsequently confirmed by the Court of Appeal on 8th January 2002

Minn din id-disposizzjoni tal-Ligi johrog car li r-reat ta' traffikar jikkonfigura anki jekk persuna toffri li taghmel wahda mill-azzjonijiet indikata f'dan l-artikolu. Fit-test ingliz, il-kelma “joffri” hija trodotta bil-kelma “offer”. Issa

⁴¹ *Il-Pulizija vs Nadia Rapinett* decided on the 28th January 2020.

⁴² A judgement given by the Court of Magistrates on the 15th February 2016

⁴³ *Il-Pulizija vs Ronald Psaila* given at first Instance on the 12th October 2001 and confirmed on appeal on the 8th January 2002.

stante li ma hemmx fl-Ordinanza definizzjoni ta' din il-kelma, allura ghall-finijiet ta' interpretazzjoni, din ghandha tittiehed fis-sinifikat ordinarju taghha, u cioe` li, spontaneament jew fuq rikjesta, direttament jew indirettament, persuna turi, bil-fatt jew bil-kliem, id-disponibilita` taghha li taghmel wahda mill-azzjonijiet indikati. In propositu huma interessanti l-osservazzjonijiet maghmula fil-Blackstone Criminal Practice 2001 – (11th Ed. B20.29) fuq l-interpretazzjoni tal-frasi “Offering to Supply” kontenuta fil-Misuse of Drugs Act 1971 s. 4. “An offer may be made by words or conduct ... Whether the accused intends to carry the offer into effect is irrelevant; the offence is complete upon the making of an offer to supply” (vide kazistika indikata – pg. 776).”

From this jurisprudence it is clear that for the crime of conspiracy it is enough for the prosecution to show that a plan of action was agreed upon by at least two persons with the purpose of dealing in drugs; for this crime (dealing in drugs) to subsist it is enough for the prosecution to show that an offer to supply drugs was made.

From the evidence adduced in these proceedings it is clear that an agreement existed between the defendant Nemanja Vucicevic and one of his flatmates whereby Vucicevic was to take some drugs (cannabis and cocaine) to Paceville; there he was to meet a third party and give him the drugs. The drugs were given to Vucicevic by his flatmate. The flatmate had also offered to provide Vucicevic with transport but he (Vucicevic) refused opting to make his own way to Paceville. Vucicevic didn't meet this third party (who was never identified) because he was arrested before he could do so. From these facts it is also clear that in terms of the jurisprudence above quoted there existed an agreement with a specific plan of action between Vucicevic and his flatmate in order for drugs (cannabis and cocaine) to be supplied to a third party; it is also clear that there was an offer to supply drugs (Cannabis cocaine), which falls within a definition of the offence dealing in drugs, in which offer Vucicevic was an accomplice with his flatmate.

Having established that Vucicevic was in possession of drugs and having established that those drugs were to be consigned to a third party it follows that the circumstances of this case show that the drugs found in his possession were not for his personal use.

The defendant is also being charged with the aggravating circumstance of having committed the abovementioned offences in or within a distance of one hundred meters of a place where youths habitually meet, this in terms of the second proviso of section 22(2) of Chapter 101 of the Laws of Malta.

In the judgement in the names *Police vs Abdikarim Isman Omar*⁴⁴ the Court of Criminal Appeal held that *this particular aggravating circumstance could only be proven by objective means*. It went to consider that the crime of which the accused was found guilty took place in Dragonara Road in Paceville. The Court of Appeal considered that Dragonara Road is a fairly long road and *the fact that it is common knowledge that young people frequent Paceville is not of itself sufficient to safely conclude that the*

⁴⁴ A judgement given on the 29th October 2018.

crime took place in or within the said one hundred meters, more so when not all areas of Paceville are invariably frequented by young people let alone on a habitual basis.

In an other judgement given by the Court of Criminal Appeal⁴⁵ it was held that for this aggravating circumstance to subsist it need not be shown that at the time the offence was committed the club or centre was open and that there actually were any young people present. It was also held that neither is it necessary to prove any specific intent to deal in drugs in a place habitually frequented by young people.

Meta l-legislatur ipprovdha li r-reat ikun aggravat (fis-sens li l-piena tizzied bi grad) jekk isir “fi, jew gewwa distanza ta’ mitt metru mill-perimetru ta’, skola, club jew centru taz-zghazagh, jew xi post iehor simili fejn normalment jiltaqghu iz-zghazagh...” huwa kien qed jipprovdha ghal kriterju oggettiv u determinat biss mid-distanza proprju ghax il-postijiet imsemmija huma tali li lejhom jew qribhom tfal u zghazagh itendu li jiggravitaw indipendentement mill-hin tal-gurnata jew mill-jum tal-gimgha, u indipendentement minn jekk l-iskola, club, centru ecc. ikunx dak il-hin miftuh jew maghluq. Din id-disposizzjoni hekk dejjem giet interpretata, u hekk korrettement interpretatha u applikatha l-ewwel qorti fissentenza appellata. Kif tajjeb osservat l-ewwel qorti: “Imkien fil-proviso m’hemm xi indikazzjonijiet ta’ hinijiet jew jiem. Lanqas ma tidher fil-proviso xi referenza ghal xi htiega ta’ xi intenzjoni specifika – jigifieri li wiehed ikun jaf jew deliberatament mar hdejn skola. Il-proviso huwa redatt f’termini assoluti u interpretazzjoni flessibbli tmur kontra l-ispina dorsali tal-Kapi 31 u 101 li huma intizi biex ikunu ta’ deterrent ghal min jipprova jazzarda jitraffika d-droga.”

When Vucicevic was arrested he was at the door of the club Havana in St George’s Road St Julian’s. This, as opposed to Dragonara Road⁴⁶, is at the very heart of Paceville and there can be no doubt that the part of St George’s Road where Havana is found is frequented by young people on a habitual basis. This charge is consequently also sufficiently proven.

Having considered further

With regards the penalty to be meted out the Court took into consideration on the one hand the nature of the charges of which the defendant Nemanja Vucicevic is being found guilty as well as the quantity and the type of drugs found in his possession; on the other hand the Court is taking into consideration his clean conviction sheet.

Wherefore, the Court,

Finds defendant **Nenad Anic** not guilty of the charges brought against him and discharges him therefrom. And

⁴⁵ In the names Il-Pulizija vs Jason Xuereb given on the 9th June 2009.

⁴⁶ Mentioned in the first quoted judgement Police vs Abdikarim Isman Omar

Whilst finding the defendant not Nemanja Vucicevic not guilty of the first, the second, and the third charges and discharges him therefrom, after having seen sections 42(d) of Chapter 9 of the Laws of Malta, sections 8(d), 22(1)(a), 22(2)(b)(i) and the second proviso of section 22(2) of Chapter 101 of the Laws of Malta and Regulations 3, 4, 6, and 9 of Legal Notice 292 of the year 1939, and section 25(b) of Chapter 389 of the Laws of Malta finds him guilty as an accomplice of the sixth and seventh charges and finds him guilty of all the other charges brought against him, and condemns him to **two (2) years imprisonment** and a **fine of one thousand Euros (€1,000)**. Furthermore and by application of section 533 of Chapter 9 of the Laws of Malta the Court is ordering the defendant Nemanja Vucicevic **to pay the Registrar of this Court the sum of six hundred and seventy eight Euros and fifty cents (€678.50)** representing expenses incurred in the employment of experts.

In conclusion the Court is also ordering **the destruction of the drugs and other objects exhibited as Document JX14** once this judgement becomes final and executive, under the supervision of the Registrar, who shall draw up a *proces verbal* documenting the destruction procedure. The said *proces verbal* shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

DR. DOREEN CLARKE
MAGISTRATE