Fil-Qorti tal-Maġistrati (Malta)
Bħala Qorti ta' Ġudikatura Kriminali

Magistrat Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

Kumpilazzjoni Nru. 490/2017

Il-Pulizija
(Spettur Joseph Busuttil)
(Spettur John Spiteri)

-vs-

Winston-Joseph Gera, detentur tal-Karta tal-Identita` bin-numru 239672M; u

Zhang Tianxia, bint Zhigou detentrici tal-Karta tal-Identita` bin-numru 140367A

Illum: 16 ta' Dicembru, 2020

Il-Qorti,

Rat l-imputazzjonijiet miġjuba fil-konfront tal-imputati Winston-Joseph Gera u Zhang Tianxia u cioe` talli:

F'diversi bnadi f'dawn il-Gżejjer, fit-30 ta' Ottubru, 2017, u/jew fix-xhur ta' qabel din id-data, b'diversi atti magħmulin minnhom, ukoll jekk fi żmienijiet differenti u li jiksru l-istess dispożizzjonijiet tal-Liġi, u li ġew magħmula b'riżoluzzjoni waħda:

Bi vjolenza jew theddid, inkluż is-serq ta' persuna, b'qerq jew ingann, użu ħażin ta' awtorita', influenza jew pressjoni, u billi taw jew irċievew ħlasijiet jew benefiċċji sabiex jottjenu l-kunsens tal-persuni li kellhom l-kontroll fuq persuna oħra, ittraffikaw persuni ta' eta` u ċioe` lil Shuang Zhai u Lili Wang bil-għan li dawn il-persuni jiġu sfruttati fil-produzzjoni ta' oġġetti jew fl-għoti ta' servizzi

u kif ukoll għall-prostituzzjoni u dan bi ksur tal-Artikolu 248A, 248B u 248D tal-Kapitolu 9 tal-Liġijiet ta' Malta;

F'xi żmien bejn Awwissu, 2017, u Ottubru, 2017, biex jissodisfaw iż-żina ta' ħaddieħor, ġiegħlu bil-vjolenza jew ħajjru b'qerq persuni tal-eta` u ċioe` lil Shuang Zhai u Lili Wang għall-prostituzzjoni, liema delitt sar bħala drawwa jew bi ħsieb ta' qliegħ;

Xjentement għexu għal kollox u/jew f'parti, minn fuq il-qliegħ tal-prostituzzjoni ta' persuni oħra;

Fl-istess dati, lok u ċirkostanzi żammew jew eżerċitaw jew kellhom sehem ma' oħrajn fl-eżerċizzju ta' burdell jew ta' dar, ħanut jew lokali jew ta' xi parti minnhom li huma ffrekwentati jew magħduda bħala li huma ffrekewentati għal skop ta' prostituzzjoni jew għal skopijiet oħra immorali;

Fl-istess dati, lok u ċirkostanzi, kellhom ħanut, alloġġ jew lukanda jew appartament privat u ħallew jew ippermettew li dak il-ħanut, alloġġ, lukanda jew appartament jew xi parti tagħhom jiġu użati bħala post ta' laqgħa għal skop ta' prostituzzjoni jew għal skopijiet oħra immorali;

Fl-istess dati, lok u ċirkostanzi bl-imġieba tagħhom ikkaġunaw lil Shuang Zai u Lili Wang il-biża' li ser tintuża vjolenza kontrihom jew kontra l-propjeta' tagħhom jew kontra l-persuna jew il-propjeta' ta' xi ħadd mill-axxendenti, dixxendenti, aħwa subien jew bniet jew xi persuna msemmija fl-Artikolu 222(1) ta' Kap 9.

Lill-Winston-Joseph Gera waħdu nakkużawh aktar talli:

Nhar it-30 ta' Ottubru, 2017, f'dawn il-Gżejjer u/jew ġewwa San Ġiljan ikkommetta serq ta' mobile phone li huwa kkwalifikat, bil-'valur' li jeċċedi l-mitejn u tnejn u tletin ewro (232.94) u ma jeċċedix l-elfejn tliet mija u disgħa u għoxrin ewro u sebgħa u tletin ċenteżmu (2,329.37), u bil-'ħin' għad-detriment ta' Shuang Zhai u/jew ta' xi persuna/i, entita' u/jew entitajiet oħra;

Fit-30 ta' Ottubru, 2017, u fix-xhur ta' qabel f'dawn il-Gżejjer impjega jew taha xogħol lil persuni li ma kienux persuni eżenti u li ma kellhomx licenzja mogħtija lilhom għal dak l-impjieg jew xogħol skont id-dispożizzjonijiet tal-Att ta' Immigrazzjoni tal-Kapitolu 217 tal-Liġijiet ta' Malta, jew mod ieħor għen jew assista persuni eżenti fl-għemil ta' reat maħsub taħt l-Artikolu 32 tal-Kapitolu 217 tal-Liġijiet ta' Malta;
Fit-30 ta' Ottubru, 2017, u fix-xhur ta' qabel, bħala l-persuna responsabbli tax-xogħol li kien qiegħed isir ġewwa l-Tian Oriental Massage Parlour, Yaun Oriental Massage Parlour, Mandarin Oriental Massage Parlour u Oriental Massage Parlour, impjega persuni li ma kienux ċittadini ta' Malta meta dawn il-persuni ma kellhomx permess validu w uffiċjali;

Fl-istess żmien, lok u ċirkostanzi bħala prinċipal, jew il-persuna li impjegat persuni oħra, 'full-time', 'part-time' jew xort'oħra b'kuntratt definit jew indefinit jew bi prova, naqas li tinnotifika lill-Korporazzjoni tax-Xogħol u Taħriġ b'dan l-impjieg kif hemm fl-Avviż Legali 110 tas-sena 1993 (3a u 10);

Talli għamel użu mill-fond Tian Oriental Massage Parlour, Yaun Oriental Massage Parlour, Mandarin Oriental Massage Parlour u Oriental Massage Parlour, għal skopijiet barra minn dawk l-iskopijiet liċenzjati għalihom u dan bi ksur tal-Artikolu 7 u 18(d) tal-Leġislazzjoni Sussidjarja 409.08 u għaldaqstant bi ksur tal-kundizzjonijiet tal-liċenzja skont l-Artikolu 23(1) tal-istes leġizlazzjoni, u ċioe' bi ksur tal-Artikolu (1)(b) tal-Kapitlu 409 tal-Liġijiet ta' Malta;

Talli fl-istess perjodu ta' żmien u ċirkostanzi f'dawn il-Gżejjer, irrenda ruħu reċediv ai termini ta' l-artikoli 49 u 50 tal-Kap 9 tal-Liġijiet ta' Malta wara li ġie misjub ħati b'diversi sentenzi mogħtija mill-Qrati ta' Malta, liema sentenzi saru definittivi u ma jistgħux jiġu mibdula;

F'każ ta' kundanna għal reat taħt din l-Ordinaza, il-Qorti giet mitluba sabiex jogħġobha tħassar kull liċenzja li għandhom il-ħatja dwar xi lukanda, alloġġ, ħanut jew fond ieħor skont l- Artikolu 14 tal-Kap 63 tal-Liġijiet ta' Malta.

Il-Qorti ġiet wkoll mitluba sabiex f'każ ta' ħtija barra li tinfliġġi l-pieni stabbiliti mill-Liġi, jogħġobha tordna wkoll il-konfiska ta' l-oġġetti kollha esebiti.

Il-Qorti ġiet wkoll mitluba sabiex waqt il-mori tal-kawża toħroġ ordni ta' imblukkar tal-propjeta' tal-akkużati ai termini tal-artikolu 23A tal-Kap 9 tal-Liġijiet ta' Malta.

Il-Qorti ġiet mitluba li f'każ ta' ħtija, minbarra li tinflinġi l-pieni stabbiliti mill-Liġi, tordna lill-imsemmija persuni sabiex iħallsu l-ispejjeż li għandhom x'jaqsmu mal-ħatra ta' l-esperti , jekk ikun il-każ , ai termini tal-Artikolu 533 tal-Kap. 9 tal-Liġijiet ta' Malta.

Il-Qorti ġiet finalment mitluba ukoll li toħroġ ordni ta' protezzjoni ai termini tal-Artiklu 412C tal-Kap. 9 tal-Liġijiet ta' Malta, kemm waqt il-mori tal-kawża kif ukoll f'każ ta'ħtija ma' kull piena li l-Qorti jidrilha xierqa fil-konfront ta' Shuang Zai, Lili Wang u Phassada Wannipha u l-membri familjari tagħha.

Rat in-nota tal-Avukat Generali permezz ta' liema baghat lill-imputati biex jigu gudikati minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali kif mahsub fis-segwenti artikoli:[1]

[1] Fol.760-761

Fir-rigward ta' Winston Gera waħdu:

a. Fl-Artikoli 248A(1)(2)(3), 248B, 248E(1) u 18 tal-Kapitolu 9 tal-Liġijiet ta' Malta;
b. Fl-Artikoli 205(b), 251B u 18 tal-Kapitolu 9 tal-Liġijiet ta' Malta;
c. Fl-Artikoli 7(1)(3), 8(1)(3), 9 u 18 tal-Kapitolu 63 tal-Liġijiet ta' Malta;
d. Fl-Artikoli 261(c)(f), 267, 270, 279(a), 280(1) u 281(a) tal-Kapitolu 9 tal-Liġijiet ta' Malta;
e. Fl-Artikolu 32(b) tal-Kapitolu 217 tal-Liġijiet ta' Malta;
f. Fir-regolamenti 3(a), 7 u 10 tal-Avviż Legali 110 tal-Liġijiet ta' Malta;
g. Fir-regolamenti 7, 18(d) u 23(1) tal-Leġislazzjoni Sussidjarja 409.08, u fl-Artikoli 43(1)(b) tal-Kapitolu 409 tal-Liġijiet ta' Malta;
h. Fl-Artikoli 49 u 50 tal-Kapitolu 9 tal-Liġijiet ta' Malta;
i. Fl-Artikoli 382A, 383, 384, 386 u 412C tal-Kapitolu 9 tal-Liġijiet ta' Malta;
j. Fl-Artikolu 14 tal-Kapitolu 63 tal-Liġijiet ta' Malta;
k. Fl-Artikoli 17, 18, 23, 23A, 31, 49, 50 u 533 tal-Kapitolu 9 tal-Liġijiet ta' Malta;

Fir-rigward ta' Zhang Tianxia waħedha:

a. Fl-Artikoli 248A(1)(2)(3), 248B, 248E(1) u 18 tal-Kapitolu 9 tal-Liġijiet ta' Malta;
b. Fl-Artikoli 205(b), 251B u 18 tal-Kapitolu 9 tal-Liġijiet ta' Malta;
c. Fl-Artikoli 7(1)(3), 8(1)(3), 9 u 18 tal-Kapitolu 63 tal-Liġijiet ta' Malta;
d. Fl-Artikoli 382A, 383, 384, 386 u 412C tal-Kapitolu 9 tal-Liġijiet ta' Malta;
e. Fl-Artikolu 14 tal-Kapitolu 63 tal-Liġijiet ta' Malta;
f. Fl-Artikoli 17, 18, 23, 23A, 31 u 533 tal-Kapitolu 9 tal-Liġijiet ta' Malta.

Rat li l-imputati m'ghandhomx oggezzjoni biex il-kaz jigi hekk trattat.

Rat l-atti u d-dokumenti kollha.

Semghet it-trattazzjoni finali.

I. Punti Preliminari

1. Rat li ghalkemm id-difiza nghatat zmien sat-30 ta' Settembru, 2020, biex fuq talba taghha tipprezenta nota ta' sottomissjonijiet, din in-nota baqghet ma gietx pprezentata.
2. Fil-kors tax-xhieda li nghatat mill-allegat vittmi w li tigi citata aktar l-quddiem, wiehed jinnota li fiha ssir riferenza ghat-third person, *"she"* jew *"her"* minflok *"I"*, *"mine"* jew *"me"*. Dan hu dovut ghall-fatt li x-xhieda ta' dawn il-persuni nghatat permezz ta' interpreti li bdew jaghmlu riferenza ghal dak li x-xhud bdiet tixhed fil-lingwa taghha, f'dan il-kaz ic-Ciniz u t-Thai.

II. Il-Provi

Ikkunsidrat-

Gie esebit il-**Current Incident Report**[2] minn fejn jirrizulta li fit-30 t'Ottubru, 2017, fl-4pm sar rapport minn Shuang Zhai li dakinhar ghal xi 2.30pm, **insterqilha l-*mobile*.** Irraportat li kienet qed tigi abbuzata rigward kundizzjonijiet tax-xoghol bir rapport isir fil-presenza tar-rapprezentant tal-Ambaxxata Ciniza. Spjegat li hallset €7,800 biex tigi tahdem f'Malta bhala *massage therapist* u malli wasslet Malta ltaqghet mal-**mara tal-imghallem li haditilha l-passaport.** Bdiet l-impjieg ma Oriental Massage Parlour f'San Giljan fejn giet **ordnata mis-sid taghmel atti sesswali u sfat mhedda li, jekk ma taghmilx dawn l-atti, kienet ser titkecca minn Malta u jitnehhilha l-*work permit*.** Kompliet li l-imghallem u t-tfajla tieghu, Ciniza, gieli refghu idejhom fuqha kif ukoll li **meta naqqset milli taghmel atti sesswali kienet thallas il-prezz** li kieku kien ser jithallas lis-sid ghal dawk l-atti. Spjegat li kienet tahdem mid-**9am sal-10pm kuljum mit-Tnejn sal-Gimgha u s-Sibt u l-Hadd mid-9am sal 12:00am minghajr ma tiehu *leave*.** Kienet tghix fl-istess *parlour* fejn kienet thallas €150 fix-xahar. **Paga fissa ma kellhiex** izda tithallas b'*commissions* u cioe` €5 ghal kull €25 li taghmel.[3] Kienet tohrog tiekol fl-10pm u gieli it-tfajla tal-imghallem kienet igibilha *noodles* li kienet issajjar hi stess.

Ir-rapport sar wara li rapprezentant tal-ambaxxata Ciniza f'Malta sar jaf bil-problemi li kienet qed tiffaccja w akkumpanjaha biex tigbor hwejjigha mill-hanut fejn kienet qed tghix. Gara li fuq il-post kien hemm l-imghallem taghha li hadilha l-*mobile* meta hi kienet riekba fil-vettura tar-rapprezentant tal-ambaxxata. Stqarret li l-imghallem ma kienitx taf x'jismu w kien imur il-hanut darbtejn kuljum jigbor it-*takings*. Spjegat li wasslet Malta fil-15 t'Awissu, 2017, u qatt ma ffirmat xi kuntratt ta' xoghol. **L-atti sesswali li kienet imgghiela taghmel kien jiddecieduhom l-imghallem u t-tfajla tieghu bil-prezzijiet ivarjaw skond in-natura tal-ghemil sesswali.** Kompliet kif **giet mhedda li jekk taghmel rapport lill-pulizija kienet ser titkecca**. Zammet lura wkoll peress li ma titkellimx bl-Ingliz.

Wara li gew arrestati l-imputati saret tfittxija fil-*parlour* u nstab il-*mobile*, il-passaport ta' Zhai u affarijiet personali taghha; il-pulizija giet infurmata li thassru messaggi, ritratti u *videos* minn fuq il-*mobile* taghha fil-hin li dan ma kienx baqa' fil-pussess taghha. Gie osservat li Zhai ma kellhiex flus fuqha u ma

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[2] **Dok.JB4** a fol.26 et seq

[3] Fol.28

gewx elevati flus mill-*parlour*.[4] **PS850 Steven-Ryan Micallef** ikkonferma dan ir-rapport.[5]

WPS9 Abigail Pomroy tispjega kif saru tfittxijiet fi Tian Oriental Massage Parlour (Hamrun) fejn kien hemm Lily Wang, *"bdejna nitkellmu mal-vittma u staqsejniha fejn kienet qedgha torqod, u l-vittma uritna kamra fejn kellha* ***zewg pultruni maghqudin flimkien u qaltilna li dik kienet is-sodda fejn kienet tghix****. Aktar minn hekk uritna ukoll il-post fejn kienet* ***tinhasel li kien sink tal-idejn zghir hafna. Ma kellix shower, xejn, u biex issajjar kull ma kellha kienet burner zghira*** *tal-gas.* ***Il-post m'huwiex post fejn tghix persuna normali****. Aktar minn hekk dakinhar tal-prezentata, kienet xheded wahda mill-vittmi, certu [w]Anipa Fasada, u hekk kif harget mix-xhida taghha din bdiet tippanikkja u bdiet tghidilna li kienet qedgha tibza minn Winston, illi kien ser jghamlilha xi haga.".*[6] Mix-xhieda ta' **WPC278 Sherona Buhagiar** jirrizulta li Wang infurmathom li malli saret taf minn Zhai li kienu nvolvew rwiehom il-pulizija, *"qaltli ahna konna diga' nfurmati,* ***bdejt nibza, armejt il-condoms u l-wipes."*** [7]

WPC186 Dorianne Tabone spejgat li flimkien ma PC276 u WPC278 ghamlet tfittxijiet fi Tian Oriental Massage fil-Hamrun *"Din kienet* ***tghix hemmhekk Lily Wang gol-hanut, kellha l-hwejjeg kollha hemmhekk, fuq gewwa net hemm kcina nkallata ghax kollha hmieg."***[8] Saret tfittxija ohra fil-*parlour* 'Mandarin Oriental Massage' *"Issa waqt is-search sibna notebook ahmar l-istess bil-hinijiet u l-flus li kienu qed jinzammu, Vat receipt book li jghajat lil Winston Joseph Gera, ….. Sibna wkoll kaxxa sewda li kien fiha 870 Euro gewwa, din kienet gol-iskrivanija l-istess fil-hanut. …".*[9] Sussegwentement saret tfittxija fi 'Yuan Oriental Massage' fi Triq Paceville ukoll fejn fih kien hemm Wannipa Passada: *"Sibna Vat receipt book l-istess jghajat lil Winston Joseph Gera, notebook l-istess bil-hinijiet u l-flus li kienu jinzammu ghal massage, u fl-iskrivanija kif tidhol sibna wkoll kaxxa sewda b'625 Euro gewwa".*[10]
Aktar il-quddiem jintwera kif dan in-*notebook*, li fil-fatt hu Diary tal-2017, ser jikkorobora bi shih dak li tixhed Wang Lily dwar hinijiet li kienet taghmel, prezzijiet u kif kienet tahdem kuljum bla jum ta' mistrieh.

1.Esebiti

[4] Fol.29
[5] Fol.450. Kopja ohra tar-rapport esebita bhala **Dok.SM** a fol. 452 et seq
[6] Fol.559-560
[7] Fol.166-167
[8] Fol.166-167
[9] Fol.167
[10] Fol.168

WPC186 ghaddiet biex esebit l-oggetti msemmija fix-xhieda taghha li nghataw l-exhibit no. **K/B/344/17**; listi mmarkati bhala **Dok.DT,** [11] **Dok.DT1** [12] u **Dok.DT2**[13]. Kopja tal-elenku tal-imsemmija esebiti gie wkoll anness mal-ewwel faccata tal-process f'Volum I.

PC1425 Adrian Ciappara ghamel tfittxija fir-residenza ta' Gera fil-presenza tal-imputata minn fejn gew elevati numru ta' dokumenti dwar l-impjegati w il-hwienet. Dawn id-dokumenti jinsabu elenkati f'lista ipprezentata mix-xhud l-ewwel darba li xehed[14] – **Esebit K/B/335/17**.[15] **PC276 Gregory Attard** xehed li flimkien ma PC1425 ghamel tfittxija fir-residenza tal-imputat fejn instabu numru ta' *mobiles, SD cards* u *laptops* li gew esebiti f'dawn l-atti.[16]

WPC369 Stephanie Cassar esebiet tlett rapport b'ritratti li ttiehdu fi tlett *parlours*, Tian Oriental Massage, Mandarin Oriental Massage u Yuan Oriental Massage.[17] Instabu hwejjeg u flus fi Tian Oriental Massage, indikazzjoni li hemm gew kienet tghix persuna. Minn Mandarin Oriental massage gew innutati *cctv* u ***dvr*** li gew elevati.[18]Sussegwentement hadet ghadd ta' ritratti mill-hanut Yuan Oriental Massage fejn ukoll ittiehed *dvr* wara li gew innutatati *cctv*.[19]

(i) Yuan Oriental Massage, Triq Paceville, San Giljan: Dok.SC[20]

Prezenti kien hemm Wannipha Phassada. Mill-post gie elevat ***dvr***. Il-kmamar huma arredati b'mod minimalistiku. Ma jaghtix l-impressjoni li fih kien qed jirrisjedi xi hadd. Tidher *cash box* sewda.

(ii) Tian Oriental Massage, Hamrun: Dok.SC1[21]

Prezenti Zhai Shuang u Wang Lili bl-interpretu Jianmin Li. Jidhru ghadd gmielu ta' hwejjeg fit-tieni kamra – indikazzjoni li kienet tghix persuna f'dan il-post ukoll, kif ukoll *cash box* sewda. Fit-tieni kamra jidhru bosta hwejjeg

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[11] Fol.167. **Dok.DT** a fol.169A
[12] Fol.168 **Dok. DT1** a fol. 169B
[13] Ibid. **Dok.DT3** a fol. 169C
[14] Fol.557 fejn issir riferenza ghall-lista a fol.63.
[15] Fol.51. Elenku tal-esebiti a fol.63-64
[16] Fol.411
[17] **Dok.SC-Dok.SC2** a fol.461 et seq
[18] Fol.459
[19] Fol.460
[20] Fol.461 et seq
[21] Fol.480 et seq

mxxerdin mal-art u bagalji miftuhin. Ma tidher l-ebda ghamara biex tilqa' dawn il-hwejjeg.[22] Ma tidhirx la kamra tal-banju u lanqas xi tip ta' kitchenette.[23]

(iii) Mandarin Oriental Massage, Triq Paceville, San Giljan: Dok.SC2[24]

Hawn jidher fond mqassam b'kuridur u kmamar fuqu. L-ewwel kamra tidher li mhix arredatata ghall-*massage room* izda li fiha ghad kbir ta' **hwejjeg u oggetti personali** mferxin fuq *massage table*. Anke hawn instabet *cash box* sewda bi flus kontanti fiha. It-tielet kamra hemm toilet u shower.

Jigi sottolinejat mill-ewwel li fl-interrogazzjoni tieghu Gera jghid li l-*cameras* ma kienux jirrekordjaw u kien jara x'qed jigri fil-hwienet *in real time* biss. Dan hu kontradett mill-fatt li nstabu *dvrs* li hu l-apparat li fuqu jigu *recorded* il-filmati mehuda mis-*cctv*.

2. Stqarrijiet

Fl-ewwel lok jigi rilevat li in linea mar-regola desunta *a contrario sensu* minn dak li jipprovdi l-paragrafu (b) tal-Artikolu 636 tal-Kodici Kriminali, liema regola giet konstantement applikata mill-qrati taghna, ko-akkuzat isir xhud kompetenti fir-rigward ta' ko-akkuzat iehor biss wara li l-kaz fil-konfront tieghu jkun gie definittivament deciz.[25] Ghalhekk dak li imputat xehed fl-ambitu ta' dawn il-proceduri ma jiswiex bhala prova favur jew kontra l-ko-akkuzat iehor. Ghaldaqstant mhux qed jigi kkunsidrat dak li l-imputati stqarrew rigward xulxin.

Fit-tieni lok il-Qorti ma tistax ma tirrimarkax dwar kemm kienet tassew ghaqlija d-decizjoni tal-Prosekuzzjoni li ma titlobx ghal *transcript* tal-istqarrijiet tal-imputati. Dan ikkostringa lill-Qorti tara w tevalwa hi stess l-imgieba xejn konvincenti tal-imputati u l-komportament taghhom li evidentement wrew d-diffikulta` li sabu rwiehom fiha mal-kors tal-interrogazzjoni.

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[22] Fol.491-496

[23] Fol.484 ritratt fuq

[24] Fol.498 et seq

[25] Vide **Sua Maesta` il Re v. Carmelo Cutajar ed altri**, Qorti Kriminali, 18 ta' Jannar, 1927; **Il-Pulizija v. Toni Pisani**, Appell Kriminali, 11 ta' Novembru, 1944; **Il-Maesta` Tieghu r-Rev. Karmenu Vella**, Qorti Kriminali, 3 ta' Dicembru, 1947; **The Police v. Alfred W. Luck et**, Appell Kriminali, 25 ta' April, 1949; **Ir-Repubblika ta' Malta v. Faustino Barbara**, Appell Kriminali, 19 ta' Jannar, 1996; **Il-Pulizija v. Naser Eshtewi Be Hag et**, Appell Kriminali, 2 ta' Frar, 1996; **Il-Pulizija v. Carmelo Camilleri v. Theresa Agius**, Appell Kriminali, 11 ta' Lulju, 1997; u passim **Ir-Repubblika ta' Malta v. Domenic Zammit et**, Appell Kriminali, 31 ta' Lulju, 1998

A. Winston Gera

Fil-fatt hu tassew evidenti l-iskomfort, *"uneasiness"*, ta' Gera w l-inabilita` tieghu li jaghti risposti f'waqthom u li ghandhom mis-sewwa. Ir-risposti tieghu minflok jindirizzaw id-domandi li sarulu huma evasivi w *long-winded* mimlija dettalji superfluwi; hu ovvju li jahli hin biex jevita milli jaghti twegiba f'waqtha. Min qed jghid is-sewwa, ma ghandux ghalfejn jintilef jahseb f'dak li ser jghid kif lanqas jintilef f'tpacpic zejjed mhux dirett lejn id-domanda specifika li tkun saret!

Pressat ghall-aktar dettal dwar dak li jkun ghadu kemm stqarr, isib ruhu f'diffikultajiet kbar. Tidher lampanti kemm ihossu skomdu meta mitlub jispjega x'kienu l-kundizzjonijiet tax-xoghol tal-impjegati, l-introjtu mill-hwienet tieghu u kif seta' jaghmel kapricci bhal xiri tal-Volvo ghal €36,000 u jghajjex mara jekk il-hwienet ma kellhomx *turnover* soddisfacenti. Il-komportament tieghu ma jikkonvinci xejn lil din il-Qorti; jidher bhala bniedem b'dahru mal-hajt li mhux kapaci jaghti risposti semplici, f'waqthom minghajr ezitazzjoni.

Kkonfrontat b'diversi fatti Gera jasal jikkonferma li l-impjegati jahdmu **sieghat twal.** Tahrablu dikjarazzjoni li l-imputata kienet taghmel *massages* ghalkemm ma kellhiex permess tahdem f'Malta**,** biex b'hekk jammetti li qed ihaddimha illegalment, l-istess bhat-Tajlandiza, Phassada**.** Jasal jammetti wkoll li l-impjegati tieghu **ma hadu l-ebda granet *leave* jew *sick leave*.** Fit-tieni stqarrija ikkonferma li minkejja dak li ssottometta ma Identity Malta, **kuntratti ta' xoghol ma kienux jezistu *"le, le, le"*** *(12:08:52)*. Ammissjonijiet li jimpingu direttament fuq l-imputazzjonijiet migjuba kontra tieghu.

Minn naha taghha Tinaxia Zhang ghall-domandi semplici taghti risposti twal minghajr ma tmur ghall-punt. Taghmel dikjarzzjonijiet li jinkonfliggu ma dak li tkun qalet sekondi qabel. L-imputata tidher tahli hinijiet twal tiddiskuti mal-interpretu taghha minflok taqbad u twiegeb, u meta taghmel dan, ir-risposta taghha hi bla sens w illogika, evidenza li ma ghandhiex mis-sewwa.

(i) L-Ewwel Stqarrija ta' Gera mehuda fil-31 ta' Ottubru, 2017, fil-21:26hrs[26]

It-tfajla tieghu hi l-imputata li jsejjhilha "Luna", li **tghinu** fil-hanut taghti *massages*. Kien hu li kien jircevi l-appuntamenti.[27]Ordna uniformijiet ghall-impjegati li kien ghadu ma gabarhomx minn hanut fl-Imsida (21:34:39).

- Fl-istqarrija mehuda l-ghada, jinsa dan id-dettal u jsemmi li l-hanut kien lejn is-**Savoy**! Jibqa' l-fatt li tul dawn il-proceduri uniformijiet ma gewx esebiti kif lanqas ma ttella' xi hadd biex jikkonferma li Gera verament ghamel dik l-ordni!

Dwar kundizzjonijiet ta' xoghol jghid li kien hemm l-istess ftehim ghall kull impjegat. **Kienu jiehdu €10-€15 *per massage* li kien jiswa €35 jew €40**. Prezzijiet tal-Hotel kienu aktar gholjin filwaqt li *massage* fil-hanut tal-Hamrun kien biss **€20.** Jinsisti li ma kienx jaccetta li jsiru atti sesswali fil-hwienet tieghu w jsemmi li c-Cinizi gew Malta bit-tir li jaghmlu dawn l-atti (21:43:34) tant li rvellaw meta ma hallihomx (21:44:50). Meta qalilhom li sabilhom apartament f'Paceville b'€450 dawn ma riedux joqghodu hemm u jirrikonoxxi li ghamel hazin li hallihom jorqdu fil-hanut imma ma ridx jitfahhom barra *"jien cucc"*. Jammetti li hallsuh €150 ghad-dawl w ilma (21:46:15) ghalkemm jaf sewwa li fil-hanut tal-Hamrun ma kienx hemm *shower* jew kcina (21:47::37). Minkejja li jikkonferma li kien hu li jigbor il-flus, stranament jistqarrr li ma jafx x'*turnover* kellu mill-hwienet ghax ihalli f'idejn l-*accountant* (21:56:22). Zewg impjegati jorqdu fil-hwienet tieghu fil-Hamrun (21:57:37) u fi Yuan, gewwa Church Street (21:57:43) ghal-kera ta' €150.

Jigi osservat ghalhekk li **ma kienux qed jigdbu l-impjegati li xehdu kif ihallsu kera biex jghixu fil-hwienet ta' Gera, li paga ma kellhomx u li jithallsu *commission* biss.**

Gera jghid li Shuang Zhai, li jsejhilha 'Emily' telqet mill-hanut izda kkonfrontat bil-fatt li minn jitlaq ma jhallix hwejjgu w l-passaport warajh ma jafx jaghti twegiba ghaliex kellha taghmel hekk (21:59). Jikkonferma li **hadilha l-*mobile* u hassar ritratt** li ttiehed ghaliex skond hu ma kellhiex dritt tiehu ritratt tieghu.

- Meta jixhed *viva voce* jinsa din il-verzjoni w jghid li kull ma ried kienu c-cwievet li kienu mwahhla mal-*mobile*, xi haga li Jianmin, xhud okulari, jichad kategorikament ghaliex jghid li c-cwievet kienu hdejn il-*hand break*

[26] **Dok. JB8** a fol.34. Fuq is-CD hemm indikat erronjament id-data tat-30 t'Ottubru, 2017 izda ir-*recording* jindika l-31 ta' Ottubru.
[27] 21:31

filwaqt li l-*mobile* kien f'idejn Zhai meta Gera dahhal idu fil-vettura tieghu w hatafilha l-*mobile* minn idejha. Jiskontra diffikulta` jispejga kif seta' jhassar ritratt hu, meta s-*settings* fuq il-*mobile* kienu bic-Ciniz!

Jghid li l-hinijiet tal-hwienet kienu bejn l-10am u 7pm u l-impjegati jiehdu hsieb il-hanut bhala *self-employed* (22:06).

Tqum id-domanda: Jekk it-tfajliet jahdmu bhala *self-employed* kif applikalhom ghall-permess biex jahdmu fil-hwienet tieghu?

Ghall-kuntrarju Jobsplus wrew tul iz-zmien li diversi kienu dawk il-persuni li gew registrati bhala impjegati, *"employees"*, mal-hwienet ta' Gera[28] u ma kienux *self-employed*; tentattiv fjakk ta' Gera biex jipprova jizloq mill-obbligazzjonijiet tieghu kemm bhala *employer* u wisq aktar biex jinheles minn responsabbilita` kriminali ghall-ghemilu.

Jichad li kien jissuplixxi lill-impjegati bil-*condoms* ghaliex ma kiex jaccetta dawn l-affarijiet fil-hwienet tieghu. Jammetti li ghalkemm l-imputata ma tistax tahdem hi xorta tghinu fil-hanut (22:12:50) billi tohodlu hsieb appuntamenti u *"jekk ninqabbdu …short of staff….[taghmel il-massaggi]"(22:13:38).*

Il-Volvo xtraha €36,000 ghaxar xhur qabel u thallset b'pagamenti. Isib diffikulta` kbira jispejga kif hallas karozza f'qasir zmien u jghid li t-tfajla tieghu tghix ukoll minn fuqu u ma kellu l-ebda *loan!* Indikazzjoni tal-**hajja komda li kien jghix minn fuq il-hwienet.**

Gera ma jistax jemmen li t-Tajlandiza (Wannipa izda jsejhilha 'Ta') setghet tigdeb dwaru ghaliex kien dejjem mexa sewwa maghha. Ghaldaqstant il-Qorti ma tistax ma tirrimarkax ghaliex kellha tigdeb dwaru kemm il-darba gid biss rat minnu!

(ii) It-Tieni Stqarrija ta' Gera ttiehdet l-ghada fl-1 Novembru, 2017, fil-11:45am[29]

L-imputat jichad li ha l-passaporti tal-impjegati ghajr ghal meta kellu bzonnhom (11:43:40) izda jikkonferma li kien hu li **taha lill-pulizija l-passaport ta' Zhai (11:55)** wara li saret tfittxija ghandu. Ammissjoni li l-**passaport instab fil-pussess tieghu propju kif allegat Zhai.** Gera jistqarr li ha l-passaport sabiex japplikalhom ghal *identity card* u biex jinhargilhom il-*work permit* izda rapprezentant ta' Identity Malta jghid li dan sehh f'Awissu, xahrejn qabel!

[28] **Dok.JS** a fol.772 et seq
[29] **Dok.JB6** a fol. 32

Perplessita` ohra temana mill-fatt li jghid li kien jircevi kera minghand l-impjegati ghalkemm ma riedhomx joqghodu hemm (11:58:52). M'ghandux kontroll fuq l-ilbies tal-haddiema tieghu (11:57) izda jammetti li ma kienx ghadu tahom l-uniformijiet li gew ordnati minn hanut f'nizla li tinsab wara li ddur mat-telgha tas-Savoy u ddur lejn Regional Road (11:58).

- Jigi mfakkar li fl-istqarrija mehuda l-lejl ta' qabel, Gera semma' li ordna l-uniformijiet minn hanut l-Msida. Liema hi l-verita? Jissemma biss hanut, minghajr isem. Tul il-proceduri ma giet mressqa l-ebda evidenza li verament kien hemm din l-ordni! Dikjarazzjonijiet li baqghu **ma gewx sostanzjati** bhal ma jaghmel ftit tal-hin wara meta jsemmi li meta fuq il-*facebook page* tieghu ikun hemm minn jitlob ghall-servizzji sesswali hu kien iwaqqaf hesrem ic-*chat*, *"daqshekk jieqaf kollox"* (12:04:34). Anke f'dan ir-rigward, tul il-proceduri Gera naqas milli jressaq mqarr *chat* wiehed li jikkorobora dak allegat minnu. Forsi ghaliex il-verita` hi li kien dlonk jaccetta talbiet simili?

Manifestazzjoni dwar kemm l-verzjoni ta' Gera ma ghandha ebda ombra ta' kreddibilita,` hu l-fatt li ghalkemm isostni li ma riedx attivita` sesswali fil-hwienet tieghu w jishaq li kien ilu jissuspetta li l-impjegati kienu qed jipprostitwixxu rwiehom minn wara dahru, hu li kellu l-hwienet koperti *b'cctv cameras* u *dvrs* (12:18), qatt ma hass il-htiega li jivverifika jekk is-suspetti tieghu kienux fondati.

Gera jammetti li ma kienx hemm kuntratti ta' xoghol mal-haddiema, ***"le, le, le!"[30].*** Jammetti li t-Tajlandiza (Phassada) impjegaha minghajr *work permit*, ***"le ghax dik igibli l-karti biex napplikalha"[31]*** u ***"qed nistenniha iggibli l-karti ... u napplikala ghal work permit[32]".*** Turija ohra ta' kif Gera kien qed jinqabad fil-gideb tieghu stess, hi meta jsemmi kif l-imputata kienet tghinu fil-hwienet billi taghmel *massages*, izda mistoqsi ghall-darb'ohra jekk kellhiex *work permit* (12:10:59) jibqa' cass u wara perjodu ta' silenzju jghid *"nista nieqaf, ghajjejt"* (12:11:12).

B. Stqarrija Tianxia Zhang 1 ta' Novembru, 2017

L-imputata tibda tispjega li ilha Malta iktar minn sentejn. Qatt ma kellha impjieg f'Malta. Il-prezz ghall-*massages* kien bejn €10-€15 izda wara tghid li ma

[30] 12:08:52
[31] 12:09:23-12:09:42
[32] 12:09:45

tafx kemm jiswa *massages* ghaliex fl-ahhar tal-gurnata tigbor il-flus f'salt**.** Hadd ma kien jixtri *condoms* sabiex jintuzaw mill-impjegati.

Tammetti l-irwol taghha fl-attivita fil-gestjoni tal-hwienet meta mistoqsija: *"How many employees does **she** and Winston **have** in all parlours?"* u twiegeb *" Only three from China".* Tispjega li **tigbor it-*takings* kull jumejn flimkien ma Gera (11:00:29-11:00:58) *"always together"*** u hadet hsieb taghmel **kuntatt ma kumpanija fic-Cina biex jingiebu** persuni biex jahdmu Malta (11:04). Winston ma jikkomunikax mal-impjegati imma kienet hi li taghmilha ta' interlokutur billi tittraduci.

Zewg Cinizi wasslu tlett xhur qabel u hi marret ghall-wahda minnhom tilqahha l-*airport* ma Gera. Ma kienitx taf il-koppja (ragel Malti u martu Ciniza) li kienu maghhom l-*airport* jistennew it-tfajliet izda sekondi wara tammetti li veru li kellha argument mal-mara ghaliex din qalet lill-impjegata taghha biex taghmel atti sesswali fil-*parlour* (11:13:45).

Bla dubbju <u>dikjarazzjonijiet li xejn ma jaghmlu sens</u> ghaliex filli tghid li kienet f'kuntatt maghha u filli tinsisti li ma tafhiex; minuti wara izda, tammetti li dik il-mara kienet l-agent li rrangat biex it-tfajliet jingiebu mic-Cina.

Dikjarazzjoni ohra taghha li <u>tisfida l-buon sens</u> tasal meta tigi mitluba tispjega fejn jghixu tnejn mit-tfajliet *"who **work with her and with Winston** where do they live..the two who came?"* (11:15) bl-imputata li minuti qabel tammetti li kienet zzur il-hwienet biex tigbor il-flus kull jumejn jew tlieta, tghid li ghall-ewwel gimghatejn it-tfajliet marru jirrisjedu maghha u ma Winston u wara marru f'xi *hotel* (11:15:45). Tichad li nehhiet xi ritratti mill-*mobile* ta' Zhai (11:30).

Mistoqsija fejn izomm iz-zewg passaporti Cinizi tghid li ***"she only takes one of the workers passaport"*** (11:18:16) u dan ghamlitu peress *"it takes a long period to bring the workers from China to her parlour and **she needs a little guarantee** if they leave"* (11:19). **Tohdilhom il-passaport ghaliex hu process twil biex jingiebu minn barra w biex terga' ssib impjegati jiehu zmien** (11:19:25). Izzid *"she just means if they want to leave **they need to inform her one month before and she will give them the passport"*** (11:20). Dwar l-impjegata fil-hanut tal-hamrun tiddikjara li minflok haditilha l-passaport, peress li din irrifjutat, **hadet minflok €500** (11:24).

Mitluba tghid fejn kien mizmum il-passaport ta' Zhai, tghid li dejjem kien jinzamm il-hanut. Fuq din ir-risposta tigi kkonfrontata bid-dikjarazzjoni taghha stess (11:31:29), li ma baqghet ma gietx kontradetta, ***"she takes passport as a guarantee not to go away"*** ghaliex kienet qed thallieh fil-*massage parlour* (11:31:38)? Fejn hu d-deterrent jekk hallietu ghad-disposizzjoni ta' Zhai?

Twiegeb, dejjem permezz tal-interpretu, *"she didn't need the passport she just wants her employees to tell her when they are leaving"* (11:32:09). Meta lilha jigi suggerit li l-passaport kien fir-residenza taghha u ta' Gera (11:32:24) tichad izda tikkoncedi li *"the first time she applied for the jobs* ***she took the passports to her apartment****"* u wara nzammu fil-hanut (11:33).

- Kemm kellu ragun l-ufficjal investigattiv jinsisti li l-imputata qed tikkontradixxi lilha nfisha meta hin minnhom tghid li zammet il-passaport bhala garazija w deterrent biex l-impjegati ma jaqbdux u jitilqu hesrem minn Malta. Altru` li zammietu ghandha!

- Daqstant iehor mhix veritjera meta tghid li t-tfajliet Cinizi ghamlu l-ewwel gimghatejn jirrisjedu maghha u mal-imputat! Sahansitra lanqas tammetti li kienu qed jghixu fil-hwienet li bl-ammissjoni taghha stess tghid li kienet tmur fil-hwienet biex tigbor it-*takings.* Possibbli ma ndunatx li qed jghixu hemm?!

In succinct din l-istqarrija toffri korroborazzjoni ta' dak li stqarrew il-vittmi, in kwantu ghall fatt li l-imputata kellha **sehem attiv fit-tmexxija tal-hwienet**, kienet hi **hadet hsieb l-ingagg taghhom mic-Cina**, kienet hi li **taghtihom struzzjonijiet** ghaliex Gera ma kienx jaf bic-Ciniz. Aktar sinifikanti minn hekk hi l-konferma taghha li **hadet il-passaporti tat-tfajliet Cinizi u lil min ma tahuliex vilment intaxxatu €500.**

III. Xhieda tal-Vittmi

1. Wannipha Phassada – li Gera jsehhilha **'Ta'** - tispjega li tghix gol-*parlour* Yuan Oriental Massage f'Paceville. Wasslet Malta tmien (8) xhur qabel mill-Italja.[33] Bdiet tahdem mal-imputat seba xhur qabel,[34] tiehu hsieb il-hanut skond **kif jiddetta hu** bil-hinijiet taghha jkunu **mill-10am sal-10pm, sebat ijiem fil-gimgha.[35] Ma thallietx tiehu *leave* jew *sick leave*** u sahansitra lanqas thalliet tmur attivita` religjuza. Kienet torqod fil-*parlour* fuq sodda li tinfetah u tinghalaq. Kcina ma kienx hemm.[36]Biex tiekol kienet igib *take-outs* ghaliex kull ma kien hemm kien *electric cooker* zghir. Thallas lil Gera **€200** fl-ahhar tax-xahar bhala kera.[37] **Minn *massage* li jiswa €45 hi kienet tiehu €10 bil-€35 jibqghu**

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[33] Fol.36-37
[34] Fol.37
[35] Fol.37-38
[36] Fol.39
[37] Fol.40

ghal Gera. F'gurnata kien ikun hemm bejn 5 u 6 persuni ghal massages, total ta' 35 *massage* fil-gimgha. Ghall-*massage* ta' nofs siegha l-hlas kien ta' €25 li minnhom kienet tiehu **€5.**[38] ***Work permit*** **ma kellhiex u qatt ma rregistrat ghal xoghol f'Malta** ***"the owner said no problem".*** Dwar paga tghid ***"Nothing, nothing pay from Winston".***[39]

Kienet mitluba mis-sid biex irrispettivament min-numru ta' klijenti, tinhareg ricevuta fiskali wahda biss: *"The owner told her one day write only one. Her employer told her that in one day write only one Vat receipt."*[40] Tkompli li ftit kienu jitolbu servizzji sesswali ***"They asked for sex"*** w hi kienet tirrifjuta izda drabi ohra, meta it-talba kienet issir fil-kors ta' *massage*, hi **kienet taghmel kif mitlub**. Dan sar fuq talba ta' Gera, *"It is the request from the owner that he told her* ***if you want more money do this kind of thing. The request from the owner said if you want more money just do this thing".*** Is-servizzji sesswali prestati minnha kienu jvarjaw minn sess orali, €40, u *handjob* li jiswa €25[41]; il-flus ghal dawn l-atti tohodhom hi bhala *bonus.*[42]Kienet hi li tiddeciedi jekk taghmilx servizzji sesswali w kienet taccetta taghmilhom meta kellha bzonn il-flus.[43] Il-**flus kienu jingabru bejn jum u tlett ijiem wara minn Gera jew it-tfajla Ciniza tieghu li 'Luna' (l-imputata).**[44] Meta kellha bzonn xi gurnata *off* kienet tkellem lil Gera. L-imputata kienet taf bil-kundizzjonijiet li kienet tghix fihom ghaliex meta nqabdet b'hafna xoghol kienet tmur tghinha fil-*massages*.[45] Izda filwaqt li minn €45 hi kienet tiehu biss €10, Luna kienet tiehu l-€45 kollha[46].

Dak li sussegwentement sehh quddiem ghajnejn il-Qorti ma jistax ma jimmilatax versu l-kreddibilita` tax-xhud meta tirrakonta l-kundizzjonijiet prekarji w inumani li kellha ggarrab. Hu dan li l-abbli difiza tinsa meta fit-trattazzjoni orali taghha tishaq li dawn ix-xhieda ma ghandhomx jitwemmnu f'dak li xehdu.

Meta x-xhud intalbet tiddentifika lill-imputati minn *monitor* li beda jittrasmetti dak li kien qed isehh f'Awla 14, ghall-ewwel ma riedet bl-ebda mod tavvicina dak il-*monitor* u evidentement wicca kien juri biza w alarm. Meta perswaza

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38 Fol.41-42
39 Fol.42
40 Fol.42-43
41 Fol.45
42 Fol.44-45
43 Fol.46
44 Fol.50
45 Fol.52
46 Fol.52-53

taghmel dan, hekk kif lemhithom u identifikathom[47], b'sahha kbira bdiet miexja lura w ma rieditx terga' tersaq lejn l-istess *monitor* filwaqt li bdiet tirtoghod u tibki. Dan sehh anke fil-presenza tat-tekniku inkarigat mir-*recording*, Charles Calleja. [48]

In kontro-ezami tikkonferma li ma kienitx tghid lil Gera dwar l-ammonti ta' flus li kienet taghmel mill-ghoti ta' servizzji sesswali. [49] Qabel ma marret tahdem ma Gera kienet tahdem ma certu Suri li ma riedithiex taghti servizzji sesswali w ghalhekk keccietha. Ikkonfermat li **kienet lesta tippresta servizzji sesswali meta marret tahdem ma Gera w li l-imputat kien konxxju minn dan**.[50] Qatt ma talbet lil Gera jzidilha l-paga w tiddikjara li qatt ma sfurzaha taghmel atti sesswali.[51]Tghid ukoll li gieli giet mistiedna tissocjalizza flimkien mal-imputati izda ma kienitx tmur filghaxijiet ghalkemm filghodu gieli marret.[52] In ri-ezami tixhed li l-**imputati kienu konxxji li hi kienet qed taghti servizzji sesswali** ghax l-imputata kienet tistaqsiha *"She say no action, she told her* ***go ahead.****".*[53]

- Minn din ix-xhieda jirrizulta kemm hi <u>veritjiera</u> Phassada li ma taghzilx li ssebbah il-verzjoni taghha billi tallega li giet <u>sfurzata</u> mill-imputati tipprostitwixxi ruhha. Madanakollu mix-xhieda taghha jirrizulta li l-imputati kienu konsapevoli tal-fatt li hi kienet taghti servizzji sesswali propju ghaliex kienu huma li <u>heggewha w instigawha</u> taghmel dan biex taqla' aktar flus filwaqt li b'konsegwenza, tressaq aktar klijenti lejn il-hwienet gestiti minnhom.

2. **Lily Wang.** Simili kif sehh bix-xhud Phassada, meta Lily Wang giet mitluba tarafx lis-sidien gewwa l-awla minn got-tieqa li hemm fil-kuridur tas-sigrieta ta' Awla 14, fil-presenza tal-Marixxalli - u kif muri fit-traskrizzjoni - ***"ngibdet lura, nfaqghet tibki u r-rejazzjoni taghha kienet ta' xi hadd imwerwer, ….. hi ppuntat lejn il-mara Tianxia u r-ragel qalet li dak huwa Winston li rreferiet ghalihom bhala l-bosses."***[54]

Wang xehdet li giet Malta fid-9 t'Awissu, 2017, tramite agenzija biex tahdem ta' *masseuse*. Hallset 50,000 f'munita Ciniza li 35,000 minnhom fehmet li kienu

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[47] Fol.53
[48] Ibid.
[49] Fol.54
[50] Fol.56
[51] Fol.57
[52] Fol.58
[53] Fol.59
[54] Fol.173-174

ghas-sid u gew mghoddija lilu mill-agenzija.[55] Ix-xhud semmiet li hallset lis-sidien, wahda Ciniza bl-isem Tianxia w Winston, ghal *blood test* u *insurance* fl-ammont ta' €491. [56] Spjegat li peress li ma titkellimx bl-Ingliz kienet tikkomunika mal-imputata. Kienet tithallas **€5** mill-prezz ta' €25 li kien jiswa *massage*, izda wara li lmentat kienet tiehu **€10**.[57] L-imputata kienet ordnatilha li jmorru kemm imorru klijenti kellha tohrog ricevuta wahda mill-ktieb tal-VAT. Il-klijenti w hlasijiet kienu jitnizzlu fuq karta, *"She can only fill one sheet for everyday…. One day only one sheet….just one sheet for one day."*[58] Kien ikollha bejn 3-4 klijenti kuljum u kienet tahdem fil-*parlour* il-Hamrun fejn sabuha l-pulizija.[59] Meta wasslet Malta l-imputati gabruha mill-airport.[60]Kienet **torqod fil-hanut u ghal dan kienet thallas €150** lill-**imputati li kienu jkunu flimkien meta jmorru l-hanut**.[61]Tiddeskrivi kif kienet tghix *"One dining room and one massage room, one of them is for sleeping and* ***no kitchen, no bathroom….. No shower****. … No a/c for me, me come in Summer. No have a/c….No windows, only doors."*. [62] Is-sidien tawha *hot plate* xi hmistax qabel ma marru l-pulizija; dan kien jahdem bil-gas, u borma. Kienet torqod fuq sufan izda ma kellhiex gwardarobba jew sodda propja.[63]

Dwar il-kundizzjonijiet tal-impjieg tispjega li kienet tahdem mill-**10am sal-10pm il-gimgha kollha, minghajr granet ta'** ***leave***. Meta kellha bzonn thalli l-hanut ghall-aktar minn nofsiegha kellha tinforma lill-imputata. [64] Wang tirrakonta li **biex setghet izzomm il-passaport ghandha kellha thallas lill-imputati €500 bhala penali**: *"My boss Winston and his girlfriend told me give me passport for the reason that they need to get some applications for her. Then the next time she saw her passport they are in the identity office. After that she want to get it back….When she was doing the identity card the officers gave the passport to her and* ***Winston asked her to give it back****….The officers with the identity office, they give back the passport to her, and then* ***Winston ask for the passport again…..If she is not going to give the passport back to Winston she has to pay 500 Euros as the penalty".***[65] Kien ikun hemm argumenti mas-sid dwar dan *"First time take me passport no give, second time taking me this money for the blood.* ***500 no give me***

[55] Fol.170-171
[56] Fol.172-173
[57] Fol.174-175
[58] Fol.175-176
[59] Fol.177
[60] Fol.176
[61] Fol.177
[62] Fol.178
[63] Fol.179
[64] Fol.180-181
[65] Fol.181-183

passport. If you no give me passport you no good…. If she doesn't do what she is told they cancel her Visa and send her to China.".[66]

Indikazzjoni ta' kemm anke din ix-xhud qed tghid il-verita` hu kif ma tippruvax timplika lill-imputati gratwitament. Fil-fatt tixhed li **qatt ma giet sfurzata** taghti xi servizzji ohra ghajr ghall-*massages*.[67] Is-sidien kienu jafu li setghet tintalab taghti servizzji sesswali ghaliex ipprovdewha b'*condoms* izda ma uzathomx ghaliex ma kienitx taghti dawk it-tip ta' servizzji[68] u remithom.[69] Bhala medja kienu jmorru 3-4 klijenti kuljum.

In kontro-ezami tispjega li lilha ntqalilha mill-agenzija li 15,000 (€1,938) renminbi kienu ghall-agenzija u 35,000 renminbi (€4,500) ghall-imputat.[70]Qatt ma rat xi ricevuta minghand Winston dwar dan il-hlas izda ghandha il-konversazzjoni mal-agenzija fuq il-*mobile*.[71] Kien Gera li hallas ghal *blood test* u l-*insurance* peress li ma kienitx ghad ghandha flus izda tathomlu wara meta bdiet taqla l-flus minn xogholha.[72] Kienet izomm dak dovut lilha u tghaddi l-kumplament lil Gera.[73] Tinsisti li kellha ordni tiftah il-hanut bejn l-**10am u l-10pm,** tispjega kif kienet **ristretta f'dak li setghet taghmel u kif evidentement l-ghemil taghha kien kontinwament sorveljat mill-imputati**:*"There was a time after half past eight she went out with her friends for dinner and they called her immediately. …China lady called me. Why are you this time closed? You go outside first you call me. I say okay I go okay. Chinese lady call me immediately and tell her it is not the time to go out and close the shop, you should inform me first before you go out.* ***If it happens another time you will be asked to abolish the application, the identity and go back to China ….. Both day and night she should inform them ….. She used to leave the shop for around less than 20 minutes for lunch or a meal. ... Yes both day and night she should inform them before she leaves…… She was never informed that she can have one day off.".***[74]

Wang tikkonferma li l-imputata ***"China lady my boss"*** **haditilha l-passaport** xi jumejn jew tliet ijiem wara li giet f'Malta sakemm imbghad haditu lura meta marret taghmel l-*identity card*,[75] u zzid *"When she finished with applying for the ID*

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[66] Fol.186-187
[67] Fol.184
[68] Fol.185
[69] Fol.187
[70] Fol.188-189
[71] Fol.189
[72] Fol.190
[73] Fol.191
[74] Fol.192-193
[75] Fol.194

card ***Winston ask her to give him back the passport."***[76]Tirrakonta li ghalkemm l-imputati qalulha li setghet tmur tghix f'dar, din ma kienitx tezisti, *"They said so but there is no such place…. Winston and his girlfriend told her there is a house to live for all the massages, and till now there is no such a place…. Winston said there is a house for them to live but there is no such place. [Qorti: How does she know did she ask to go somewhere better?]* ***Winston mentioned he rent a place and until today there is no more message from this place."***. [77] Meta wasslet fil-hanut kien hemm biss cilindru tal-gass izda mhux il-*hot plate*.[78] Tiddikjara li ma ghamlitx rapport lill-pulizija peress li ma tafx kif l-affarijiet jipprocedu f'Malta u b'hekk ma tafx x'setghet taghmel.[79]

3. Zhai Shuang bdiet biex tispjega li wasslet Malta fil-15 t'Awissu, 2017, wara li saret taf minn Ciniza mizzewga Malti, li sid hanut kellu impjieg ghaliha.[80] Kienet mgharrfa li x-xoghol kien ser ikun *"formal and legal… At the beginning she was told to do the massage only, and then after she arrived she was asked to cleaning, gather cash and massage."*. Mara bl-isem 'Liu' ghenitha biex igib visa.[81] Sal-jum li fih xehdet ma kienitx taf x'jismu s-sid u t-tfajla tieghu li hi Ciniza. Meta wasslet Malta marru ghaliha l-*airport* Liu w zewgha. Marru jiltaqghu maghha wkoll is-sid tal-hanut u t-tfajla tieghu, li ix-xhud identifikat bhala l-imputati. [82] L-imputata zammitha milli tkompli tkellem lil Liu *"Because the girlfriend of the shop owner said* ***you are employed by me now****, I don't want you contact any other person."*.[83] Wara li halliet ic-Cina ma kienet iffirmat l-ebda kuntratt ta' xoghol, u lanqas Ciniza ohra, li tahdem maghha li bhala giet biex tahdem mal-imputat.[84] Tiddeskrivi l-kundizzjonijiet li fihom kienet qed tghix fejn la kellha kcina u kienet tuza shower li tintuza mill-klijenti:

*"Xhud: The shop owner promised her before that she will have a place to live, however after she arrived and settled at the shop he said if you want to live with us you need to pay 30 Euro per month, if you want to live out you should pay us 150 Euro per month…..****If she choose to live outside from shop she was asked to pay 30 Euro and Winston called this a tax for living out****…….* ***She choose to live at the own shop so she doesn't move on and she paid 150 Euro per month for the accommodation*** *……****The tax is for Winston only*** *and she need to pay extra for what she had found herself……She lives in a room for the massage only and sometimes*

[76] Fol.195
[77] Fol.195
[78] Fol.196
[79] Fol.196
[80] Fol.78-80
[81] Fol.81
[82] Fol.83
[83] Fol.84
[84] Ibid.

*if it is not possible she just sleep on the ground…. **There is no place to sleep.. ..[Qorti: So for sleeping on the floor you were paying 150 per month?]….. Yes**.".*[85]

Zhai tispejga li **paga bazika ma kellhiex**[86] u kif **giet mgghielha tixtri hwejjeg u zraben** biex tahdem bihom peress li dawk li gabet maghha ma kienux *sexy* **bizzejjed.** Giet ordnata mill-imputati tilbes dawn il-hwejjeg fil-hanut,[87] ***"Hot and sexy…. really tight, show her body shape…. low cut …Above the knees…. That is what she was told because for that reason if you do not wear hot and sexy clothes you will not get customers.".***[88]

Kienet tahdem mid-**9am sal-10pm sebat ijiem fil-gimgha minghajr** ***leave*** **jew** ***sick leave.*** Tispjega li kienet tithallas mill-flus tal-gurnata billi tiehu dak dovut lilha, bil-kumplament tat-*takings* jingabar mill-imputati, ***"the owner's girlfriend told her that what you earned goes to me because I bring you to Malta, I made you the identity card, I have the right to kick you out.".***[89] Kien biss fl-okkazzjoni li giet fgata li ghamlet *full intercourse,* bil-kumplament tas-servizzji li nghataw minnha jkunu dejjem sess orali. Zhai tixhed kif giet trattata mill-imputati: *"She descibe how she was treated, like* ***everyday she can have only one meal,*** *if she left the shop for food she will be caught and phoned to say like go back to the shop, don't go out. [Qorti: Not even to eat?] … No. And* ***she only saw her passport once*** *before the policeman help her to get it back. It is the situation that the owner and his girlfriend took her to get the ID card…..* ***She asked for the noodles as her lunch which is the only meal for the whole day because after ten pm she can leave the shop because it is closed, and at that time there is no food often in surrounding,*** *…..She asked the girlfriend of the owner to buy her the noodles and she only bought once. After it is finished she didn't manage to get her anymore.".* [90]

Bl-ghajnuna ta' klijent barrani, li kkomunikat mieghu billi wzat *translation application* tal-*mobile,* marret l-ambaxxata Ciniza izda kien il-*weekend* u meta sabitha maghluqha halliet in-numru taghha maghhom.[91] It-Tnejn cemplulha lura u ltaqghet ma rapprezentant tal-ambaxxata: *"So on Monday before the interpreter came this client invite her to go out for lunch but the girlfriend of the shop owner asked her to stay, and she told her if you go out you need to pay me 50 Euros per hour, if you have one minute extra exceed to this hour it is 100 Euro for every minute……The client took her to an Italian restaurant to wait for the interpreter ….. after she met the interpreter, they come back to the shop to take a photo as evidence for*

[85] Fol.87-90
[86] Fol.93
[87] Fol.95
[88] Fol.93-95
[89] Fol.95-98
[90] Fol.111-113
[91] Fol.114

the policeman, but on the way the shop owner Winston and his girlfriend stopped the car and they tried to rob her again, her wallet and mobile phone.".[92] L-imputati kienu barra l-hanut *"the interpreter and her sit in the front of the car, and Winston once he saw the car he stand in the front to stop the car, and then once the car stopped Winston tried to ask her about the key for the shop, and then tried to grab her wallet and the phone from the window. [Spettur: Did he manage?] …. The wallet not because she threw it to the back. But the phone yes. …After Winston got the mobile the interpreter was also afraid and she drive the car to the police station directly ….. after they arrive at the police station the policeman help her to get back her passport and mobile because they tried to find Winston and his girlfriend at the end. [Qorti: Therefore you got the mobile and the passport at that time?]…..Yes….After she got back her mobile she couldn't find anything like her photos she took and the recordings…. when Winston is stopping the car and grabbing mobile his girlfriend was also there sitting near the street and pointing at them. She cannot hear what she is saying because there is a bit of distance between them.".*[93]

Ix-xhud tghid li meta kienet ic-Cina w giet offruta b'dan l-impjieg issemmew biss *massages* u xejn dwar sess. Kien hemm tlett okkazzjonijiet fejn **meta rrifjutat taghti servizzji sesswali kellha thallas lill-imputati ghall-introjtu mitluf;** l-ewwel darba €20, u f'zewg okkazzjonijiet ta' wara €30 bil-flus tircevihom l-imputata li kienet tkun il-hanut maghha.[94]

In kontro-ezami tixhed li **kienet l-imputata li qaltilha b'dawn l-*extras***[95] wara xi gimghatejn li kienet wasslet Malta.[96] Wara gimgha mill-wassla taghha cemplet lil Liu ghaliex ma felhietx il-guh aktar; mal-ikel din gabitilha *condom* ghaliex issuspettat li ser ikollha taghmel atti sesswali wara li gharfitha lil-imputati hadulha l-passaport.[97] Ixxukjat ruha x'hin rat il-*condoms* u tghathom lill-imputata li qaltilha li hi kienet ser itiha *condoms*.[98] Tinsisti li kienet gabet bizzejjed hwejjeg maghha u ma kellhiex bzonn aktar[99] izda *"His girlfriend choose the dress for her and let her to try it on, and then let Winston to see if it fit or not.* ***If Winston said okay they got clothes.".***[100] Darba biss uzat dawn il-hwejjeg biex harget filghaxija ghaliex il-bqija tahdem u torqod biss.[101] Kien hemm xi 5 jew 6 darbiet li klijenti harguha ghall-ikel u dan kien ma klijent ghall-habta ta' nofs

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92 Fol.115
93 Fol.116-117
94 Fol.118
95 Fol.125
96 Fol.126
97 Fol.127-128
98 Fol.131-132
99 Fol.1401-41
100 Fol.142
101 Fol.143

Ottubru qabel ma marret ghand il-pulizija. Klijent Taljan offrielha torqod lukanda ghal bejn 3-6 ijiem billi taha l-*key card*.[102] Meta darba sebhet ma tiflahx intbghatet tfajla Ciniza biex ticcekja jekk kienx minnu w kien hemm li qalulha taghlaq il-hanut ghaliex qabel ma emmnuhiex u sahansitra kienu rrabjaw meta qaltilhom li ma tiflahx.[103] Kien hemm xi 9 tipi ta' *massages, "The prices for different services are not the same, but what she earns like 5 Euro per half hour is fixed."*.[104] **Il-hlas taghha kien €5 ghal *massage* ta' 30 minuta u €10 ghall-*massage* ta' aktar.** Dak li jkun imiss lilha kien jittiehed fl-ahhar tal-gurnata meta jsir rendikont tal-introjtu tal-jum.[105] Il-flus tal-hanut kienu jingabru bejn darba sa tlett darbiet kuljum u meta l-imputata ma kienitx tkun il-hanut kienet taghmel kuntatt maghha permezz ta' app Ciniza *WeChat*. Darba biss haduha tiehu kafe.[106]

Spjegat li meta **l-imputata ordnatilha taghmel dak li xtaqu l-klijenti** ghall-ewwel ma fehmitx x'riedet tghid biha ghaliex l-intendiment kien li taghti *massages*. Izda fehmet x'riedet tfisser b'dak il-kliem meta giet **sfurzata tidhol fil-kamra u tigi abbuzata sesswalment mill-klijent xi gimghatejn wara li bdiet fl-impjieg.[107]** Tichad li l-imputat ried iwaqqafha milli tippresta servizzji sesswali fil-hanut.[108] Tikkonferma li ghamlet assi sesswali fil-hanut Oriental biss.[109]

Li Jianmin xehed dwar dak li assistha ghalih wara li tfajla Ciniza, haddiema f' *massage parlour*, talbet l-ghajnuna tal-Ambaxxata Ciniza. Ix-xhieda tieghu tikkorobora l-verzjoni ta' Zhai w tgiddeb dik ta' Gera in kwantu ghal kif insteraq il-*mobile* taghha mill-istess imputat.

Ix-xhud semma' li Zhai rrakontatlu t-trattament li rceviet waqt fl-impjieg mal-imputati. Jixhed, "*She said she was working in massage parlour and was not treated very well, and she wanted to report to the policeman. I said okay I can help to translate; do you have your ID card with you? Do you know where you are living, whatever? And she said that she has her ID card with her but she doesn't know exactly where she works. I said okay no problem you can take a photo….And then I said okay I can take you to where you live or where you work, you can take a photo, at least you can make it clear to the police, and then I drove her, I think in St Julians, the street I think it is a street from Dragonara, from that point up to the Hilton, you know that road, and **when we passed by where she worked she used her mobile phone to take a photo of***

[102] Fol.144
[103] Fol.146
[104] Fol.150
[105] Fol.151
[106] Fol.152
[107] Fol.152-153
[108] Fol.155
[109] Fol.156

the façade of the massage parlour. Of course I stopped a little bit in front of the massage parlour. Suddenly, and there was a man rushed to my car, and told me to stop, and in the meantime he trust his hand to grab the key and the mobile phone ….. *because I was sitting on the driver's seat, the girl sit near me, and she was facing the massage parlour. She was taking the photo. [Qorti: Okay so when you say trust his hand to grab what or whom?] Mobile phone. Then in the meantime he told me to stop. You know stop here. And then he trust his hand grabbed the keys, you know the keys were near the break handle, then he told me to stop. I was shocked you know when he was grabbing everything from my car. I told him I cannot because I don't want blocked road because a lot of traffic behind me. He said park over there in the corner, and I was shocked, I said okay we have to leave, because my mobile phone, my wallet was over there as well near my handbrake. And I said okay let's run away. And I sped up and drove to the police station in St Julians…..* ***The man grabbed her mobile phone and she said she lost all the information****, and fortunately she still had her ID card with her, and then I help her translate to the policeman."*. Jgharraf lill-imputat Winston Gera bhala din il-persuna maskili.[110]

Ryan Spagnol, rapprezentant tal-Agenzija Identity Malta, xehed li **Wannipha Passada mhix maghrufa mal-agenzija, u cioe` ma kellhiex u lanqas ma jirrizulta li qatt applikat ghal *residence permit*,** filwaqt li Wang u Zhai applikaw u nghataw *work permit* u permess ta' residenza.[111] Dwar l-imputata Tianxia Zhang jghid li applikat l-ewwel darba fl-2015 ghal skopijiet ta' kors fl-Ingliz. Wara li dan il-permess skada, geddet ir-*residence permit* taghha bhala *partner* ta' cittadin Malti Winston Gera. Spagnol jiddikjara li **sakemm Tianxia Zhang tibqa' tghix mall-istess cittadin Malti, ma' tistax tahdem f'Malta.[112]**

Joseph Saliba in rapprezentanza ta' Jobsplus esebixxa numru ta' dokumenti li juru li Lili Wang u Shuang Zhai nghatlhom permess biex jahdmu ma Oriental Massage Centre fid-9 t'April, 2017. Mill-banda l-ohra Yubo Zhong inghatat permess tahdem ma Tian Oriental Massage f'Settembru, 2017, bl-ewwel impjieg fl-istess post ikun fl-2016[113]. Madanakollu w minkejja li nghataw *work permits* minn Identity Malta f'Mejju, 2017,[114] Lili Wang u Shuang Zhai ma kienux registrati ma Jobsplus wara li wasslu Malta.[115] Registrata kien hemm biss Yubo Zhong u dan kien biex tahdem ma Tian Oriental Massage.[116]

[110] Fol.214-216
[111] Fol.219-222
[112] Fol.222
[113] **Dok.JS** a fol.772
[114] Fol.776 u Fol.782
[115] Fol.775 u Fol.781
[116] Fol.793

Jigi osservat li annessi mal-applikazzjonijiet maghmula minn Gera ma Identity Malta hemm dikjarazzjonijiet li Wang u Zhai ser jghixu fir-residenza tieghu minghajr hlas! Jghid: *"Ms Zhai Shuang of passport no. G51687396 and Ms Wang Lili of passport no. E15993730 will be living in this residence Dibrell, Flat 2, Triq il-Klarissi, St Julians. This residence is my own 3 bedroom residence … this is just temporary, till they manage to find an adequate residence to rent and live in. When they do find their own residence, I will immediately inform ID Malta with the changes. I would like to state that **I will not charge them any money for their short stay with us**, as they work in my shop".*[117]

Esebit ukoll hemm il-'Contract of Employment' li fih jigi dikjarat li kienu ser jircevu €800 kull xahar kif ukoll *cost of living increases.* Jinghad fil-kuntratt ukoll li ser ikunu ntitolati ghal *vacation leave*, btali f'jiem ta' festa nazzjonali, *sick leave* u hinijiet ta' xoghol kif stabbiliti fil-Hotels and Clubs Council Wages Regulation Order.[118] Fid-dokument intestat 'Position Description' Gera jiddikjara li is-sieghat fil-gimgha huma *"40 hours per week" bil-gross monthly wage ta' €800.*[119] Dokumentazzjoni simili giet esebita wkoll fir-rigward ta' Shuang Zhai, bl-istess indirizz[120] jigi indikat fic-certifikazzjoni tal-assikurazzjoni.[121]

Dikjarazzjoni ohra maghmula minn Gera terga' taghti garanziji li din ser tghix fir-residenza tieghu,[122] fejn **mhux ser thallas ghall-akkomodazzjoni** u ma kull bdil ser jinforma lil Agenzija.[123] L-istess jinghad dwar il-kundizzjonijiet li jirregolaw l-impjieg taghha hekk kif mweghda bil-'Contract of Employment' datat l-24 ta' Marzu, 2017, li fih jissemmew l-istess kundizzjonijiet deskritti aktar il-fuq fil-kuntratt ta' Wang.[124] Simili ghal Wang is-sighat mistennija li tahdem Zhai kienu ta' 40 siegha fil-gimgha ghal paga ta' €800 gross fix-xahar.[125]

Jirrizulta wkoll mill-kuntratt t'impjieg sottomess lil Identity Malta f' para 11:

"The Employer shall provide to the Employee with food facilities and accommodation in house at the Employer's expenses".[126]

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117 Fol.237
118 Fol.275-276
119 Fol.282
120 Fol.319
121 Fol.320
122 Fol.321-324
123 Fol.325.
124 Fol.369 et seq.
125 Fol.376
126 Fol.372

Korroborazzjoni ohra li timmilita versu kreddibilita` shiha li ghandha tinghata lix-xhud Zhai; tassew Zhai hi xhud li l-imputati, anke permezz tas-sottomissjonijiet orali tal-abbli difensur taghhom, jaghmlu sforz qawwi biex jiskredithawha, izda ma jirnexxilhomx.

Jigi mfakkar li Zhai tixhed hekk: "*The shop owner promised her **before** that she will have a place to live, however after she arrived and settled at the shop ……If she chose to live outside from shop she was asked to pay 30 Euro and Winston called this a tax for living out*".[127]

Mill-provi jirrizulta li dawn iz-zewg tfajliet lanqas ma rifsu fuq l-ghatba ta' Gera ghaliex mill-ajruport ittiehdu direttament fil-hwienet. Lanqas ma ngabet xi prova li kif mwieghed minnu nforma lill-Identity Malta bil-fatt li kienu qed jirrisjedu f' fond differenti mir-residenza tieghu w bi hlas!

Rizultanzi li jimmanifestaw **in-nuqqas t'affidabilita**` tal-imputat Gera li ma ddejjaqx **jizvija l-awtoritajiet;** ghemil li jikxfu bhala ragel bla skrupli, lest jisfrutta l-mizerja ta' dawk li kienu qed jiddependu minnu ghall-ghajxien taghhom, wara li bi pretensjonijiet foloz u qarrieqa, inducihom ihallu art twelidhom u jigu jahdmu Malta, ta' fuqhom senduqhom.

Jo Bhong Zong [*recte* Yubo Zhong[128]] li l-pulizija semmiet kif ma gietx meqjusa bhala vittma ta' traffikar, xehdet li hi tghix ma familtha, lkoll Maltin. Kienet ilha tghix Malta sitt snin u bdiet tahdem ma Winston sena qabel fil-hanut Mandarin Oriental Massage f'San Giljan.[129] Kienet tahdem bejn l-10am-7pm u **minflok salarju kienet tithallas *commission* ta' bejn €5-€10** ghall-*massage* ta' 30 mins u 60mins rispettivament.[130] Tikkonferma li jekk ikun hemm klijent wiehed f'jum kienet tithallas biss €10 ghal gurnata xoghol. [131] Hadmet ma Gera minn Awwissu, 2016, sa Ottubru, 2017 u kienet tarah darba f'gimgha meta kien jigi jigbor il-flus. Gieli ghenet kollegi ohra li jahdmu fi hwienet diversi.[132] In kontro-ezami tikkonferma li kien hemm okkazzjonijiet fejn l-imputati cemplu lil haddiema biex johduhom kafe, kienu jwissuhom li jekk klijent ikun fis-sakra ma ghandhomx idahhluhom fil-hanut u f'kaz li jkun ser jaqla' l-inkwiet kienet iccempel lil Gera.[133] Tixhed li Gera qal lil Shuang li ma kellhomx jaghtu servizzji sesswali. Fil-*massage room* ta Mandarin u Oriental kien hemm *panic button* izda

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[127] Fol.87-88
[128] Isem registrat ma Jobsplus, **Dok.JS** a fol.772 et seq
[129] Fol.520-521
[130] Fol.522
[131] Fol.523
[132] Fol.525
[133] Fol.526

ma ssemmix fejn fil-kamra kienet tinsab.[134] Tikkonferma li Gera tahom permess joqghodu aktar mis-7pm u li ma kienx hemm problemi ghal *leave*.

Madanakollu l-Qorti ma setghetx ma tindunax li d-domandi maghmulha lix-xhud mill-abbli difensur in kontro-ezami ma kienu marbuta bl-ebda mod ma dak li xehdet in ezami kif tirrikjedi l-procedura penali.

Dan qanqal dubbji serji fil-Qorti kemm kienet qed tkun veritjiera x-xhud fir-risposti taghha. Kien ghalhekk li l-Qorti pprocediet biex tidhol aktar fil-fond dwar x'riedet tfisser Zhong meta qalet li Gera kien jaghtihom granet ta' *vacation leave*. Fil-fatt irrizulta li meta **ma kienitx tmur ghax-xoghol din ma kienitx tithallas** u kwalunkwe hlas percepit kien abbazi ta' kemm ikollha klijenti. Indubbjament dan ifisser li jekk tiehu gurnata *sick* ma kienitx tithallas ghaliha:

"Spettur: Were you ever sick and could not go to work?
Xhud: Yes sometimes.
Qorti: And did you go to work just the same or not?
Xhud: No I call my boss I tell him I am sick, and he said okay stay home.
Spettur: And ***were you paid anything for that day which you took sick leave?***
Xhud: No for clients*.".*[135]

IV. Xhieda tal-Imputati

L-imputat **Winston Gera** ghazel li jixhed. Simili ghall-istqarrijiet tieghu, Gera jiskontra diffikulta` kbira biex jaghti xhieda elokwenti. In-nuqqas ta' verita` f'dak li jistqarrr twasslu sabiex jikkontradixxi lilu nnifsu kif ukoll jaghmel dikjarazzjonijiet li jisfidaw s-sens komun, il-logika w huma kontradetti anke mill-provi migbura, kif ser jintwera meta tigi kkunisdrata w meqjusa din ix-xhieda.

Jiddeskrivi li kien ilu seba' snin jiggestixxi l-hwienet tieghu Oriental f'Church Street, Paceville; Mandarin u Yuan f'Paceville Avenue, Paceville; Tian Massage fil-Hamrun u hanut iehor fl-Alexandra Hotel.[136] Jispjega kif ghal bidu kien ikun hemm min imur ghall-servizzji ohra, bl-*extras,* u ghalhekk ghamel mezz biex ikun fil-hanut filwaqt li fuq il-*facebook page* tieghu kien jaghmilha cjara li ma jaccetax attivitajiet simili.[137]

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[134] Fol.526-528
[135] Fol.530
[136] Fol.943-944
[137] Fol.944-945

- Esebixxa estratt mill-*facebook* tieghu li jirrisali ghal hafna qabel id-dati indikati fl-imputazzjonijiet odjerni, u cioe` kwazi **sentejn qabel** fi Frar, 2015.[138]

Fl-istess zmien, Marzu, 2015, kien ghamel *pamphlet* dwar dak li kien permess u dak li ma kienx. [139] Gera esebixxa ghad ta' dokumenti ntestati 'Staff Recruitment' ghal numru ta' impjegati li jsostni li kienu jelenkaw il-kundizzjonijiet ta' xoghol taghhom.

- Madanakollu jigi nnutatat li dawn mhux talli huma biss fotokopja mhux awtentikata izda jirrigwardaw impjegati li isimhom mhux decifrabbli. Iktar minn hekk id-dati fuqhom huma tal-2012-2016 u sa nofs is-sena 2017. [140] Dan ifisser li Gera jrid jroxx il-bzar fl-ghajnejn b'dawn id-dokumenti ghaliex l-ebda wiehed ma jikkoncerna lil xi wahda mill-vittmi, li tnejn minnhom Wang u Zhai wasslu Malta xahrejn qabel ma gie arrestat u cioe` f'Awissu 2017!

  Fil-fatt Gera naqas milli juri xi ftehim simili maghmul ma Wang, Zhai jew Phassada! Il-Qorti ma tistax ma tosservax ukoll li ghalkemm Gera jallega li bosta kienu l-messaggi fuq *facebook* jitolbu servizzji sesswali li jghid li dejjem irrifjuta, giet esebita biss *exchange* minn **Frar, 2015**. Fejn hi l-prova li hu ma kienx jaccetta hwejjeg simili? Fejn hi l-prova ta' dawn l-*exchanges/chats* fejn hu suppost qatalhom barra? Forsi ma ngabitx ghaliex kien jinkorragixxi tali ghemil fil-hwienet tieghu kif jixhdu Wang, Zhai u Phassada?

Isostni li Shuang Zhai kienet il-*mastermind* li ffabrikat l-allegazzjoni kontrih; fl-istess hin jirrikonoxxi li dawn hallsu ammonti kbar ta' flejjes biex jigu Malta u jghid li minhabba f'hekk, u minkejja li Zhai ma kienitx taf taghmel *massages*, xorta zammha w impjegaha.[141]

- Dikjarazzjoni bhal din turi li Gera ftit kien interessat li dawn jaghmlu *massages* fil-veru sens tal-kelma. Altrimenti ghaliex impjegaha f' *massage parlour* jekk sa mill-bidu nett induna li ma kienitx kapaci? Min ihemm ghalik ma jgghelekx thallsu €150 f'xahar biex tghix f'kundizzjonijiet *sub standard* meta precedentement weghdhom akkomodazzjoni b'xejn!!

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[138] Fol.946 u vide **Dok. WG** a fol.985 et seq
[139] Vide fol.988-990
[140] **Dok.WG1** a fol.991-1012
[141] Fol.948

- Fl-ewwel lok il-Qorti tqis li minkejja l-flus li hallsu biex jinstabilhom impjieg f'Malta, Gera ma rregistrax lil Wang u Zhai ma Jobsplus – turija li ma kellux intenzjoni li jidhol f'relazzjoni maghha bhala *employer-employee.*

- Fit-tieni lok, tqum id-domanda: ghaliex kellha tiffabrika storja kontra min kien jipprovdilha l-ghajxien taghha??

Izid li l-problemi ma Zhai bdew sa mill-ewwel jum li wasslet Malta.[142] L-imputat jsemmi li l-agenta li gabitha Malta kienet haditilha *condoms* li Zhai qaltlu bihom.

- Mela kif jista jitwemmen Gera meta jghid li hu ma riedx lill-impjegati jaghmlu atti sesswali u fl-istess hin jammetti li Zhai qaltlu bihom? Ma jaghmilx sens li din kellha ghalfejn tikxef idejha mieghu jekk verament hu ma kienx jaf x'kien qed isehh fil-hwienet tieghu u/jew ma kienx jippermetti atti ta' prostituzzjoni fihom!

  Mhemmx dubbju li l-imputat fit-tentattiv tieghu sabiex ihammeg lil Zhai, jispicca **maqbud fin-nassa ta' gideb fabbrikata minnu stess.** Ghall-kuntrarju Gera kien jaf ben tajjeb dak li Zhai kellha taghmel biex iddawwar lira zejda u b'hekk tressaq aktar klijenti lejn il-hwienet tieghu; kien ghalhekk li paga ma nghatatx kif originarjament mweghda biex hi kellha **bilfors tispicca tiddependi fuq l-ghoti ta' servizzji sesswali**.

Ikompli li l-agenta - li lanqas biss ma jiftakar isimha ghalkemm jammetti li cemplilha - qaltlu li ahjar ihalliha taghmel li trid ghaliex inkella kien ser jitlifha.[143] B'koincidenza kbira kien propju fil-jum li ghamlet rapport mal-pulizija li Gera jixhed li ried ikecci lil Zhai mill-impjieg.[144]

Gera jasal jiddikjara li rregistra l-impjegati mal-ETC (Jobsplus) meta Joseph Saliba jghid propju l-kontra!

- Filwaqt li Gera jixhed li registral ill-impjegati kollha *"Iva kollha"*,[145] Saliba jghid cjar u tond li Zhai u Wang ma kienux registrati ma Jobsplus ghalkemm kellhom *work permit*. Phassada u Zhang, l-imputata, ma kienux registrati lanqas.

[142] Fol.949
[143] Fol.950
[144] Ibid.
[145] Fol.951

Mitlub jipproduci l-*engagement forms* tal-impjegati, Gera jiddikjara *"dawk ma gibtx ghax ma nafx li ghandi bzonn ingibhom"*; dan meta din hi wahda mill-imputazzjonijiet addebitati lilu w wara li sema' u ra lil Saliba jipprezenta dokumentazzjoni li turi li **Zhai u Wang ma kienux registrati ma Jobsplus**!!

Hu l-imputat stess li jammetti li l-hinijiet ta' ftuh tal-hwienet kienu jinqabzu ***"Nista nghidlek il-hinijiet, pero il-hinijiet kienu jinqabzu ... Mil-10:30 am sas 7:30 pm"*** u li ma kienx izomm registru dwar x'*vacation leave* kien jittiehed "***Le, m'ghandiex registru.... meta jridu jiehdu leave.....Qatt ma nizilt xejn,***". Jghaddi biex jikkonferma dak li xehdu l-impjegati li paga bazika ma kellhomx izda kienu jithallsu b'*commission* fuq kull *massage*, "***Jekk jahdmu 8 sieghat hadu 5, 10 euro jew 15 ghal kull massage skont massage ikun u dawk, imbaghad ghandhom il-gratuities li jaqalghu dawk ghalihom u jien niehu it-20 euro."***[146]Pressat ghall-dettalji dwar *leave* li kien jaghtihom jammetti li ma Zhai, Wang u Phassada ma kienx tkellem dwar *leave* u *sick leave*, *"Kemm kienu ilhom jahdmu hawn* ***lanqas biss tkellimna fuq dawn l-affarjiet".***[147]

L-imputat ikompli li kienu biss Zhai u Wang li zammhom jabitaw fil-hwienet tieghu w kien gja sabilhom flat biex jaqsmuh bejniethom.[148] Esebixxa *chat* mal-agent bl-isem Keith fejn fid-19 t'Awwissu tirrizulta korrispondenza dwar flat b'€550 mensili bhala kera.[149]

- Hawnhekk jitfakkar dak li xehdet Lili Wang meta ssemmiet li ghalkemm kien iweghdhom li ser issibilhom akkomodazzjoni, din il-weghda qatt ma mmaterjalizzat: *"Winston and his girlfriend told her there is a house to live for all the massages, and till now there is no such a place.... Winston said there is a house for them to live but there is no such place. [Qorti: How does she know did she ask to go somewhere better?] Winston mentioned he rent a place and until today there is no more message from this place."*.[150].

  Il-Qorti trid tissottolineja li huwa ghal kollox irrilevanti li Gera kien qed jipprova jsib appartament ghalihom. Kemm kellhom ragun iz-zewgt tfajliet ragun ma jaccetawx li jmorru fil-flat offrut lilhom bi €550 meta fil-Para.11 tal-kuntratt li ffirmaw ma Gera hu weghdhom li kien ser ihallas hu ghall-akkomodazzjoni:

146 Fol.951-953
147 Fol.954
148 Fol.957
149 **DokWG2** a fol.1013-1015
150 Fol.195-196

"11. Board and Lodging: *The Employer shall provide to the employee with* ***food facilities and accommodation in house at the Employer's expense****."*[151]

L-imputat konvenjentement ma jaghmel l-ebda riferenza ghal din il-klawzola bir-raguni tkun li qatt ma kien intenzjonat iharisha.

Ikompli jixhed li kien lmenta dwar hwienet ohrajn tal-*massages* li kienu jipprovdu servizzji sesswali mal-Ispettur Sandro Camilleri w esebixxa *chat* mieghu; [152] *chat* li tirrisali ghal Dicembru, 2016 sa Marzu, 2017 u ghalhekk xhur qabel il-wassla ta' Wang u Zhai. Bis-semplici fatt li jilmenta ma spettur dwar dak li kien qed issehh fi hwienet ohra, ma jezonerahx minn risponsabbilita` kriminali ghal dak li halla jsir fi hwejjgu fix-xhur ta' wara. Wara kollox kif jinghad, *if you cant beat them join them!* Minghajr ma jinghad xejn li min wasal jipprova jqarraq bl-awtoritajiet billi jaghdilhom kuntratti ta' xoghol fazzulli, fejn maghhom jaghmel dikjarazzjonijiet inveritjieri, daqstant iehor ma jistax jigi eskluz li b'makkakerija w b'hazen, inqeghda bic-*chat* mal-Ispettur Camilleri f'tentattiv biex jiskolpa ruhu f'kaz ta' bzonn f'xi data futura, kif fil-fatt sehh.

Tant Gera qatt ma kellu intenzjoni jhaddem lill-impjegati bil-kuntratt t'impjieg li ssottometta lil Identity Malta w li gie ffirmat mal-impjegati Zhai u Wang - liema impjegati baqa' ma rregistrahomx ma Jobsplus - li fuq domanda tal-avukata tieghu stess jasal jghid li ma kien hemm l-ebda kundizzjoni dwar akkomodazzjoni:

Dr. Marion Camilleri: Issa min-naha tieghek qatt ghamiltilhom xi kundizzjoni dwar fejn ghandhom joqghodu?
Winston Gera: ***Fejn jghixu? Le,*** *l-unika kundizzjoni li ghamiltilhom hi li jekk jaddi xahar iehor ma' nistax inzommkom hawn, jigifieri ultimatum ghidtilhom ghax il-bagalji, il-hwienet zghir il-bagalji jigru l-hawn u l'hemm, jsaru hemm, spa riha ta' incens mhux riha ta' qarabaghli.*
Dr. Marion Camilleri: Jigifieri ir-reazzjoni ghall-fatt li kienu qed jghixu gol-hanut, x'kienet? X'kienet ir-reazzjoni tieghek ghal-fatt li dawn kienu qed jghixu gol-hanut inti x'ghidtilhom? Diga spjegajt parti minnhom
Winston Gera: Gimgha wara gimgha, jumejn wara jumejn nitolbuwom u niletikaw jiena u dik ghax jien ghedtilha tajtek zmien biex dan ghidtilha ma' jistax ikun nibqa sejjer hekk u ghidtilhom jekk ha tibqghu hawn nibda inzommilkom il-kera, biex inbezzahom biex immorru x'imkien iehor pero dik ghidta biss lanqas qatt ma' hadd one cent.[153]

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[151] Fol.273 et seq Kuntratt ta' Wang Lili u fol.369 et seq Kuntratt ta' Zhai
[152] Fol.960
[153] Fol.961

Donnu nesa li fl-istqarrija jammetti li ha **€150** ghad-dawl w ilma minghand Zhai u Wang! Kif jghid il-Malti, il-giddieb ghomru qasir! *Multo magis*, Phassada tixhed li hi kienet tghaddi **€200** fix-xahar lil Gera.[154]

Jistqarrr li meta kienu jsibu mument kwiet johodhom jieklu l-Avenue, u dan kien issehh darbtejn jew tlieta fil-gimgha. Jghid li qed jesebixxi ritratt ta' dak li jsejjah il-*Christmas staff party*, fejn stranament jindika lil Wang Lili, meta din ix-xhud tghid li wasslet Malta fid-9 t'Awissu, 2017,[155] xahrejn qabel ma nbdew il-proceduri odjerni w ghalhekk certament ma setghetx tkun f'xi *Christmas party*![156] Mhux ta' b'xejn li mbghad ghazel li ma jesebix l-imsemmi ritratt.

In kontro-ezami jichad li zamm il-passaporti ta' Zhai jew Wang jew li talab flus jekk izommuh huma.[157] Ir-raguni li kellu ghandu l-*mobile* ta' Zhai kien ghaliex dawn kienu mdendlin ma holqa li kien hemm fuq il-mobile w hu jiehu c-cwievet ried: *"Issa l-mobile taghha bil-holqa u c-cwievet qedghin hemm, ic-cwievet ma' taghtomlix, rajthom fuqha u tellajt ic-cwievet u maghhom tela' l-mobile"*[158]

- Izda dan jigi kontradett mir-rapprezentant tal-Ambaxxata Ciniza li jishaq li fil-hin li Zhai kienet qed tiehu r-ritratt ta' Winston u l-hanut, **ic-cwievet kienu fejn il-*hand break* u hatafhom Gera.**

  Gidba wara l-ohra, hrafa wara l-ohra, hu dak li jikkaraterizza l-verzjonijiet li kapaci jaghti Gera, mhux biss mal-pulizija izda sahansitra fuq il-pedana tax-xhieda. Jianmin ixxejjen anke din il-fabbrikazzjoni tal-imputat u jispjega li wara li Gera dahhal idu minn got-tieqa u ha c-cwievet li kienu hdejn il-*hand break*, hataf il-*mobile* li kien **f'idejn** Zhai, "***She was taking the photo***. *[Qorti: Okay so when you say trust his hand to grab what or whom?] Mobile phone. …. And* ***then he trust his hand grabbed the keys, you know the keys were near the break handle"***.[159]

- Riflessjoni ta' kemm ma ghandux problemi jigdeb mal-awtoritajiet hu l-fatt li ma Identity Malta ma ddejjaq xejn jaghmel dikjarazzjoni falza meta mhux biss qal li l-impjegati Wang u Zhai ser jghixu mieghu, izda pprezenta kuntratt t'impjieg li fil-para. 11 tieghu hemm stipulat li kien ser ikun hu li jhallas ghall-akkomodazzjoni taghhom:

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[154] Fol.40
[155] Fol.170-171
[156] Fol.967.
[157] Fol.973
[158] Fol.974-975
[159] Fol.214-216

"Prosekuzjoni: Tajjeb, issa inti semmejt li kienu joqghodu gewwa go dan il-hanut, jekk nissugerilek li inti lil Identity Malta tajthom indirizz tieghek, tad-dar tieghek, xi tghidli?
Winston Gera*: *Ija vera
Prosekuzjoni: U x'inhi r-raguni imbaghad li ma' kinux jirresedju fl-indirizz tieghek u kienu qed jirresedu gol-hanut tieghek
***Winston Gera**: Ezatt, ghax <u>qabel jigu ikun irid ir-rent declaration form</u> li fejn ha joqghodu u mhux ha joqghodu*
Qorti: Fejn qedgha din ir-rent declaration form?
Winston Gera: Le dik meta taghmel l-application tal-ID Malta
***Qorti**: Dik li hemm ezebiti fl-atti u iffirmajt li kienu ser joqghodu ghandek? Jigifieri <u>qed tghidli, inti issottometejt lill-Gvern li kienu ser joqghodu ghandekk, meta ma' kinux ser joqghodu ghandhekk, hekk hu</u>?*
***Winston Gera**: **Iva"**.*[160]

Stranament l-imputat ma gie addebitat bl-ebda imputazzjoni fuq dikjarazzjoni falza li tirrizulta in kwantu ghad-dokumentazzjoni li ssottometta bil-ghan li jinhargu *work permits*. Madanakollu r-rizultanzi jirriflettu l-karattru xejn onest tieghu.

Meta jigi mistoqsi dwar il-kundizzjonijiet tax-xoghol li kienu mistennija jissottomettu rwiehom ghalihom l-impjegati, johrog bic-cjar kemm Gera kien ihaddimhom <u>minghajr ideja tal-ligijiet l-izjed elementari li jirregolaw hinijiet u salarju</u>.

Kemm allura aktar jaghmel sens dak li xehdu l-impjegati meta jghidu li kienu **jahdmu kuljum mit-Tnejn sal-Hadd, bla *leave, sick leave* u hinijiet esagerati, fejn paga ma kellhomx** u b'hekk in vjolazzjoni tal-'Contract of Employment' li ffirmaw ghalih qabel ma gew Malta:[161]

***"Prosekuzjoni**: Kif kont thallashom bir-rata meta kienu jaqbzu is-sieghat, 40 siegha tax-xoghol? Kif kienet ir-rata x'kien il-ftehim?*
***Winston Gera**: Huma meta miktub cara fuq dik il-karta li kellhom jiffurmaw qabel*
***Prosekuzjoni**: Kif kien il-ftehim taghkom u kif kont thallashom bir-rata tal-overtime, x'kienet?*
***Winston Gera: Huma hekk jithallsu, 5 euro ta' 25 euro massage, 15 euros ta' 90 minutes u 10 ta' 60 minutes dik il-paga, dik il-commission** ghandhom ic-cavetta, jidhlu u jitilqu fi x'hin iridu....*
***Prosekuzjoni**: Mela ha nurik dokument li qieghed min 273 sa 278 tal-process, qed nurik propju 278 jekk nurik din il -firma taf tghidilna ta' min hi din il -firma?*
***Winston Gera**: Iva.... Tieghi*[162]*.....*

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[160] Fol.976
[161] Vide kuntratti a fol.273 et seq (firma a fol.278) u a fol.369 et seq (firma a fol.374)
[162] Fol.978

***Prosekuzjoni**: Hawnhekk inti kont ghamilt prezentajt dan il-kuntratt lil Identity Malta u kont ghedtilhom bil-kundizzjonijiet tal-work, tax-xoghol ghedtilha fil-kuntratt kien hemm miktub li kien ha jkolla tmien mitt euro fix-xahar, sick leave u hours of work skont il-kundizzjonijiet ta' Malta, issa inti qed tghidilna li dawn kienu jithallsu b'commission, x'inhi r-raguni li lil Identity Malta ghedtilha li din kien ha jkolla tmien mitt euro u issa lil din il-Qorti qed tghidilha li dan kienet qed tiehu skont kemm ikola klijenti, x'inhi r-raguni?*
Winston Gera**: Issa, **il-kuntratt dak work contract sar dan l-ahhar, kien isir meta konna napplikaw qabel
***Prosekuzjoni**: Jiena fuq dan il-kuntratt mhux kif kien isir, lil Identity Malta ghedtilhom li ha thallasha 800 euro fix-xahar, lil Qorti qed tghidilha li kont thallasha per client, <u>x'inhi r-raguni li lil Identity Malta ghedtilha informazzjoni mod imbaghad ghamilt modd iehor, x'inhi r-raguni</u>?*
Winston Gera**: Ir-raguni dak johrog dak il-kuntratt, **jien ghalhekk naghmel dik il-karta qabel biex imma dak il-kuntratt bilfors irid isri biex ikun hemm, biex jaghdi work permit
***Prosekuzjoni**: Nghidlek sew li barra dawn il-flus, fejn kienu jiresedu riedu jhallsu ghalieh? Kienu qed joqghodu fil-massage parlor riedu jhallsu ghalieh? Kemm kienu jhallsu? Naqblu jew le?*
***Winston Gera**: Le*
***Prosekuzjoni**: Mela jekk nissugerilek li kienu jhallsu 150 euro extra ohra fix-xahar biex joqghodu gewwa zewgt ikmamar b'saqqu mal-art, fl-istess post tax-xoghol, fejn suppost in-nies qedghin jahdmu? Xi tghidli dwar dan?*
***Winston Gera**: Nghidlek li mhux vera, mhux vera tas-saqqu mal-art ukoll*
***Qorti**: Fejn kellhom kamra tas-sodda allura?*
***Winston Gera**: Le, **dak hanut m'huwiex biex joqghodu n-nies fih**, jien ghalhekk ma' ridt lil hadd fih, pero xorta kien hemm sofa bed f'kull hanut hemm sofa bed.".*[163]

L-imputata **Tianxia Zhang** ukoll ghazlet tiehu l-pedana tax-xhieda.

Jigi osservat li ghakemm l-abbli difensur taghmel bosta domandi li bla dubbju huma *leading questions*, tenut kont li x-xhieda ta' ko-akkuzat la tista tiskolpa w lanqas tissarraf fi pregudizzju kontra ko-akkuzat l-iehor, il-Qorti qed tiskarta t-twegibiet intizi biex jiskolpaw lil Gera.

Zhang tispjega li wasslet Malta fl-2015 u ilha *girlfriend* ta' Gera mill 2016.[164] Tghid li kienet tkun fil-hwienet ta' Gera <u>izda ma taghmel xejn</u>, dikjarazzjoni li giet kontradetta mill-vittmi li jsemmu kif kienet tghinhom fil-*massages.*

Tishaq li l-allegazzjonijiet maghmula mit-tfajliet huma foloz. Dawn ma kellhomx fejn jirrisjedu w Winston prova jsibilhom appartament izda, peress li ma qablux fuq kera, thallew jirrisjedu fil-hanut. [165] It-tfajla 'Ta' (fil-verita`

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[163] Fol.979-980
[164] Fol. 1048
[165] Fol.1049-1050

jisimha Wannipha Phassada) mit-Tajlandja, bhaz zewg tfajliet l-ohra, talbet lil Winston biex tibqa tghix fil-hanut ta' hdejn l-Avenue. Qatt ma lmentaw maghha dwar kundizzjonijiet tal-impjieg taghhom.[166] Issemmi li marru jixtru hwejjeg lil Zhai minn Terranova ghaliex kull ma gabet maghha kienu biss zewgt tibdiliet. L-ohrajn kienu jilbsu ilbies *casual* izda sekondi wara tghid li *"l-impjegati ta' Winston ghandhom uniformi"*.[167] Mitluba tispecifika min kienu dawn il-persuni b'uniformi, issemmi li kienet it-tfajla li kien hemm qabel li kellha uniformi izda dawn iz-zewgt tfajliet l-uniformi taghhom kienet ghada mhux lesta.[168] L-imputata tixhed li kien hemm okkazzjoni fejn klijent wegga' lil Zhai u meta qalet b'dan lil Winston, kien qalilha biex jekk jerga' jitfacca ma taccetahx. Meta dan rritorna fil-Oriental, tgharrfet lil Winston b'dan u dan mar fil-hanut u qallu jitlaq il-barra.[169]

Tikkonferma li t-tfajliet ingabu Malta bis-sahha ta' agenti u tirreferi ghall-agent li ried li Zhai taghmel atti sesswali, bhala ragel li ghandu mara Ciniza ta' madwar 50 sena izda ismu ma tafux. Wara tghid li l-agent li gabet lit-tfajliet kienet mara. Tiddeskrivi kif gimghatejn qabel ma nbdew il-proceduri, f'nofs Ottubru, ghall-habta ta' nofsinhar kienu sabu l-hanut tal-*massages* maghluq, marru f'hanut tac-Chinese *take-away* il-Hamrun u sabu lil Wang Lily tahsel il-platti. [170] Minhabba f'dan Gera u Wang kellhom argument izda mir-rakkont taghha stess moghti *viva voce* kollox jindika li l-affarijiet baqghu civili ghall-ahhar. Argument iehor ma Wang kien ghaliex riedet tahdem aktar mill-hin stabilit minn Gera izda meta marru sabu l-hanut miftuh bid-dwal mixghulin u din ma kienitx hemm.[171] Il-hinijiet tal-hanut kienu mill-10am sas-7pm b'siegha *break* li kien jittiehed bi flessibilita`.[172] Zhai u Wang kellhom ic-cwievet tal-hanut li kienu jahdmu fih.[173] Mindu beda l-kaz u inghalqu l-hwienet jghixu bi €8 fil-gimgha w ghandhom tarbija. Hi dejjem trattat lit-tfajliet tajjeb u tahseb li ghamlu dawn l-allegazzjonijiet kontriha ghaliex kienu jghiru ghaliha kif ukoll ghaliex ma thallewx jaghmlu atti sesswali li bihom kienu jaqilghu aktar.[174]

In kontro-ezami tishaq li Zhai qatt ma ghamlet *complaints* maghha hlief li *"l-hinijiet ta' xoghol huma qosra wisq"*. Kif ser jintwera meta jigu kkunsidrati il-kotba

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[166] Fol.1051
[167] Fol.1052
[168] Fol.1053
[169] Fol.1055
[170] Fol.1057
[171] Fol.1058
[172] Fol.1059
[173] Fol.1060
[174] Ibid.

elevate mill-hwienet (id-diaries), din id-dikjarazzjoni ghandha mill-ludikru tenut kont li dawn kienu jibqghu miftuhom sa tard bil-lejl!

Zhang tkompli li flus kienu jingabru mill-hwienet kull tlett ijiem jew kull hamest ijiem.[175] Tkompli *"Hemm registru fejn jiktbu xi jkunu ghamlu imbaghad huma jiehdu commission, li jifdal jinzamm fil-kaxxa ghal Winston biex jigborhom….. **Huma jigbru l-ammonti li jkun hemm miktub fuq il-ktieb.**"*[176]. Tammetti li ma kellhiex ghalfejn tahdem ghaliex kienet tghix minn fuq Winston. Kienet tigbor il-flus meta kien jitlobha Winston.[177] Giet Malta permezz ta' agent biex tistudja l-Ingliz, u estendiet il-visa taghha. Tul iz-zmien dejjem hadmet b'agenti biex setghet tibqa Malta.[178] Impjegata wahda kienet tghix fir-residenza taghha f' Tas-Sliema mal-familja taghha. **Taf li Wang Lili kienet tghix fi Tian l-Hamrun, u Zhai f' l-Oriental f'Paceville**. [179] Il-Qorti tistaqsi, ghaliex allura fl-interrogazzjoni qalet li jghixu f'hotel??

L-imputata ma tafx taghti spjegazzjoni ghaliex kellhom jaghmlu l-allegazzjonijiet kontriha ghaliex hargithom jieklu, xtratilhom hwejjeg u dejjem pruvat timxi sewwa maghhom.[180] Kienet tikkomunika mal-impjegati bil-*mobile* taghha u anke tathom istruzzjonijiet hi stess.[181] Bdiet tmur il-hanut wara li gew dawn z-zewgt tfajliet Cinizi ghaliex ma kienux jafu bl-Ingliz.[182] Tikkominika maghom b' *WeChat application* Ciniza;[183] xi haga li semmiet Zhai[184]u punt iehor li jsib korroborazzjoni.

V. Xhieda in Difesa

Xehed **Edward Maggi** li ghandu hanut Paceville u ilu jaf lil Gera tul l-ahhar hames snin. Kull xahar kien jaghmel *massage* ghandu.[185]Qatt ma raha ghajn hazin u kollox kien kif suppost kuntrarjament ghal hwienet ohra fejn staqsa ghal *pedicure* u offrewlu servizzji sesswali.[186] Mistoqsi minn kien itih il-*massage*

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[175] Fol.1062
[176] Fol.1063
[177] Fol.1063
[178] Fol.1065-1066
[179] Fol.1067-1068
[180] Fol.1068
[181] Fol.1070
[182] Fol.1071-1071
[183] Fol.1072
[184] Fol.152
[185] Fol.1076-1077
[186] Fol.1078

jsemmi li din kienet Amanda jew Winston, u hadd aktar. Jghid li Amanda kienet wahda Orjentali u gieli kien hemm *masseuses* ohra orjentali fil-hanut.[187]

Il-Qorti tirrimarka li Amanda hi Maltija li xehdet f'dan il-procediment u spjegat li kienet halliet l-impjieg taghha qabel ma wasslu Wang u Zhai. Ghalhekk ix-xhieda ta' Maggi ma ghandha l-ebda rilevanza fuq l-imputazzjonijiet odjerni filwaqt li ftit jista' jinghad li hi xhieda li fuqha tista' tistrieh din il-Qorti galadarba ma kienx kapaci jiddistingwi persuna Maltija minn dik Asjatika; irid jinghad li kien imur ta' spiss u ghalhekk zgur li kellu zmien bizzejjed jaghmel din id-distinzjoni. Filwaqt li jghid li gie offrut servizzji sesswali minn din it-tfajla Orjentali, jigi mfakkar li hu l-istess Gera li semma' kif din Amanda kienet impjegata ezemplari.

Winston Carbone xehed li fl-2014-2015 kera hanut *ground floor* f'Church Street, Paceville lil Gera.[188] Qatt ma mar fil-hanut ghalkemm kien ikun fil-qrib peress li ghandu flats fuq il-hanut.[189]Jiftakar li madwar sentejn u nofs qabel qabel ra karta mwahhla mal-hanut li *"they shouldn't touch nothing else except the massage".*[190] **L-ispettur Sandro Camilleri** kkonferma li Gera lmenta mieghu dwar dak li kien qed isehh f' *massage parlours* ohra kif ukoll dwar il-fatt li ma ttiehiedx rapport fl-ghassa ta' San Giljan izda ma vverifikax dwar dan. Ma jiftakarx li qatt ltaqa' mieghu ghalkemm kien jiltaqa ma hafna nies.[191]

Trevor Vassallo xehed li fis-snin 2016-2017 u anke qabel kien klijent tal-spa ta' Gera minhabba *dislocated shoulder* li sofra ghaxar snin qabel (2010).[192]L-ahhar li mar kien f'Settembru fejn il-*massage* sar minn wahda Asjatika. Dakinhar il-*masseuse*, ta' statura zghira, qaltlu jnehhi l-*jeans*.[193] Il-post fejn kien izur kien jismu Swedish Therapy u kien jinsab fi Dragonara Road. Qatt ma kien raha qabel din it-tfajla u wara din l-okkazzjoni ma marx izjed.[194]Lil Gera kien jarah f'dan il-hanut izda ma kienx ikun hemm dejjem.[195] Din ghamlitlu sinjal biex inehhi l-*boxers* u l-*jeans* u qaltlu *"take off, take off"* u qaltlu *"blow job"*.[196] Peress li

[187] Fol.1081
[188] Fol.1089
[189] Fol.1090
[190] Fol.1091
[191] Fol.1096-1097
[192] Fol.1101-1102
[193] Fol.1102
[194] Fol.1103-1104
[195] Fol.1105
[196] Fol.1106-1107

sar jaf li Gera kien qed jiffaccja dawn l-akkuzi offrielu biex jixhed[197] u dan kien meta ltaqa' mieghu l-Isptar f'Novembru ftit wara li gie mressaq.[198]

Il-Qorti tistaqsi ghaliex ghazel jistenna li jiddekorru aktar minn sentejn u nofs biex jaghti din ix-xhieda? Ghaliex ma marx ghand l-awtoritajiet qabel? Ghaliex Gera ma talabx biex jinstema dan ix-xhud kif wara kollox hu intitolat jaghmel b'rikors maghmul ai termini tal-artikolu 405(5) tal-Kodici Kriminali? Fl-ahhar nett ma jistax ma jigix nnutat li l-hanut li jsemmi Vassallo mhux wiehed mill-hwienet li l-vittmi ta' Gera kienu qed jahdmu fihom izda hu hanut differenti bl-isem Swedish Therapy. Ghaldaqstant din ix-xhieda hi bla rilevanza dwar l-imputazzjonijiet addebitati.

Keith Rizzo, *letting agent,* ikkonferma li f'temp ta' 4 snin Gera kien kellmu fi tlett okkazzjonijiet sabiex isib akkomodazzjoni ghall-impjegati tieghu izda wara kien krielhom il-post tieghu.[199]Kien ifittex *locations* tajbin u *safe* izda fl-ahhar okkazzjoni ma haduhx u Gera qallu li kien hemm wahda *finicky*.[200]Kien anke uza l-*massage parlour* tieghu madwar hames snin qabel meta ha lill-missieru ghandu. Kollox f'postu rah, xejn hazin.[201]

Monica Gera, omm l-imputat, xehdet li t-tfajla li kienu jsejhulha' 'Ta' (li jirrizulta hi Phassada Wannipha li xehdet *viva voce*), sa mill-bidu nett kienet taghmel kommunikazzjoni maghha w tghidilha li zbaljat tixhed kontra Gera u li *"I want to come and work with Winston"*.[202]

Il-Qorti tosserva hawn ukoll li minkejja li din ix-xhud tishaq li bosta kienu l-messaggi bejniethom, baqa' ma gie esebit l-ebda messagg li jibda biex jikkorobora x-xhieda taghha. Anzi minkejja l-importanza taghha, fejn addiritura din setghet tezonera lill-binha, stranament tghid *"I blocked her"!!* Xhieda ohra sfurzata w mqanzha bl-iskop li tipprova tikkorobora l-verzjoni tal-imputati izda li sfortunatament bhal xhieda ohra in difesa *back fires miserably!* Possibbli meta konxxja li messaggi simili setghu jezoneraw lill-binha, Monica Gera ma ghamlitx *print-out* jew hadet *screen shot* ta' dawn il-messaggi li bghatitilha Phassada? Jekk kien daqshekk essenzjali dak li Phassada kellha xi tghid, x'wassalha tibblokjaha? Kliem ulterjuri huma superfluwi.

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[197] Fol.1108
[198] Fol.1105
[199] Fol.1122
[200] Fol.1123-1125
[201] Fol.1126
[202] Fol.1129-1131

Amanda Borg spjegat li ilha taf lil Gera minn meta kienu tfal. Hadmet mieghu minn Frar, 2016, sa Mejju, 2017, meta waqqfet ghaliex wegghet idejha.[203]Kienet tahdem fil-hanut Oriental bhala *massage therapist.* Il-hinijiet kienu jiddeciduhom ma Gera. Kellhom uniformi *polo shirt* blu bil-*logo* u qalziet li nxtraw minn Gera u kien jinsisti li jintlibsu mill-*staff.*[204]Sa Mejju, 2017, hadd ma kien jghix fil-hanut b'Winston jipprova jsibilhom akkomodazzjoni.[205] Gera ma kienx jaccetta li *massages* ikunu akkumpanjati b'xi *extras* ghax huma kienu professjonisti.[206] Tfahhar lil Gera bhala l-ahjar boss li qatt kellha. **Minflok paga** kien ihallasha fuq kull *massage;* **€10** ghal *massage* ta' siegha, siegha u nofs **€15** u **€5** ghal *massage* ta' nofsiegha ***"Il-hlas taghna ehe".*** Id-dhul kien jigi registrat billi jinkiteb f' *diary,*[207]kien hemm ukoll VAT *receipt book.* Tghid dan dwar Gera:

"Ix-Xhud: Kien jghidilna biex naghmlu tlett (3) VAT receipts….
Il-Qorti: mela qed nifhmek sew, Sinjura, li jkun hemm kemm ikun hemm klijenti, tlett receipts kuljum, biss.
Ix-xhud: Iva, ehe
Il-Qorti: Ikun hemm kemm ikun hemm
Ix-xhud: Iva".[208]

Din ix-xhieda sservi ta' korroborazzjoni ghal dak li stqarrew l-impjegati li kienu jithallsu biss <u>percentagg </u>fuq kull *massage,* minghajr ma kellhom paga. Korroborazzjoni wkoll hi dwar il-fatt li Gera ma kellux inibizzjoni biex iqarraq mal-awtoritajiet billi <u>ma jiddikjarax il-VAT</u> u konsegwentement id-dhul li kien jiggenera mill-hwienet tieghu! Lil Borg kien jghidilha tohrog biss tlett ricevuti fiskali, waqt li dawk li xehdu *viva voce* jsemmu li kellhom struzzjonijiet johorgu biss ricevuta wahda kuljum.

VI. Kreddibilita` tax-Xhieda

Il-kaz tal-prosekuzzjoni hu msejjes mhux semplicement fuq ix-xhieda tal-vittmi, li l-Qorti kellha okkazzjoni <u>tevalwa x-xhieda taghhom minn distanza ravvicinatissima</u> tenut kont li din ittiehdet f'distanza ravvicinata permezz ta' *video-conference*. Irid jigi sottolinejat kemm dawn kienu **riluttanti milli jidhlu f'dettalji ta' dak li ghaddew minnu; tat-toqol u dwejjaq** li mmanifestaw mal-

[203] Fol.1109
[204] Fol.1112-1113
[205] Fol.1113
[206] Fol.1116
[207] Fol.1117
[208] Fol.1118

interpreti waqt li bdew jaghtu dik ix-xhieda; **tal-manjiera li biha rrejaggixew** meta lemhu lill-imputati minn fuq *monitor* jew it-tieqa li taghti ghall-awla 14, **id-dmugh iccarcar ma wicchom** meta rrakontaw il-kundizzjonijiet li gew soggetti ghalihom u **l-agitazzjoni** kbira taghhom meta hasbu li kienu ser jergghu jiltaqaw mal-istess imputati.

Kif irriteniet il-Qorti tal-Appell Kriminali fil-procediment **The Police vs Yilmaz Azlan:**[209]

> The court is guided by article 637 of the Criminal code when appreciating the evidence given by a witness namely that regard being must be given to the demeanour, conduct, and character of the witness, to the probability, consistency, and other features of his statement, to the corroboration which may be forthcoming from other testimony, and to all the circumstances of the case. Thus the court has to conduct a certain exercise when assessing a witness to see whether he is saying the truth or otherwise and follows the above guidelines. However, these guidelines are not exhaustive. The law leaves such matters of discretion in the hands of the Judge who has to analyse such evidence in seeing whether for example a witness is credible or not, sees whether he has an ulterior motive to testify in the manner he did, to examine his behaviour and how he acted whilst on the witness stand and how he answered the questions put forward to him. In carrying out such an examination the court will be in a position to judge whether such witness is saying the truth, whether such evidence is consistent with what was said by the same witness earlier on if for example he himself is makes contradictions in his own testimony or whether there are other facts which disapprove what is being said by the witness. These are but a few examples because the law does not provide any hard rules on the judge as to how he is to carry out such examination. But it is imperative that the judge is free to use his own discretion to see where the witness takes him. A judge can believe a witness in whole, in part or not at all

Il-Qorti qiset li xhieda li ma gewx meqjusa bhala vittmi izda li hadmu ma Gera, Yubo Zhong u Amanda Borg, ippruvaw jaghtu stampa favorevoli ghall-imputat, bla mistenni w ghaliex il-verita` titla f'wicc l-ilma, spiccaw **jikkorroboraw dak li qalu dawn il-vittmi** rigward kif kienu jithallsu u cioe` b'semplici *commission* fuq kull *massage* u dwar il-fatt li ma kellhom l-ebda dritt ghal *leave* jew *sick leave*. Dan jimmilita versu l-kredibbilita` ta' dawn il-vittmi. Ix-xhieda ta' Wang, Zhai u Phassada, kuntrarjament ghall-dik moghtija mill-imputati, kienet elokwenti w dettaljata. Anke l-istess Amanda Borg li tressqet bhala xhud in difesa kkonfermat kif, bhal ma xehdu l-vittmi, kif Gera kien jinsisti li tinhareg ricevuta tal-VAT wahda biss irrispettivament minn kemm ikunu nghataw servizzji, dettal li jissemma' mill-vittmi kollha li jinciedi fuq il-kreddibilita` taghhom.

Kuntrajament ghall-vittmi, l-imputati ma kienux kapaci joffru korroborazzjoni ghal dak dikjarat minnhom. Kif intwera aktar il-fuq, Gera jaghmel

[209] Qorti tal-Appell Kriminali; Per Onor. Imhallef Consuelo Scerri Herrera, Dec.18.06.2019; Appeal no. 438/2014

dikjarazzjonijiet li baqghu mhux sostanzjati imqarr sal-grad tal-possibbli!! Mitlub dettalji ulterjuri, jitfixxkel fi kliemu, propju kif ghamel tul iz-zewg interrogazzjonijiet tieghu. Ma ngabet l-ebda prova biex tibda tnissel imqarr farka ta' kredibbilita` f'dak li kellu xi jghid.

Procediment senjalat minn **bahh assolut ta' provi da parti tal-imputati li jibdew mqarr remotament jissostanzjaw il-verzjoni taghhom**.

Minn naha taghhom il-vittmi kkonvincew lill-Qorti li dak mistqarr minnhom kellu mis-sewwa. Ma kellhomx ghalfejn jigdbu dwar Gera jekk kienu qed ippappuwha sew kif jallega l-imputat. Ma jaghmel l-ebda sens li min qed jghix hajja 'aggevolata', fejn kienu jaghmlu *easy money* kif jghid Gera, jimminaha! Aktar u aktar meta l-imputata tghid li kienu jiggieldu maghha biex jaghmlu hinijiet itwal!

Ezempju tal-onesta` li biha xehdet Shuang Zhai kien meta ddeskriviet kif wara li giet attakkata minn klijent, l-imputata rieditha terga' tmur mieghu izda malli sar jaf Gera, waqqafha. L-istess Zhai li sal-jum li fih xehdet ma kienitx taf x'jismu Gera! Persuna li trid taghmillek vendikazzjoni zgur li kienet ser taghti ismek, jekk tasal taghmel rapport dwarek mal-pulizija. Ma jaghmilx sens altrimenti li zzomm lura milli taghti ismek izda imbghad timplikak f'ghemil daqstant gravi!

Tant evidentement il-verzjoni tal-imputati ma ghandhiex mis-sewwa, li lanqas jista' jinghad li l-Qorti giet rinfaccjata b' *conficting versions*. Biex wiehed jitkellem dwar 'verzjoni', fl-ewwel lok u necessarjament irid ikun hemm rakkont b'sembjanza ta' verita`, li ghandu mis-sewwa u mhux mahluq minn hrejjef u frott tal-immaginazzjoni. Rakkont ibbazat fuq is-sens kommun, li jsegwi l-logika.

Gie muri kif Gera jesebixxi dokumenti li bl-ebda mod ma jissostanzjaw dak li jkun xehed dwaru! Ezempji kienu ic-*chats* li skond hu kien ikollu ma persuni interessati fis-servizzji sesswali, l-uniformijiet li jghid kienu ordnati w kellhom jingabbru minn hanut, b'isem li jibqa misteru, li jinsab x'imkien bejn l-Msida, Regional Road u s-Savoy.

L-istess jinghad dwar dikjarazzjonijiet li suppost iffirmaw Wang, Zhai u Phassada fejn jobbligaw rwiehom li ma jipprestawx atti sesswali. Meta l-Qorti tippressah biex jesebixxi dawk id-dokumenti li jikkoncernaw dawn l-impjegati, jghid li ma jafx jaqrahom ghax bic-Ciniz iffirmaw. Dokumenti li l-Qorti gja` kellha okkazzjoni tirrikmarka li jirrisalu ghall-zmienijiet qabel l-akkuzi addebitati w li qatt ma setghu gew iffirmati minn Zhai u Wang li wasslu Malta f'Awissu, 2017. U la huma ffirmati bic-Ciniz lanqas ma jista' jkun li xi wahda

minnhom tappartjeni ghal Phassada li hi Tajlandiza! U kif qatt seta' kien li ffirmaw xi dokument simili jekk **kienu propju l-imputati li hajjruhom u heggewhom jaghmlu dawn l-atti meta cahduhom minn paga?**

Ix-xhieda tal-imputati ma jwasslu ghall-imkien. Ma jikkonvincux anzi jimmanifestaw kemm ma ghandhomx mis-sewwa. Ix-xhieda tal-imputati tisfida s-sens komun u tigi kontradetta minn provi li jissostanzjaw w jikkoroboraw ix-xhieda tal-vittmi; anke minn persuni li sejhu biex jixhdu fid-difiza ta' Gera u Zhang.

VII. <u>Il-Kotba/*Diaries*</u>

Il-Qorti ezaminat il-ktejjeb u tlett (3) *desk diaries* li fuqhom, kif *del resto* jammettu l-imputati, l-impjegati kienu jnizzlu kull servizz li jinghata. Minflok cash register kien hemm dawn il-kotba.

Shuang Zhang issemmi li *"Hemm registru fejn jiktbu xi jkunu ghamlu imbaghad huma jiehdu commission, li jifdal jinzamm fil-kaxxa ghal Winston biex jigborhom ….. **Huma jigbru l-ammonti li jkun hemm miktub fuq il-ktieb.**"*[210].

Kif jirrizulta mill-ircevuti esebiti minn **WPC186 Dorianne Tabone** *'Receipt for items seized by the Police'*:[211] il-**ktejjeb blue bl-iswed** instab fil-hanut tal-Hamrun fejn kienet tahdem Lily Wang;[212] Diary 2017 ahmar mill-hanut Mandarin fejn kien hemm Yubo Zhong,[213] u **Diary 2017 kannella** mill-hanut Yuan Oriental Massage[214] fejn kienet tahdem Wannipha Phassada. L-ircevuti msemmija inghataw lill-impjegati li kienu fuq il-postijiet imsemmija. Dan hu kkonfermat mir-relazzjonijiet ta' WPC369 Stephanie Cassar[215] li indikat min mill-impjegati kienu prezenti fil-hwienet waqt it-tfittxijiet.

Peress li ma jirrizultax li kienet qed issir xi attivita` illegali fil-hanut Mandarin Oriental Massage, tant li l-pulizija tiddikjara li Yubo Zhong ma kienitx meqjusa minnhom bhala vittma ta' traffikar, maghdud mal-fatt li Joseph Saliba pprezenta dokumentazzjoni li turi li din il-persuna nghatat *work permit* fl-

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[210] Fol.1063
[211] Vide **Dok. DT-Dok.DT2** a fol.169A-169C
[212] **Dok.DT** a fol. 169A
[213] **Dok.DT1** a fol.169B
[214] **Dok.DT2** a fol.169C
[215] **Dok.SC-Dok.SC2** a fol. 461-518

2016,[216]il-Qorti mhux ser tanalizza id-*diary* ahmar li nagabar minn l-imsemmi hanut ghajr li tirrileva li, simili ghad-diary li gie elevat mill-vettura tal-imputat, jidher kif l-impjegati f'hanut kienu jissejjhu f'hanut iehor meta jinqabbdu bix-xoghol.

Mill-vettura ta' Gera ngabar ***Diary* 2017 iswed** li fih jidher evidenti kif impjegati kienu jipprestaw is-servizzji taghhom fi hwienet differenti skond il-bzonn.[217] Fil-fatt minn dan id-*Diary*, simili bhal dak li nstab fi Yuan Oriental li generalment fih hadmet Phassada, msejjha 'Ta', jidru bosta servizzji li nghataw mill-istess 'Ta'.·

Jigi sottolinejat li l-hinijiet li fihom kienu jinghataw id-diversi servizzji jkunu jmorru lill'hinn mis-7pm.

(a) Ktieb blu/bl-iswed migbur mill-Tian Oriental Massage, Hamrun[218]

Dan il-ktieb jibda minn dak li tidher hi d-data **"1.10",** l-1 t'Ottubru, bl-ahhar data tkun dik tat-"30". Il-Current Incident Report juri li Zhai ghamlet ir-rapport fit-30 t'Ottbru, 2017,[219] ghalhekk l-*entries* waqfu malli involviet ruhha l-pulizija.

L-*entries* jibdew mill-1 t'Ottubru u jispiccaw fit-30 fejn il-ktieb kollu jindika biss servizzji li jiswew **€15** fejn dawn il-*massages* kienu jdumu medja ta' 20 minuta b'whud ikunu anke ta' 10 minuti (2/10: 11:20-11:40; 9/10: 12:45-12:55; 15/10 20:10-20:20).

Tajjeb jigi osservat li kemm Gera kif ukoll Amanda Borg issemmu li *massages* kienu jkunu ta' 30 minuta, 60 minuta u 90 minuta. Il-Qorti tista' facilment tikkonkludi *massages* ta' ghaxar minuti, kwarta jew ghoxrin minuta x'tip kienu!

Il-hinijiet li fihom nghataw dawn is-servizzji jibdew mid-9.30am u baqaw sejrin sa tard bil-lejl. Ezempji huma:

2/10-**21:40**; 3/10-**20:50**; 6/10-**21:40**; 7/10-**20:45**; 10/10-**21:50**; 12/10-**21:25**; 19/10-**21:10**; 22/10-**21:50**; 24/10- **21:30**; 29/10-**20:45**.

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216 **Dok.JS** a fol.772

217 Envelope 24 parti minn esebit **Esebit K/B/335/17**. Elenku tal-esebiti a fol.63-64

218 **Dok.DT** a fol. 169A

219 Fol.26

Jigi mfakkar li meta xehdet Lili Wang spjegat kif '*massage*' kien jiswa €25 li minnhom hi kienet tiehu €10.[220] B'hekk dak li kien dovut lill-*employer* hu l-bilanc ta' €15. Difficilment jigi spjegat kif **irrispettivament mill-hinijiet li javarjaw bejn 10 minuti u nofsiegha, l-*massage* kien dejjem jiswa l-istess prezz sakemm ma kienx l-istess tip ta' 'massage'**!

L-ammont generat lil Gera minn dan il-hanut bejn l-1 t'Ottubru w t-30 t'Ottubru ghal 31 servizz hu ta' **€1,695**.

(b) *Diary* 2017 kannella elevat minn Yuan Oriental Massage[221]

F'dan id-*diary* jidher bic-cjar li persuna bl-isem ***"Ta"*** kienet impenjata ferm f'dan il-hanut, bi granet shah tkun l-unika persuna li sservi klijenti; fil-fatt jidher li l-akbar volum ta' klijenti kienu moqdija minn din il-persuna *"Ta"*. Jigi mfakkar li fil-kors tal-ewwel interrogazzjoni Gera kontinwament isejjah lit-Tajlandiza Wannipha Phassada *"Ta"*. Hdejn kull *massage* jidru l-kliem "Ta" kif ukoll ammonti li jvarjaw bejn "5" u "10"**. Meta xehdet** Phassada qalet li minn *massage* li jiswa **€45** hi kienet tiehu €10 bil-€35 jibqghu ghal Gera. F'gurnata kien ikun hemm bejn 5 u 6 persuni ghal massages, total ta' 35 *massage* fil-gimgha. Ghan nofs siegha il-hlas kien ta' €25 li minnhom kienet tiehu €5.[222] Ezatt kif stqarret kien ikun hemm medja ta 5-6 klijenti f'gurnata; xhieda li b'dan il-ktejjeb tigi korroborata fit-totalita` taghha.

Propju kif xehdet Phassada, fid-*diary* jidhru ammonti ta' **"€45 TA (10)"** jew **"€25 TA (5)"** – konferma ohra li din ix-xhud qed tkun ghal kollox veritjiera. Dak li xehdet hu kkoroborat b'dak li jirrizulta mid-*diary* anke in kwantu ghad-dikjarazzjoni taghha (u tal-vittmi l-ohra) li l-hwienet kienu jinzammu miftuhin sa tard bil-lejl u f'*weekends* anke sa 12am. Kienu jahdmu kuljum kif jixhed id-*diary* elevat. Ser jigu kkunsidrati hinijiet li jmorru lill'hinn minn hinijiet regolari ezatt kif isostnu l-impjegati barranin:

April
Saturday 22nd sad-21:00
Friday 28 sa 22:10
Sunday 30th 21:25

May
1st 20:30
3rd 20:30

220 Fol.174-175
221 **Dok.DT2** a fol.169C
222 Fol.41-42

Friday 5th 21:50
Saturday 6th 21:00
15th 22:00
Saturday 20th 21:45
22nd 21:00
24th 21:30
31st 22:00

June
Sunday 4th 22:00
12th 21:40
13th 21:15
Sunday 17th 22:45
Saturday 24th 22:55

July
7th 22:30
17th 21:40
19th 22:30
20th 21:30
31st 22:20

August
1st 22:00
3rd 21:49
19th 21:30
25th 22:30
28th 21:05

September
Sat 2nd 22:40
6th 22:00
8th 22:00
19th 23:00
21st (Festa Pubblika) 23:00
25th 22:40
26th 00:00 (nofs il-lejl) bis-servizz jibda fil-23:30
27th 23:55

October
1st 23:00
2nd (nofs il-lejl) bl-ahhar zewg servizzji jibdew fil-23:00 u 23:30 rispettivament

3rd 21:30
5th 22:00
7th 21:45
9th 21:30
11th 23:55
12th 22:05
18th 22:15
19th 23:00
Saturday 21st 22:30
25th 22:00
Sunday 22:00
30th 22:30

Gie osservat li fuq kull pagna hemm miktuba **"OK";** prova li b'xi mod saret *reconciliation*. Ghaldaqstant ma jista qatt jitwemmnu l-imputati li ma kienux konxxji tal-hinijiet li kienu qed jaghmlu dawn l-impjegati (maghdud mal-fatt li kien hgemm *dvrs*). Jinghad ukoll li mill-hinijiet twal li jdumu miftuhin il-hwienet kienu propju l-imputati **l-ikbar beneficcjarji** u mhux l-impjegati; kif setghu qatt jikkontendu li ma kienux jafu x'hinijiet dawn kienu jaghmlu jew addiritura li riedu jdumu izjed!!

Dawn iz-zewg kotba huma xhieda mill-aktar determinanti ta' kemm dak li xehdu l-vittmi ghandu mis-sewwa. Ma jinqabdu fl-ebda gidba, dak kollu li xehdu jidher <u>miktub iswed fuq l-abjad</u>, u **l-kontenut tal-kotba jissostanzja fl-anqas dettalji dak li xehdu Phassada, Zhai u Wang dwar il-*commissions* taghhom, in-numru ta' klijenti kuljum w il-hinijiet twal li gew sfurzati jahdmu**.

Il-kotba provdew opportunita` ghall-Qorti biex tmiss b'idejha u tesperjenza mill-qrib id-destin kiefer li gew suggetti ghalih dawn it-tlett tfajliet. X'ma jkollhomx ir-rejazzjoni ta' biza u twerwir li l-Qorti kkonstat *first-hand* hekk kif dawn it-tfajliet regghu lemhu lil min holoq dan il-jasar ghalihom!

VII. L-Imputazzjonijiet

Il-Qorti ser tibda biex tikkonsidra l-imputazzjonijiet addebitati liz-zewg imputati, u wara tghaddi biex tikkunsidra dawk addebitati lil Gera wahdu.

Partecipazzjoni Materjali

Wara li studjat bir-reqqa dak li stqarret l-istess imputata kif ukoll dak li kellhom xi jghidu dwar l-imputata l-vittmi Phassada, Zhai u Wang, il-Qorti ddeterminat li Tianxia Zhang kellha **partecipazzjoni materjali** fir-reati addebitati lilha. Ghalhekk Zhang tiffigura bhala **ko-awtur** u mhux bhala komplici ta' Gera.

Shuang Zhai tixhed: *"the owner's girlfriend told her that what you earned goes to me because I bring you to Malta, I made you the identity card, I have the right to kick you out."*.[223]Indikazzjoni cjara tal-fatt li Zhang Tianxia kienet ko-awtur, participant materjali fl-ghemil sancit.

L-imputata fix-xhieda taghha tammetti li kienet hi li kienet taghti struzzjonijiet lill-impjegati [224] u kienet tikkomunika maghhom permezz tal-app Ciniza *WeChat*[225] ghaliex ma kienux jafu bl-Ingliz.[226] Ammissjoni ohra minghandha tirrigwarda l-irwol primarju taghha biex tigbor il-qliegh mill-hwienet u tfisser kif hi, flimkien ma Gera, *"jigbru l-ammonti li jkun hemm miktub fuq il-ktieb"*[227] Zhang ukoll tixhed kif kienet ghamlet kuntatt ma agenti biex jingiebu Zhai u Wang Malta.

Il-vittma Shuang Zhai tirrakonta kif kienet l-imputata li kienet tiggestixxi l-operat kwotidjan tan-negozju. Tant li qaltilha ma tkellem lil hadd izjed issa li giet impjegata maghha, *"Because the girlfriend of the shop owner said you are employed by **me** now, I don't want you contact any other person."*.[228]Tixhed li meta talbet biex tiehu *break* biex tmur *lunch* ma klijent *"the girlfriend of the shop owner asked her to stay, and she told her if you go out you need to pay **me** 50 Euros per hour, if you have one minute extra exceed to this hour it is 100 Euro for every minute"*.[229] L-istess imputata li ghazlitilha l-ilbiesi 'hot and sexy', *"His girlfriend choose the dress for her and let her to try it on, and then let Winston to see if it fit or not. If Winston said okay they got clothes."*.[230]

L-irwol attiv ta' Zhang jirrizulta anke mix-xhieda ta Lili Wang: *"There was a time after half past eight she went out with her friends for dinner and they called her immediately. …**China lady** called me. Why are you this time closed? You go outside first you call **me**. I say okay I go okay. Chinese lady call me immediately and tell her it*

[223] Fol.95-98
[224] Fol.1070
[225] Fol.1072
[226] Fol.1071-1071
[227] Fol.1063
[228] Fol.84
[229] Fol.115
[230] Fol.142

is not the time to go out and close the shop, you should *<u>inform me first</u>* *before you go out. If it happens another time you will be asked to abolish the application, the identity and go back to China…..".*[231]

Imbghad Wannipha Phassada ssemmi li meta l-imputata kienet tmur taghmel *massages,* il-€45 li jiswa *massage* kienet tohdhom l-imputata izda meta taghmlu hi tieu biss €10.[232]

Fis-sentenza taghha fl-ismijiet **Ir-Repubblika ta' Malta vs Richard Grech,** il-Qorti tal-Appell Kriminali (Sede Superjuri) kellha s-segwenti konsiderazzjonijiet x'taghmel:[233]

> **47.** Illi sabiex l-appellant jista' jinstab hati bhala ko-awtur f'dawn id-delitti jrid jirrizulta sodisfacjentement ippruvat mill-prosekuzzjoni, lil hinn minn kull dubju dettat mir-raguni, illi kien hemm il-<u>partecipazzjoni materjali</u> tieghu ma' l-ezekutur jew ezekuturi dirett/i tal-att li bih kien ikkonsumat ir-reat, izda u fuq kollox illi huwa <u>ppresta l-ko-operazzjoni diretta u essenzjali</u> ghall-esekuzzjoni tad-delitt. Dan allura necessarjament jimplika illi jrid ikun hemm il-ftehim pre-ordinat bejn tnejn jew aktar persuni ghall-fini li jigi kommess id-delitt. Mankanti din l-intenzjoni u cioe' dan l-akkordju bejn tnejn jew iktar persuni, allura ma jistax jinghad illi l-figura tal-ko-awtur tista' tiehu l-hajja. Kwindi jrid jigi ppruvat sal-grad tac-certezza morali illi "bejn dik il-persuna u l-awtur tad-delitt kien hemm il-hsieb komuni li jsir dak id-delitt, u li <u>l-presenza ta' dik il-persuna effettivament assistiet lill-awtur, anke jekk biss moralment, biex iwettaq dak id-delitt</u>.[234]"
>
> **48**. Dak allura illi jrid jirrizulta mhuwiex biss l-att materjal li jindika l-presenza fizika ta' l-akkuzat fuq il-post tad-delitt ghaliex dan l-element wahdu ma jistax jistabilixxi r-reita', izda wkoll irid jirrizulta illi huwa jkun ha <u>sehem attiv</u> fil-kommissjoni tar-reat u wkoll illi kien hemm 'l hekk imsejjah "*common design*" bejn l-malviventi lil hinn minn kull dubju dettat mir-raguni. Il-fatt materjali wahdu li persuna tkun ghenet biss fil-kommissjoni tad-delitt ghalhekk ma jistax iwassal ghall-figura tal-ko-awtur, izda ghal dak tal-komplici billi kif inghad l-ko-awtur irid necessarjament ikun ha <u>sehem attiv</u> fil-kommissjoni tad-delitt u mhux semplicement offra l-ghajnuna tieghu fil-preparazzjoni ghall-kommissjoni tar-reat jew sabiex l-att materjali tal-ezekuzzjoni tad-delitt jirnexxi. Dan ifisser allura meta applikat ghal fattispecje ta' dan il-kaz illi :
>
> > **"Jekk hemm il-hsieb bejn zewg persuni, wiehed huwa l-awtur, dak li fil-fatt jispara u l-iehor li jkun mieghu li ma jisparax, galadarba ghandu l-istess hsieb li joqtlu, u la qieghed hemm jiehu parti attiva - f'dak il-kaz it-tieni persuna li ma tisparax li qed tiehu parti attiva hija l-ko-awtur.**

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[231] Fol.192-193

[232] Fol.52-53

233 Per Onor. Imhallef Joseph Zammit McKeon, Agent President, Onor. Imhallef Abigail lofaro, Onor Imhallef Edwina Grima; Dec. 31 ta' Ottubru 2018; Att ta' l-Akkuza numru 27/2007

234 App.Krim 24/05/2002; **Il-Pulizija vs Carmelo Agius et**.

Il-korreu mhux ristrett ghal dak biss li kien l-esekutur dirett tal-att konsumattiv izda jikkomprendi anke dawk li jippartecipaw f'kooperazzjoni diretta essenzjali ghall-esekuzzjoni tar-reat.[235]

Mhux biss izda:

'Min ihajjar lil persuna ohra biex tikkommetti s-serq, u waqt li dik il-persuna tikkommetti s-serq jiddistrahi lil dawk li jkunu prezenti, huwa ħati ta' serq huwa wkoll bħala ko-awtur; għaliex huwa ko-awtur f'delitt minħabba parteċipazzjoni materjali mhux biss dak li jkun l-ezekutur dirett tal-att konsumatur tar-reat, imma anki min b'xi mod iehor jippresta ko-operazzjoni diretta u essenzjali ghall-esekuzzjoni tad-delitt.'[236]

49. Illi kif inghad aktar 'il fuq huwa stabbilit illi l-appellant kien wiehed mill-imhuh wara l-ftehim li sar bejnu u l-awturi l-ohra sabiex jigi kommess id-delitt. Kien hu li flimkien ma' Chris Scerri u James Vella fasslu pjan sabiex jisirqu il-basktijiet li fil-fehma taghhom kienu jikkontjenu l-flus minn fuq il-persuna ta' Alphonse Ferriggi li kien jasal kmieni fil-ghodu bil-konsenja l-bank. Kien l-appellant li haseb biex idahhal lil Joseph Zammit sabiex jassistihom fil-kommissjoni ta' l-istess ghaliex kien tal-fehma illi kien kapaci iharrabhom wara l-kommissjoni tad-delitt billi jistenniehom b'vettura ohra sabiex ma jaghtux fil-ghajn li kienu involuti fil-kommissjoni ta' l-istess. Mhux biss izda huwa stabbilit ukoll, kif diga` nghad, illi l-appellant kien prezenti fuq ix-xena tad-delitt sabiex jassisti b'mod dirett fl-esekuzzjoni ta' dan il-pjan pre-ordinat, ghalkemm huwa baqa` jinnega illi kien prezenti u li spara lil Ferriggi.

50. L-appellant jishaq ukoll illi huwa ma kienx jaf illi l-komplici tieghu kellhom arma tan-nar fil-pussess taghhom, li ghalkemm hija skreditata mill-provi, madanakollu anke jekk *gratia argomenti* l-Qorti kellha temmen il-verzjoni tieghu xorta wahda dan ma jistax awtomatikament jezonerah mir-responsabbilta` penali ghall- konsegwenzi li sehhew.

51. Fis-sentenzi fl-ismijiet "**Ir-Repubblika ta' Malta vs Joseph Zammit**"[237] u "**Ir-Repubblika ta' Malta vs Matthew Mizzi**"[238] għal dak li jirrigwarda kompliċita`, u l-korelazzjoni u l-komunikabilita' mal-awtur jew l-awturi tar-reat kien ddikjarat hekk :-

In materja ta' komplicita', tajjeb hawn li ssir referenza ghal dak li jghid il-Professur Sir Anthony Mamo[239]**:**

"... if a man, with the object of aiding the commission of a theft, assists the principal to enter into the house, knowing that he had provided himself with a weapon for the purpose of facilitating the theft if it should be found so necessary,

235 Deċiża fl-14/12/2004 mill-Qorti tal-Appell Kriminali (Sede Superjuri) mill-Imħallfin De Gaetano Vincent, Filletti Joseph A., Scicluna David - - **Repubblika ta' Malta vs Etienne Carter**.
236 Deċiża fil-25 ta' Ottubru 1958 mill-Imħallef Dr. W. Harding - **Pulizija vs Joseph Scicluna** app.inferjuri.
237 Deċiża fl-20 ta' Jannar 2011 mill-Qorti tal-Appell Kriminali (Sede Inferjuri) mill-Imħallfin Raymond Pace, David Scicluna u Joseph Zammit Mc Keon.
238 Deċiża fl-24 ta' Frar 2014 mill-Qorti Kriminali mill-Imħallef Michael Mallia.
239 Lectures in Criminal Law, P. I, p. 148 – 149.

will be co-responsible for the theft aggravated by 'violence' if the principal actually makes use of that weapon in perpetrating the theft. Nani[240] puts the rule in the following words: 'Se la scienza del complice non si estendesse alla qualita' del delitto medesimo, non potrebbe a lui comunicarsi quella distinta imputabilita' la quale e' inerente alle qualita' ignorate del delitto, e conseguentemente non potrebbe essere colpito da quella specie o da quel grado maggiore di pena che la legge avesse riservato al delitto cosi' qualificato .... Questa scienza per altro dovrebbe presumersi per le qualita' connesse col delitto conosciuto o talemente dipendenti dalla non ignorata commissione del medesimo che la commissione del delitto importasse ancora la previdenza delle qualita' medesime.'

"....when the principal causes a more serious event or result than was in the contemplation of the accomplice, then the doctrine commonly accepted on the continent may be briefly stated as follows:

"i. If the principal deliberately commits an offence which is wholly different from that ordered or advised by the accomplice, the latter is not liable for the offence committed....

"ii. In all other cases, a distinction is made between what is called excess in the means ('eccesso nei mezzi') and excess in the purpose ('eccesso nel fine'). There is the former where the principal uses means different from those concerted between the parties: e.g. the original common design contemplated the use of a stick to beat a person, but the principal uses a sword and kills that person. In this case the responsibility for the more serious result is wholly of the principal. There is an excess in the purpose where, though the means are those actually combined between the parties, they produce a more serious result than that originally contemplated. In any such case, if the graver result ensues as a natural and foreseeable consequence of the means used or owing to the negligence (i.e. not to the deliberate intention) of the principal, liability for the graver result is contracted also by the accomplice: for, although he may not have expressly desired that result, nevertheless he maliciously wanted the means which by their very nature could cause that result[241].

"This is, as Maino says, the doctrine universally accepted on the continent. With us it applies subject to the express provisions of our law which, as we have seen, extends liability in respect of the aggravating act to all parties to the criminal enterprise with whose previous knowledge it was perpetrated and even to those who, becoming aware of the aggravating act at the time of its perpretration, and being able to prevent it, did not do so."

52. **<u>Francesco Antolisei</u>** wkoll josserva[242] :-

"Nell'ipotesi, poi, che una rapina sia sfociata in un omicidio (ipotesi tutt'altro che infrequente nella pratica e grave di conseguenze), bisognera' considerare se

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240 Principii di Giurisprudenza Criminale, s. 155.

241 Carrara, Programma, s. 500 – 504; Maino, 63, s. 339; Chaveau et Helie, Vol. I, Part I, Cap. XII, s. 279.

242 Manuale di Diritto Penale – Parte Generale, sesta edizione , Giuffre` – 1969.

l'uccisione sia stata il risultato di una insospettabile, e percio' eccezionale, resistenza della vittima o di altri avvenimenti singolarissimi. Nel caso che a tale quesito si risponda negativamente, i compartecipi che non vollero l'uccisione ne risponderanno."

L-istess awtur jirreferi ghal sentenza tal-Qorti ta' Kassazzjoni tat-18 ta' Novembru 1960 fejn gie ritenut li "in casi in cui un rapinatore a mano armata aveva ucciso uno degli aggrediti, ha ritenuto la responsabilita' per omicidio volontario ex art. 116 c. P. di tutti i concorrenti nella rapina."

53. Fid-dawl tal-premess, jidher car illi min qiegħed fuq ix-xena tad-delitt u jkollu rwol dirett anke jekk mhux ewlieni fl-eżekuzzjoni tar-reat jitqies li huwa ko-awtur fid-delitt kommess, mhux kompliċi, ghalkemm jista' ikollok il-figura tat-tnejn fl-istess persuna bħal per eżempju l-persuna li tkun iffurmat il-pjan jew ħajret lil ħaddieħor jipparteċipa fid-delitt li sussegwentement pero' tipparteċipa hi wkoll direttament fil-kommissjoni tar-reati nnfushom meta dawn ikunu fl-eżekuzzjoni tagħhom.

54. Stabbilit dan l-insenjament gurisprudenzjali allura l-figura tal-appellant tissarraf f'dik ta' ko-awtur fil-kommissjoni tad-delitt mertu ta' dana il-kaz, anke jekk l-appellant seta' ma kienx il-persuna li spara t-tir kif qed jallega. Dan ghaliex jekk huwa ppruvat illi l-appellant kien konsapevoli li kienet ser tintuza arma tan-nar fl-esekuzzjoni tad-delitt, ghalkemm ma jirrizultax ftehim ċar li persuna sejra tinqatel bl-arma li l-malviventi ikollhom fil-pussess taghhom waqt l-ezekuzzjoni, xorta waħda l-appellant jitqies bħala ko-awtur u xorta waħda jitqies responsabbli daqslikieku kien hu stess li spara l-arma lejn Ferriggi.
[sottolinejar ta' din il-Qorti]

Hi l-imputata nnifisha li fil-kors tal-istqarrija taghha tammetti li kienet hi li hadet hsieb ir-*recruitment process* ma agent fic-Cina, li kienet hi flimkien ma Gera li kienet tigbor it-*takings*, li kienet hi li ddecidiet izzomm il-passaporti tat-tfajliet bhala garanzija w deterrent biex ma jaqbdux u jitilqu l-impjieg, li kienet hi li ntaxxat lil Wang €500 talli zammet il-passaport.

Ma hemmx dubbju li l-impjegati kienet tqishom taghha daqs kemm kienu ta' Gera. Jigu mfakkra xi frazijiet saljenti minn dik l-istqarrija:

- Kienet tmur tigbor it-*takings* kull jumejn flimkien ma Gera (11:00:29-11:00:58) *"always together"*.

- Mhemmx dubbju li kienet tqis it-tfajliet bhala impjegati taghha: *"How many employees does **she** and Winston **have** in all parlours?" Only three from China"*.

- Kienet taghmel kuntatt ma kumpanija fic-Cina biex jingiebu persuni biex jahdmu Malta (11:04).

- *"she only takes one of the workers passaport"(*11:18:16) u dan għamlitu peress *"it takes a long period to bring the workers from China to her parlour and she needs a little guarantee if they leave"* (11:19).

Certament il-provi juru li Tianxia Zhang prestat ko-operazzjoni diretta u essenzjali fl-għemil li tiegħu tinsab imputata flimkien ma Gera.

1. <u>**L-ewwel imputazzjoni: Traffikar ta' Persuni**</u>

L-artikolu 248A u 248B meta promulgati bl-***Att III tal-2002*** ittrasponew fid-dritt Malti id-**Deċizjoni Kwadru 2002/629/JHA** (***Council Framework Decision of 19 July 2002 on combating trafficking in human beings***). Bl-***Att XVIII tal-2013*** dawn l-artikoli ġew emendati sabiex jittrasponu fid-dritt ġuridiku Malti d-**Direttiva 2011/36/EU**.[243]

Il-***Council of Europe Convention on Action against Trafficking in Human Beings, Treaty*** No.197, ratifikata minn Malta fit-30 ta' Jannar, 2008, u li tirrispekja d-dispożizzjonijiet tar-reġim leġislattiv Ewropew, hemm provdut:

> 74. In the definition, trafficking in human beings consists in a combination of three basic components, each to be found in a list given in the definition:
>
> – **the action** of: "recruitment, transportation, transfer, harbouring or receipt of persons";
> – **by means** of: "the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person";
> – **for the purpose of exploitation**, which includes "at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".
>
> 75. Trafficking in human beings is a combination of these constituents and not the constituents taken in isolation. For instance, "harbouring" of persons (action) involving the "threat or use of force" (means) for "forced labour" (purpose) is conduct that is to be treated as trafficking in human beings. Similarly, **recruitment of persons (action) by deceit (means) for exploitation of prostitution (purpose).** For there to be trafficking in human beings ingredients from each of the three categories (action, means, purpose) must be present together……

[243] Dispożizzjonijiet oħra ta' din id-Direttiva ddaħħlu permezz tal-Victims of Crime Bill No.66 li sussegwentement ġie promulgat bħala l-Victims of Crime Act, Kapitolu 539 tal-Liġijiet ta' Malta.

77. Thus trafficking means much more than mere organised movement of persons for profit. The critical additional factors that distinguish trafficking from migrant smuggling are use of one of the means listed (force, deception, abuse of a situation of vulnerability and so on) throughout or at some stage in the process, and use of that means for the purpose of exploitation. ..... [emfazi u sottolinejar tal-Qorti]

Fl-isfond ta' dan it-taghlim, jirrizulta rekwizit essenzjali, sabiex jiffigura r-reat ta' traffikar ta' persuni, l-**isfruttament** tal-persuna li tkun giet **traffikata – f'dan il-kaz ir-reklutagg taghhom mic-Cina w l-facilitazzjoni tad-dhul taghhom f'Malta -** bl-adoperazzjoni ta' xi wiehed mill-mezzi msemmija fl-artikolu 248A(2) tal-Kodici Kriminali, fosthom **"qerq jew ingann;"** li hu precizament dak li sehh fil-konfront ta' Zhai u Wang, u **bl-abbuz tal-vulnerabilita`** li tqeghdu fiha l-istess impjegati kif ukoll Phassada, meta paga ma nghatawx u ttiehdilhom il-passaport, biex baqghu jiddependu ghall-kollox mill-imputati.

Il-Qorti ser tghaddi biex b'riferenza ghall-provi li gja saret ampja riferenza ghalihom, jigi kkunsidrat jekk jirrizultawx ir-reati ravvizati bl-artikoli 248A u/jew 248B tal-Kodici Kriminali.

(i) L-Ewwel Rekwezit, l-Sfruttament jew "Exploitation"

Fl-Explanatory Memorandum msemmi hemm dikjarat:

87. Under the definition, it is not necessary that someone has been exploited for there to be trafficking in human beings. It is enough that they have been subjected to one of the actions referred to in the definition and by one of the means specified "for the purpose of" exploitation. Trafficking in human beings is consequently present before the victim's actual exploitation ……….

91. Article 4(b) of the present Convention follows ECHR case-law in that it states that a human-trafficking victim's consent to a form of exploitation listed in Article 4(a) is irrelevant if any of the means referred to in sub-paragraph a. has been used. .....

97. Article 4(b) states: "The consent of a victim of 'trafficking in human beings' to the intended exploitation set forth in sub-paragraph (a) of this article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used". The question of consent is not simple and it is not easy to determine where free will ends and constraint begins. In trafficking, some people do not know what is in store for them while others are perfectly aware that, for example, they will be engaging in prostitution. However, while someone may wish employment, and possibly be willing to engage in prostitution, that does not mean that they consent to be subjected to abuse of all kinds. For that reason Article 4(b) provides that there is trafficking in human beings whether or not the victim consents to be exploited………..

225. In accordance with the definition, the offence laid down in Article 18 is constituted at an early stage: **a person does not have to have been exploited for there to be trafficking in human beings. It is sufficient that they have been subjected to one of the acts in the definition by one of the means in the definition for the purpose of exploitation. There is thus trafficking of human beings before any actual exploitation of the individual. …….**

226. Under Article 4(b), where there is the threat or use of force or other forms of coercion or where there is abduction, **fraud, deception**, abuse of power or of a position of vulnerability, or giving or receiving of payments or benefits to achieve the consent of a person having control over another person, the consent of the victim does not alter the offenders' criminal liability

Fil-kaz in dezamina, originarjament u bl-iskop li johrog il-*work permit* taghhom minn Identity Malta, Zhai u Wang inghataw kuntratt ta' xoghol ("Contract of Employment"[244]) - li gie ffirmat minnhom u mill-imputat Gera - fejn fih jinghad espressament li ser jinghataw –

"Para 5:

(a)*Holidays and Vacation Leave….All national holidays and public holidays….four working weeks and four working days of vacation leave during any calendar year….;*
(b) *Sick Leave: The Employee shall be entitled to eighteen days sick leave on full pay in each calendar year….;*
(c) *Hours of Work…laid down in the "Hotels and Clubs Council Wages regulation Order"*.

F' Para.6 intestat '*Salary*' insibu:

> *"The Employer shall pay the Employee a net salary of €800,00 per month (Eight hundred Euro). Government cost of living increases will be automatically added to the salary herein agreed."*.

Imbghad f'Para.11:

"Board and Lodging.
The Employer shall provide to the Employee with food facilities and accommodation in house <u>at the Employer's expenses</u>".[245]

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[244] Fol.273 et seq u Fol.369 et seq
[245] Fol.372

L-ingann ikompli fid-dokument intestat 'Position Description' fejn Gera jiddikjara lis-sighat fil-gimgha li Zhai u Wang kienu mistennija jahdmu kienu ta' *"40 hours per week"* bil-gross monthly wage ta' *€800"*.[246]

F'dikjarazzjoni ohra maghmulha lil Identity Malta datata Awissu, 2017, Gera jghid: "*Ms Zhai Shuang of passport no. G51687396 and Ms Wang Lili of passport no. E15993730 will be living in this residence Dibrell, Flat 2, Triq il-Klarissi, St Julians. This residence is my own 3 bedroom residence … this is just temporary, till they manage to find an adequate residence to rent and live in. When they do find their own residence, I will immediately inform ID Malta with the changes. I would like to state that I will not charge them any money for their short stay with us, as they work in my shop"*.[247]

Hu tassew rilevanti li minkejja dan, meta jigi interrogat anqas minn tlett xhur wara, Gera jghid li kuntratti t'impjieg ma kienx hemm, ***"le, le, le!".***[248] Konferma li ssottometta il-kuntratti t'impjieg **bl-iskop uniku li jinhareg il-permess biex jistghu jigu Malta w mhux ghaliex kien ser jonora xi wiehed minnhom**, tirrizulta fix-xhieda tieghu *viva voce:*

*"**Gera:il-kuntratt dak work contract sar dan l-ahhar, kien isir meta konna napplikaw qabel...... [Prosekuzjoni**: Jiena fuq dan il-kuntratt mhux kif kien isir, lil Identity Malta ghedtilhom li ha thallasha 800 euro fix-xahar, lil Qorti qed tghidilha li kont thallasha per client, x'inhi r-raguni li lil Identity Malta ghedtilha informazzjoni mod imbaghad ghamilt modd iehor, x'inhi r-raguni?] **Gera**: Ir-raguni dak johrog dak il-kuntratt, **jien ghalhekk naghmel dik il-karta qabel biex imma dak il-kuntratt bilfors irid isri biex ikun hemm, biex jaghdi work permit".*** [249]

Sfortunatament izda l-ikbar ingann ma soffritux Identity Malta izda Zhai u Wang li emmnu li fl-impjieg gdid taghhom kien ser ikollhom dawk il-kondizzjonijiet li ffirmaw ghalihom. Kemm gew imqarrqa msieken! Mhux talli ma nghatawx akkomodazzjoni jew *food facilities* kif mweghda, izda thallew isofru l-guh u jiddependu mill-ghoti ta' servizzji sesswali biex ikollhom bizzejjed biex jghixu; mhux talli ma hadmux 40 siegha fil-gimgha kif mweghda izda hadmu mill-**9am sal-10pm kuljum mit-Tnejn sal-Gimgha, bis-sibt u l-hadd mid-9am sal 12:00am**; mhux talli nghataw il-paga miftehma ta' €800 izda lanqas centezmu tal-paga bazika ma nghataw u kull ma kienu jiehdu kienu bejn €5 sa €10 fuq kull *massage.*

Jigi sottolinejat l-ovvju. Dawn il-kundizzjonijiet jivvjolaw b'mod grossolan u massicc il-kundizzjonijiet bazici w minimi li jirregolaw l-impjieg in kwantu

246 Fol.282 u 376
247 Fol.237
248 12:08:52, tieni stqarrija
249 Fol.979-980

jikkoncerna limitatament **l-impjieg lecitu**, u cioe` l-ghoti ta' *massages* fil-veru sens tal-kelma. Bla dubbju l-legizlatur jipprotegi biss ix-xoghol legittimu u mhux dak illegitimu bhal ma hi l-prostituzzjoni, li ghaliha hadd ma jista' jistenna xi forma ta' hlas jew kumpens.

Galadarba s-settur ta' *massage parlours* mhux regolat minn Wage Regulation Order (*lex specialis*), dawn jigu regolati minn National Standard Orders (*lex generalis*) fosthom, **National Minimum Wage National Standard Order; Organisation of Working Time Regulations, 2003; Overtime Regulations, 2012; Weekly Allowance National Standard Order** u **Weekly Day of Rest and Annual Vacation Leave National Standard Order.**

L-ghemil qarrieqi tal-imputat hu fid-deher meta filwaqt li fil-kuntratt t'impjieg hemm imnizzel fil-para.5.3 li *"The Employee shall work in accordance with a weekly on [sic] monthly roster….which roster must respect the parameters laid down in the "Hotel and Clubs Council Wages Regulation Order"* (fejn jinghad mill-ewwel li dan il W.R.O ma jsib l-ebda applikazzjoni ghall-*massage parlours* skond id-dettami tal-istess ordni[250]), meta jixhed Gera, dan jghid li l-kategorija li tahthom jaqaw l-impjegati hi dik ta' "Massage and Beauty" [251] li ma tiffigurax bhala xi settur distint.

Mhemmx dubbju li minn dawn il-kundizzjonijiet *sub-standard* w inumani gawda biss Gera li ra l-introjtu tieghu jizdied a skapitu tal-impjegati tieghu. Dan jinkwadra f'dak l-isfruttament li tirreferi ghalih il-ligi fl-artikolu 248A tal-Kodici Kriminali:

> **248A(1):** Għall-finijiet ta' dan is-subartikolu sfruttament jinkludi li persuna tiġi meħtieġa tipproduċi oġġetti u tipprovdi servizzi taħt kundizzjonijiet u f'ċirkostanzi li jmorru kontra *standards* fil-kamp tax-xogħol li jirregolaw il-kondizzjonijiet tax-xogħol, pagi u s-saħħa u s-sigurtà.

[250] "EXPLANATORY NOTE
(This note is not part of the Order but is intended to indicate its applicability).

The provisions in the above Schedule will apply to all persons employed in hotels, guest houses, holiday complexes or tourist villages, licensed holiday flats, clubs, coffee shops, bars and restaurants.

Hotels include any bar, restaurant or shop run directly by the management of a hotel as part of that hotel.

Clubs include any bar, restaurant or shop either run directly by the management of a club, or given out under contract, for the purpose of increasing the amenities of the club. The term "guest houses", "holiday complexes or tourist villages", and "licensed holiday flats" have the same meaning as is assigned to them by the Malta Travel and Tourism Services Act."

[251] Fol.951

F'dan l-isfond issir riferenza ghall-provi saljenti dwar it-trattament li nghataw il-vittmi sabiex ikompli jidher l-sfruttament taghhom mill-imputati:

– Dwar l-Akkomodazzjoni

Filwaqt li kif gja` ntqal fil-'Contract of Employment' iffirmat minn Gera ma Shuang Zhai u Lili Wang kien hemm provdut li: *"The Employer shall provide to the Employee with food facilities and accommodation in house at the Employer's expenses (Para.11)"*[252], Zhai taghti storja differenti li tiskontra bil-qawwa ma dak li gie mifthiem. Ezempju tal-makakkerija w hazen li bniedem kapaci jezercita anke fuq min ghandu anqas mix-xejn.

Zhai tiddeskrivi kif giet kostretta tghix fil-hanut billi giet mhedda li kellha thallas taxxa lill-imputati ta' €30 biex tghix x'imkien iehor: *"If she choose to live outside from shop* ***she was asked to pay 30 Euro and Winston called this a tax for living out****…….. She choose to live at the own shop so she doesn't move on and she paid 150 Euro per month for the accomodation……* ***The tax is for Winston only and she need to pay extra for what she had found herself****……She lives in a room for the massage only and sometimes if it is not possible she just sleep on the ground…. There is no place to sleep.. [Qorti: So for sleeping on the floor you were paying* ***150*** *per month?]….. Yes."*.[253]

Wang Lily ukoll tirrakonta kif giet ingannata meta, wara li giet mweghda li ser tirrisjedi f'dar, din il-weghda ma mmaterjalizatx: *"Winston and his girlfriend told her there is a house to live for all the massages, and till now there is no such a place…. Winston said there is a house for them to live but there is no such place. [Qorti: How does she know did she ask to go somewhere better?] Xhud: Winston mentioned he rent a place and until today there is no more message from this place."*.[254]

Hawnhekk jerga' jintwera kemm ma kienitx onesta w sinciera l-imputata meta fl-istqarrija taghha tasal tghid li ghall-ewwel hmistax hi w l-imputat laqaw lil dawn iz-zewg Cinizi gewwa darhom.

– Hinijiet ta' Xoghol/Nuqqas ta' Paga/Hlas ta' Kera/Ilbies 'Sexy'

L-impjegati jixhdu kif kienu **jahdmu kuljum bejn 9am u l-10pm sebat ijiem fil-gimgha minghajr ma jiehdu *vacation leave* jew *sick leave*.** [255] Zhai ssemmi li meta kienet ma tiflahx l-imputata kienet lmentat maghha li jekk ma thallix il-

[252] Fol.372
[253] Fol.87-90
[254] Fol.195
[255] Fol.95

hanut miftuh ma kienietx ser taqla' flus.[256] Zhai: *"the owner's girlfriend told her that **what you earned goes to me** because **<u>I bring you to Malta</u>**, I made you the identity card, I have the right to kick you out"*[257].

Zgur li l-ebda negozju rispettabbli ma kien ser igieghel impjegat jixtri, minn flusu, hwejjeg *'hot and sexy'* biex jintlibsu fuq il-lant tax-xoghol,[258] ***"Hot and sexy…. really tight, show her body shape…. low cut** …Above the knees …. That is what she was told because for that reason **if you do not wear hot and sexy clothes you will not get customers**.".*[259]

<u>Din il-mara giet mnezza mid-dinjita` taghha biex issir komodita` f'idejn l-imputati!</u>

Phassada ukoll tikkonferma li **tahdem kuljum bla *vacation leave* jew *sick leave* mill-10am sal-10pm sebat ijiem fil-gimgha.**[260] Thallas lil Gera **€200** fix-xahar talli tirrisjedi fil-*parlour*[261] u minn *massage* li jiswa €45 hi kienet tiehu €10 bil-€35 jibqghu ghal Gera. Tghid ***"Nothing, nothing pay from Winston"***[262]**.**

Yubo Zhong kif ukoll Amanda Borg jikkonfermaw li kienu jithallsu *commission* ta' bejn €5-€10 fuq kull *massage* u ma kellhomx paga fl-impjieg taghhom ma Gera.

Wang Lily semmiet li kienet tithallas €5 mill-prezz ta' €25 li kien jiswa *massage,* izda wara li lmentat ma Gera bdiet izzomm €10.[263] Thallas **€150** fix-xahar biex tirrisjedi fil-hanut[264] li kellu *"One dining room and one massage room, one of them is for sleeping and no kitchen, no bathroom….. No shower. … No a/c for me, me come in Summer. No have a/c….No windows, only doors."*. [265] Kienet torqod fuq sufan, la kellha gwardarobba u lanqas sodda.[266] Hinijiet ta' xoghol kienu m**ill-10am sal-10pm il-gimgha kollha, minghajr granet ta' *leave*.** [267] Meta kellha bzonn

[256] Fol.96
[257] Fol.98
[258] Fol.95
[259] Fol.93-95
[260] Fol.37-38
[261] Fol.40
[262] Ibid.
[263] Fol.174-175
[264] Fol.177
[265] Fol.178
[266] Fol.179
[267] Fol.180-181

thalli l-hanut ghall-aktar minn nofsiegha kellha tinforma lill-imputata.[268] Tghid ***"She was never informed that she can have one day off.".***[269]

WPS9 Abigail Pomroy tiddeskrivi fejn kienet tabita Wang Lily - li skond il-kuntratt t'impjieg imsemmi, suppost kellha tirrisjedi f'fond adekwat a spejjez tal-imputat: *"il-vittma uritna kamra fejn kellha* ***zewg pultruni maghqudin flimkien u qaltilna li dik kienet is-sodda fejn kienet tghix****. Aktar minn hekk uritna ukoll il-post fejn kienet tinhasel li kien sink tal-idejn zghir hafna.* ***Ma kellix shower, xejn, u biex issajjar kull ma kellha kienet burner zghira tal-gas****.".*[270]

Dan kollu hu prova mill-aktar lampanti ta' kif **l-imputati sfruttaw fil-massimu** dawn l-impjegati.

It-Tieni rekwizit: it-'traffikar'

L-artikolu 248E(1) tal-Kodici Kriminali joffri definizzjoni ta' dak li tfisser il-frazi "traffikar ta' persuna":

> **248E.** (1) F'dan is-sub-titolu, l-espressjoni "jittraffika persuna" jew "jittraffika minuri" tfisser ir-**reklutaġġ**, trasport, bejgħ jew trasferiment ta' persuna, jew ta' minuri, skont kif jista' jkun il-każ, inkluż il-ħabi ta' dik il-persuna, jew tal-minuri, li wara tiġi riċevuta u jkun hemm bdil jew trasferiment ta' **kontroll** fuq dik il-persuna, jew fuq il-minuri, u tinkludi kull għemil li **jiffaċilita id-dħul**, transitu, residenza fi jew ħruġ mit-territorju ta' xi pajjiż għal xi wieħed mill-għanijiet imsemmija fl-artikoli preċedenti ta' dan is-sub-titolu, skont kif jista' jkun il-każ.

Ser jigi muri kif **Gera u Tianxia Zhang hadu hsieb ir-reklutagg** ta' dawn it-tfajliet, tnejn mic-Cina, u wahda Tajlandiza li kienet diga Malta. *Multo magis* lit-tfajliet Cinizi **ffacilitawlhom id-dhul f'Malta** meta prezentaw lil Identity Malta dokumentazzjoni fazzulla w fabbrikata bl-iskop li jinhareg *work permit* ghal Zhai u Wang. Malli daw iz-zewg tfajliet Cinizi ngahtaw il-*work permit*, il-kuntratt u l-kundizzjonijiet mifthem bejnhom u Gera sfumaw fix-xejn.

- Reklutagg

Ma jista' jifdal l-ebda dubbju li l-imputati ghamlu reklutagg tal-vittmi Phassada, Wang u Zhai; kien Gera li applika ghall-permessi necessarji sabiex Wang u Zhai setghu jigu jahdmu gewwa Malta u kienet l-imputata li kienet ikkomunikat ma agenti fic-Cina.

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[268] Fol.180-181
[269] Fol.192-193
[270] Fol.559-560

Fil-fatt hi l-istess imputata li fil-kors tal-istqarrija taghha issemmi kif **kienet hi li ghamlet kuntatt ma kumpanija fic-Cina biex jingiebu persuni biex jahdmu Malta (11:04).** Dawn it-tfajliet kienet tqishom bhala impjegati taghha daqs kemm kienu impjegati ta' Gera: *"How many employees does **she** and Winston **have** in all parlours?" Only three from China".* Kif ukoll ma tmeriex lill-ispettur meta jikkonfrontaha dwar fejn kienu jghixu l-impjegati taghhom*"who **work with her and with Winston** where do they live..the two who came?" (11:15).*

Lil Phassada impjegaha wara li tkecciet minn ma *employer* ohra li ma rieditix taghmel atti sesswali, u dan Gera kien jafu kif jammetti fl-interrogazzjoni meta jsemmi li Suri keccitha. Din isservi ta' prova li Gera kien jaf x'kien bi hsiebha taghmel Phassada u minkejja dan impjegaha! Hi l-istess Phassada li tixhed kif meta marret tahdem ma Gera kienet lesta tippresta servizzji sesswali w li l-imputat kien konxxju minn dan.[271]

- Facilitazzjoni ta' dhul f'Malta

Gja saret riferenza kif l-imputati ffacilitaw id-dhul f'Malta ta' Zhai u Wang meta ingaggawhom u dan anke permezz ta' dikjarazzjonijiet foloz ma Identity Malta. Gja sar accenn ghall-fatt li l-kundizzjonijiet ta' impjieg li kienu ser jigu offruti kif elenakti fil-'Contract of Employment' u fil-'Position Description' kienu **frott tal-immaginazzjoni, ingann perpetrat minn Gera versu l-awtoritajiet Maltin bl-iskop li jinhareg *work permit* u ghal xejn izjed**.

Id-dikjarazzjoni ta' Gera, fl-isfond ta' dak li rrizulta mill-atti, turieh bhala bniedem li lanqas ghall-awtoritajiet ma ghandu rispett, tant li jigdeb maghhom minghajr biza ta' xejn: *"Ms Zhai Shuang of passport no. G51687396 and Ms Wang Lili of passport no. E15993730 will be living in this residence Dibrell, Flat 2, Triq il-Klarissi, St Julians. This residence is my own 3 bedroom residence … this is just temporary, till they manage to find an adequate residence to rent and live in. When they do find their own residence, I will immediately inform ID Malta with the changes. I would like to state that I will not charge them any money for their short stay with us, as they work in my shop".*[272]

Dikjarazzjoni li saret fl-istess zmien li ghamel kuntratt t'impjieg maghhom, li permezz tieghu ntrabat li jhallsilhom ghall-akkomodazzjoni taghhom.

[271] Fol.56
[272] Fol.237

- Kontroll

a). Mal-wassla ta' Zhai u Wang f'Malta inghata bidu ghall-**regim ta' kontroll** strett, li ra lill-impjegati kontinwament mghassa w sorveljati lejl u nhar mill-imputati, ristretti f'dak li setghu jaghmlu w ma jaghmlux anke fil-hinijiet liberi taghhom – jekk hin tal-irqad jista' jitqies bhala hin liberu ghax mill-bqija l-granet taghhom ghaddewhom jahdmu biex ikattru l-gid ghall-Gera u Tianxia Zhang!

Il-kontroll ezercitat fuqhom sar wiehed totali malli gew sfurzati jghixu fil-hwienet ta' Gera. Ghalkemm hu minnu li ma ntuzatx forza fizika fuqhom madanakollu **forza psikologika** ntuzat. Intwera kif Gera impona taxxa jekk dawn riedu jsibu fejn jikru barra mill-hwienet tieghu w dan fisser, ghal min kien mghafus finanzjarjament, li minbarra hlas tal-kera ghall-fond kien ser ikollhom ihallsu taxxa ta' €30 talli ma jissottomettux rwiehom ghall-jasar li impona fuqhom Gera. Din bhat-tehhid tal-passaporti serviet ta' deterrent biex ma jinhallux mill-kontroll a distanza li kellhom fuqhom l-imputati.

L-imputati **ezercitaw kontroll shih u assolut** mill-imputati fuq dawn il-vittmi. L-imputati kienu konsapevoli tas-sitwazzjoni prekarja li kkundannawhom ghaliha biex b'hekk l-istess impjegati Zhai, Wang u Phassada necessarjament spiccaw dipendenti fuq l-impjieg offrut mill-imputati; aktar minn impjieg dan ma kien xejn ghajr posizzjoni li toqrob ferm lejn forma ta' skjavitu raffinata.

Phassada semmiet kif riedet tattendi attivita` religjuza w ma thallietx[273] filwaqt li Zhai tixhed: "*the owner's girlfriend told her that what you earned goes to me because I bring you to Malta, I made you the identity card, I have the right to kick you out.*".[274]Issemmi wkoll li meta giet mistiedna ghal *lunch* l-imputata wrietha l-estremita` tal-kontroll li kienet tezercita fuqha: "*this client invite her to go out for lunch but the girlfriend of the shop owner asked her to stay, and she told her if you go out you need to **pay me** 50 Euros per hour, if you have one minute extra exceed to this hour it is 100 Euro for every minute*".[275]

Indikazzjoni ohra cjara tal-fatt li Zhang Tianxia kienet **ko-awtur, participant materjali** fl-ghemil sancit.

Wang ukoll issemmi l-intensita` tal-kontroll li gie ezercitat fuqha tant li ghalkemm kien tard filghaxija, u kieku kellhom jitwemmnu l-imputati dan

[273] Fol.39
[274] Fol.95-98
[275] Fol.115

ifisser li kien wara l-hin tal-gheluq li Gera jghid kien dak tas-7pm, meta din harget fit-8.30pm mill-ewwel cemplet l-imputata ghas-sodisfazzjon:[276]

"Th*ere was a time after* <u>*half past eight*</u> *she went out with her friends for dinner and they called her immediately. …China lady called me. Why are you this time closed? You go outside first you call me. I say okay I go okay.* ***Chinese lady call me immediately and tell her it is not the time to go out and close the shop, you should inform me first before you go out. If it happens another time you will be asked to abolish the application, the identity and go back to China….. Both day and night she should inform them….. She used to leave the shop for around less than 20 minutes for lunch or a meal. …. Yes both day and night she should inform them before she leaves****……* ***She was never informed that she can have one day off.".***[277]

Shuang Zhai ukoll ssemmi trattament simili: ***"Because the girlfriend of the shop owner said you are employed by me now, I don't want you contact any other person.".***[278] F'mument iehor fix-xhieda taghha *"She descibe how she was treated, like everyday she can have only* ***one meal, if she left the shop for food she will be caught and phoned to say like go back to the shop, don't go out****. [Qorti: Not even to eat?] ..No."* [279]

Kienu kontrollati anke ghal dak li jilbsu, b'kollox isir sabiex <u>minflok *massage parlour* il-hwienet isiru burdell</u>: Zhai tghid*"His girlfriend choose the dress for her and let her to try it on, and then let Winston to see if it fit or not.* ***If Winston said okay they got clothes.".***[280]

b). Fin-nuqqas assolut ta' paga, kellhom jirrikorru ghall-atti sesswali li setghu jinghataw fil-hwienet ta' Gera sabiex ikollhom aktar dhul. B'hekk Gera ezercita kontroll fuqhom billi assigura ruhu li dawn ma sabu l-ebda alternattiva ohra sabiex jippruvaw itejjbu s-sitwazzjoni finanzjarja taghhom.

c). Izda dan ma kienx kontroll sufficjenti ghall-imputati ghaliex sahansitra **hadu** l-**passaporti** tal-impjegati. Jekk l-impejgata riedet izomm il-passaport kellha thallas **taxxa ta' €500**! B'hekk l-imputati setghu jabbuzaw mill-vulnerabbilita` li kienu huma stess li poggew lill-impjegati taghhom fiha.

Lily Wang issemmi li l-imputata Zhang haditilha l-passaport u talbitha €500 jekk riedet izzommu ghandha; li zzomm il-passaport tieghek ghandek hu

[276] Fol.180-181
[277] Fol.192-193
[278] Fol.84
[279] Fol.111-113
[280] Fol.142

obbligu impost mill-Ordinanza dwar il-Passaporti, Kapitolu 61 tal-Ligijiet ta' Malta: *"When she finished with applying for the ID card Winston ask her to give him back the passport."*[281] Imbghad *"**If she is not going to give the passport back to Winston she has to pay 500 Euros as the penalty**"*.[282] Mill-banda l-ohra Zhai tghid li ***"she only saw her passport once** before the policeman help her to get it back"* [283]

L-imputata stess fl-istqarrija minn taghha tammetti li zammet passaporti ghandha kif ukoll tammetti li ppenalizzat lil tfajla minnhom billi esigiet €500 wara li din irrifjutat li taghtiha l-passaport taghha. Tammetti li **haditilhom il-passaport ghaliex il-process biex dawn it-tfajliet jingiebu minn barra hu wiehed twil u biex terga' ssib impjegati jiehu zmien** (11:19:25). Meta l-imputata tigi mistoqsija fejn izomm iz-zewg passaporti Cinizi tghid li *"she only takes one of the workers passaport"*(11:18:16) ghax *"it takes a long period to bring the workers from China to her parlour and **she needs a little guarantee** if they leave"* (11:19). Izzid *"she just means if they want to leave they need to inform her one month before and she will give them the passport"* (11:20). Dwar l-impjegata tal-hanut tal-Hamrun tiddikjara li minflok haditilha l-passaport, peress li din irrifjutat, **hadet minflok €500** (11:24).

d). Mhux talli l-imputati ma tawhomx akkomodazzjoni b'xejn kif mwieghed lilhom izda t-tfajliet gew mgieghlha jghixu fil-hanut tal-imputat minghajr facilitajiet bazici bi hlas ta' **€150** fix-xahar (Zhai u Wang) b'Phassada thallas **€200.**[284] Dan sar biex l-imputati jzommu ghajnejhom konstantament fuqhom, biex jiehdu minnhom kemm felhu.

Necessarjament sitwazzjoni simili tirrendik dipendenti ghal kollox fuq min izommok f'jasar simili. Din t-tip ta' skjavitu tohrog aktar fid-deher meta Gera impona fuqhom **taxxa ta' €30** kemm il-darba dawn iddecidew li jmorru jghixu band'ohra bl-iskop li dawn jaqtaw qalbhom u jigu dipendenti fuqu. Dan mhu xejn ghajr **abuzz u sfruttament tal-vulnerabilita` ta' dawn l-impjegati.**

e). Il-kontroll fuqhom ma kienx wiehed **psikologiku** jew **finanzjarju** biss izda sahansitra wiehed **fiziku**. Il-hwienet fejn dawn gew kostretti jghixu kif ukoll jahdmu kienu mghammra b'*cctv cameras* li assiguraw li dawn jsegwu l-ordnijiet tal-imputati f'kull hin. Kif spjegat Wang, hekk kif din kienet thalli l-hanut, l-imputata cemplitilha minnufih.[285]

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[281] Fol.195
[282] Fol.181-183
[283] Fol.113
[284] Fol.40
[285] Fol.192-193

Gja ntqal li mill-hwienet gew elevati *dvrs,* li permezz taghhom l-hwienet kienu qed jirrekordjaw dak kollu li kien qed isehh fihom. L-imputati kienu jezercitaw poter kbir fuq l-impjegati tant li Zhai lanqas ma setghet titfi l-*camera* peress li kien mezz ta' kontroll mis-sidien biex ikunu jafu kemm kienu jzuru klijenti, *"She had asked Winston's girlfriend twice and what she replied is <u>you can't switch off the camera</u>, otherwise just go inside the room and sleep there."*[286] Tirrakonta wkoll *"There is a room for the massage only.* ***If she came out of the room not enough to half an hour she need to pay <u>penalty</u>****.....The owner's girlfriend said* ***no matter what is happening just stay there till half an hour, I don't mind what is happening just stay there half an hour, if not pay me****."*[287] Ghal dawk it-30 minuta Zhai sfat priguniera ma klijent inkella kellha thallas taxxa lill-imputata!

Ghaldaqstant mill-provi akkwiziti mhemmx dubbju li gie pruvat b'mod skjaccat it-tieni rikwezit u cioe` **it-traffikar** kif definit fl-artikolu 248E(1) tal-Kodici Kriminali:

<u>(iii). It-Tielet Rekwezit: 'il-Mezz'</u>

It-tielet rekwezit jirrikjedi li t-traffikar ikun sar b'xi wiehed jew aktar mill-mezzi msemija fl-artikolu 248A(2):

> (*a*) vjolenza jew **theddid**, inkluż is-serq ta' persuna;
> (*b*) **qerq jew ingann**;
> (*ċ*) użu ħażin tal-awtorità, **influenza jew pressjoni;**
> (*d*) li wieħed jagħti jew jirċievi ħlasijiet jew benefiċċji sabiex jottjeni l-kunsens tal-persuna li jkollha l-kontroll fuq persuna oħra;
> (*e*) abbuż ta' poter jew ta' pożizzjoni ta' vulnerabbiltà:
>
> Iżda f'dan il-paragrafu "pożizzjoni ta' vulnerabbiltà" tfisser sitwazzjoni li fiha persuna kkonċernata ma jkollhiex alternattiva reali jew aċċettabbli ħlief li tissottometti ruħha għall-abbuż involut.

Article 82 tal-Explanatory Memorandum dwar il-***Council of Council of Europe Convention on Trafficking (E.T.S.197)*** jipprovdi:

> 81. The means are the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, and giving or receiving payments or benefits to achieve the consent of a person having control over another person.

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[286] Fol.139
[287] Fol.103

> 82. Fraud and deception are frequently used by traffickers, as when victims are led to believe that an attractive job awaits them rather than the intended exploitation.
>
> 83. By abuse of a position of vulnerability is meant abuse of any situation in which the person involved has **no real and acceptable alternative** to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is **impelled** to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce…..

(a) Theddid

Appena l-impjegati wasslu Malta, minflok l-impjieg mwieghed sabu rwiehom minghajr paga, kontinwament mhedda u mcahhda milli jghixu hajjithom liberament. Bil-passaport li ttiehdilhom huma sfaw taht il-kontroll u dominju assolut tal-imputati.

Zhai xehdet li giet mhedda li titkecca minn Malta u jitnehhilha l-*work permit* kemm il-darba ma taghtix servizzji sesswali; mhedda li jekk taghmel rapport lill-pulizija kienet ser titkecca.[288]Meta rrifjutat taghti servizzji sesswali kellha thallas lill-imputati ghall-introjtu mitluf, l-ewwel darba €20, u f'zewg okkazzjonijiet ta' wara €30, flus li thallsu lill-imputata. L-imputata wissietha li jekk tonqos milli taghmel atti sesswali mal-klijent li gja kien vjolenti lejha, kellha **thallasha l-prezz ghall dak is-servizz u l-introju mitluf**.[289] **Kellha taghti servizzji sesswali b'sogru ghall-inkoluminita` fizika taghha,** fejn kellu jkun l-imputat li waqqaf lill-imputata milli tkompli tisfurzaha!

Meta irrapurtat x'kien gralha mal-imputata din qaltilha ***"as long as the client paid you, just satisfy them***[290] *….. The second time when the same client came to her the owner's girlfriend was there as well, and she is not willing to provide him service, and the shop owner girlfriend ordered her to go, otherwise she say you must pay me the shop owner's girlfriend.".*[291] Tkompli: *"At the beginning before she entered the room where client was they all knew that it is about sexual activity and girlfriend of the owner force her to go to the room, and that is why she was choked…..[Qorti: He was actually choking her as part of the sex, or not?]… Yes part of it. The full of her body is in blue*

[288] Fol.26
[289] Fol.99
[290] Fol.100
[291] Fol.100-101

and purple the colours changed because of too many bruises. [Qorti: So it wasn't just the neck she was actually beaten.] …Xhud: Yes."[292]. L-imputata kienet fil-kamra ma genbha w meta qaltilha b'dak li kien gralha, zammitha milli ccempel lill-pulizija *"the girlfriend of the owner said if you call the police our four shops will be put in trouble because the tax issues may be checked."* [293] Altru li sar diskors simili tenut kont kif kienu jqarrqu bl-awtoritajiet fuq il-VAT.

Bhala parentezi l-Qorti tirrimarka li skond Zhai, meta l-imputat sar jaf li kien hemm min kien vjolenti ma Zhai, l-imputata ma riedietx taf w ordnatilha tmur mieghu xorta, izda Gera waqqaf lill-imputata *"Winston after he knew that he came to the shop and he talked to his girlfriend like let's stop it"*.[294] Altru li hi veritjiera` x-xhud fejn ma fittietx li ssebbah l-istorja taghha biex tinkrimina l-Gera b'dak li ma sehhx!

l-istess Zhai li tishaq li l-imputata kienet tghidilha taghti servizzji sesswali w li kemm il-darba din ma kienitx ser taghmel dan, hi kienet ser tinduna mis-*cctv footage* meta taraha li tkun harget mill-kamra qabel u gghielha thallsha l-ammont tal-introjtu mitluf, *"There is a room for the massage only.* ***If she came out of the room not enough to half an hour she need to pay penalty****…..The owner's girlfriend said no matter what is happening just* ***stay there till half an hour, I don't mind what is happening just stay there half an hour, if not pay me****."*[295].

Indikazzjoni tal-kontroll u sorveljanza li l-imputati ezercitaw fuqhom. Fil-fatt Zhai tixhed li meta talbet permess lill-imputata biex tohrog (dan kien meta riedet tmur l-ambaxxata) din qaltilha *"if you go out you need to pay me 50 Euros per hour, if you have one minute extra exceed to this hour it is 100 Euro for every minute…….*[296] Turija kif it-tfajliet inzammu fl-impjieg taht **regim ta' theddid** kontinwu fejn gew trattati bhala komodita`, bicca ghodda li tiggenera l-flus.

Dan ir-rakkont ikompli juri l-irwol attiv li Tianxia Zhang kellha fl-operazzjoni tal-hwienet ta' Gera.

(b) Influwenza u pressjoni

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[292] Ibid.
[293] Fol.102
[294] Fol.101
[295] Fol.103
[296] Fol.115

Bhala mezz li bih issir it-traffikar jissemma wkoll **"(ċ) użu ħażin tal-awtorità, influenza jew pressjoni".** Fit-test Ingliz insibu elenkati bhala 'means" "misuse of authority, influence or pressure;".

Mill-provi li saret riferenza ampja ghalihom jirrizulta b'mod mill-aktar manifest kif l-imputati fit-tmexxija w gestjoni tal-istabbilimenti in kwistjoni, kellhom posizzjoni ta' awtorita` fuq l-istess impjegati. Il-kariga ta' *employer* minnha nfisha hi posizzjoni ta' awtorita`. Bhala sid u/jew *employer* hu mistenni minnek li tkun tezercita` influwenza fuq id-dipendenti tieghek.

Mhemmx dubbju li Gera u Zhang kellhom dik l-awtorita`, dik l-influwenza li jitkellem dwarha l-legizlatur. Izda bil-mod kiefer, nieqes minn kull farka ta' civilita` dik l-awtorita` abuzaw minnha serjament kif anke gie rilevat meta l-Qorti kkunsidrat it-theddid kontinwu fuqhom.

L-imputati rnexxielhom izommu taht kontroll assolut lill-impjegati taghhom. Dak il-kontroll issarraf fi pressjoni konstanti w skjacanti fuq nisa li f'Malta ma kienu jafu lil hadd, li legami mal-pajjiz ma kellhomx. Ghalhekk bil-kundizzjonijiet li gew soggetti ghalihom, sabu rwiehom jiddependu ghal kollox fuq Gera u Zhang li pprovdewlhom post fejn setghu bl-ghemil t'atti ta' prostituzzjoni jew fl-ghoti ta' *massages* veri, jahdmu sighat tal-misthija; dan biex huma jdawwru lira zejda w Gera jkompli jistghana minn fuqhom.

Importanti jigi emfassizat li l-sfruttament ma kienx biss in kwantu ghall-atti sesswali li kellhom jizvolgu, izda anke ghal dak li jirregwarda *massages* veri w propji. Hu ta' ghajb u misthija kif gew mgeghla jahdmu, kif jixhdu l-kotba analizzati, hinijiet minn filghodu sa tard bill-lejl, minghajr mqarr jum ta' mistrieh, sebat ijiem fil-gimgha.

In-nisa sfaw vittmi ta' Gera li kien kapaci jisfrutta sal-massimu s-sitwazzjoni ta' skjavitu` li flimkien ma Zhang holoq ghalihom. F'dak l-isfond ta' **kontroll u pressjoni kontinwa** mhemmx dubbju li dawn it-tlett impjegati ma sabu l-ebda alternattiva ohra.

Permezz tal-kundizzjonijiet li fasslu l-imputati ghal dawn it-tlett nisa, holqu **pressjoni** liema bhala fuq l-istess impjegati li sabu lilhom nfushom f'saram tal-biza. Jew joqghodu sal-inqas dettal mar-regoli inumani w bla qalb dettati mill-imputati, jew jitkeccew minn Malta bil-konsegwenti telf t'impjieg li kienu tant hadmu ghalih biex setghu jigu mpjegati f'Malta; impjieg li ghalih hallsu ammonti sostanzjali ta' flejjes gewwa c-Cina (Zhai u Wang). Rinfaccjati b'dawn il-kundizzjonijiet u minghajr alternattivi ohrajn, it-tliet nisa ma baqalhom l-ebda ghazla ghajr li jissokkombu ghall-pressjoni li kienu kapaci b'tant krudelta` jezercitaw fuqhom l-imputati. Pressjoni li nholqot bhala konsegwenza naturali

tal-kontroll assolut li kienu soggetti ghalih, tat-theddid li jitkeccew u jibqghu minghajr l-ghajxien kwotidjan. Dawn in-nisa tnezzghu mid-dinjita` taghhom, u minn kull tama w holm li setghu kellhom mal-wassla taghhom f'pajjizna.

Il-pressjoni ezercitata fuq l-impjegati issib il-kulminazzjoni taghha meta jittiehdilhom il-passaport.

Li jittiehidlek il-passaport meta tinsab f'art barranija, tissarraf mhux biss f'theddida kontinwa li fi kwalunkwe hin tista' tigi deprivat mill-liberta` w mill-identita` tieghek, izda tpoggik fi stat ta' vulnerabilita` totali fejn tisfa mcahhad mill-protezzjoni ta' l-Istat li lilu tappartjeni.

Zhai xehdet li *"**The first night that she arrived Malta they took her passport**….: She doesn't know the reason, and she noticed that **her colleague Lily also they took her passport……**When she tried many times to ask for her passport back but they replied **like if you want your passport back what you earned is nothing, and you can't stay in Malta anymore. If you call the police we will kick you out**.*[297]

Lily **Wang tikkonferma li ttiehdilha l-passaport**.[298] Sakemm applikat ghal ID card inghatalha lura izda wara rega' hadulha.[299] Issemmi li biex setghet izzomm il-passaport ghandha kellha thallas lill-imputati €500 bhala penali: ***"If she is not going to give the passport back to Winston she has to pay 500 Euros as the penalty"***.[300] Dwar l-imputata xehdet ***'China lady my boss'*** **haditilha l-passaport** xi jumejn jew tliet ijiem wara li giet f'Malta sakemm imbghad haditu lura meta marret taghmel l-identity card u zzid *"When she finished with applying for the ID card **Winston ask her to give him back the passport**."*[301] Tentattivi kontinwi biex l-imputati jzommu l-passaporti taghhom bhala l-garanzija biex dawn ma jhallux l-iskjavitu` li hejjewlhom.

(c) Qerq w Ingann

Article 82 tal-Explanatory Memorandum dwar il-***Council of Council of Europe Convention on Trafficking (E.T.S.197)*** jipprovdi:

> 82. Fraud and deception are frequently used by traffickers, as when victims are led to believe that an attractive job awaits them rather than the intended exploitation.

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297 Fol.111-112
298 Fol.153-154
299 Fol.154
300 Fol.181-183
301 Fol.195

Il-kuntratt ta' impjieg li nghataw il-vittmi Zhai u Wang kienu mezz ta' ingann. Gera qatt ma kien intenzjonat jonorah kif gja intqal. Tant ghalih dawn il-kuntratti ma kellhom ebda validita,` li mistoqsi mill-investigaturi kienx hemm kuntratt ta' xoghol ma dawn iz-zewg nisa jghid ***"le, le, le!".***[302] u quddiem il-Qorti jasal jammetti li dawk saru biss biex jiffacilita l-hrug tal-*work permit:*

"Gera:il-kuntratt dak work contract sar dan l-ahhar, kien isir meta konna napplikaw qabel...... [Prosekuzjoni**: Jiena fuq dan il-kuntratt mhux kif kien isir, lil Identity Malta ghedtilhom li ha thallasha 800 euro fix-xahar, lil Qorti qed tghidilha li kont thallasha per client, x'inhi r-raguni li lil Identity Malta ghedtilha informazzjoni mod imbaghad ghamilt modd iehor, x'inhi r-raguni?]* ***Gera**: Ir-raguni dak johrog dak il-kuntratt, **jien ghalhekk naghmel dik il-karta qabel biex imma dak il-kuntratt bilfors irid isri biex ikun hemm, biex jaghdi work permit". [303]

> (d) Mezz iehor hu dak tal- **"(*e*) abbuż ta' poter jew ta' pożizzjoni ta' vulnerabbiltà:".**

Gja ntqal hafna dwar l-awtorita` li l-imputati indubbjament kellhom minhabba l-posizzjoni taghhom bhala sid (Gera) u/jew persuni involuti fil-gestjoni tal-hwienet (Zhang). Hu l-mod li bih dak il-poter jigi ezercitat li jiddetta jekk hux qed ikun abbuzat jew le. Meta posizzjoni simili tigi ezercitata l-barra mill-parametri permessi bil-ligi, fejn l-individwu suggett ghalija jigi mghakkas gratwitament, mhemmx dubbju li dak l-ezercizju jissarraf f'abbuz.

Meta tigi kkunsidrata l-vulnerabbilita` tal-vittmi, fuq banda wahda hemm Wannipha Phassada kienet Malta minghajr il-permessi necessarji. Dan tikkonfermah hi, jammettieh Gera u jikkonfermaw Ryan Spagnol u Joseph Saliba. Permess biex tahdem ma kellhiex u kienet bzonn flus wara li tkecciet minn ma *employer* ohra. Sabet impjieg ma Gera li ma sab l-ebda diffikulta li tithalla taghmel atti sesswali fil-hwienet tieghu.[304]

Mill-banda l-ohra kien hemm Lily Wang u Shuang Zhai li jitkellmu bl-Ingliz ma jafux, gew Malta fl-impjieg ta' Gera wara li hallsu ammonti kbar lill-agenti fic-Cina biex isibilulhom impjieg. Kuntrarjament ghal dak li kien gie mifthiem maghhom, sabu rwiehom kostretti li jghixu fil-hanut stess b'kera ta' €150 u bla paga ta' xejn. Indubbjament dawn il-vittmi huma ezempju anzi definizzjoni ta' "vulnerabbilita`".

Dwar kif din l-vulnerabbilita` giet abbuzata mill-imputati gja` ntqal hafna meta gie kkunsidrat it-trattament li gew soggetti ghalih il-vittmi li gew mcahhda

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302 12:08:52, tieni stqarrija

303 Fol.979-980

304 Fol.45

mill-aktar htiegijiet bazici, soggetti ghall-kondizzjonijiet ta' xoghol abbuzivi, kostretti jghixu fi hwienet b'kera u fejn ittiehdilom il-passaport. Azzjonijiet intizi biex jikkostringu lill-impjegati jibqghu fl-iskjavitu moderna li fasslulhom l-imputati.

Dwar abuzz ta' posizzjoni ta' vulnerabbilita` issir riferenza ghal dak li nsibu fl-Explanatory Memorandum gja msemmi:

> 83. By abuse of a position of vulnerability is meant abuse of any situation in which the person involved has **no real and acceptable alternative** to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is **impelled** to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce…..

Imbghad:

> 2.3. The existence of vulnerability is best assessed on a case-by-case basis, taking into consideration the personal, situational or circumstantial situation of the alleged victim. Personal vulnerability for instance, may relate to a person's physical or mental disability. Situational vulnerability may relate to a person being irregularly in a foreign country in which he or she is socially or linguistically isolated. Circumstantial vulnerability may relate to a person's unemployment or economic destitution. Such vulnerabilities can be pre-existing and can also be **created by the trafficker**. Pre-existing vulnerability may relate (but not be limited) to poverty; mental or physical disability; youth or old age; gender; pregnancy; culture; language; belief; family situation or irregular status. Created vulnerability may relate (but not be limited) to social, cultural or linguistic isolation; irregular status; or dependency cultivated through drug addiction or a romantic or emotional attachment or through the use of cultural or religious rituals or practices. …...
>
> 2.5. Abuse of a position of vulnerability occurs when an individual's personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her, such that the person believes that **submitting to the will of the abuser is the only real or acceptable option available to him or her, and that belief is reasonable in light of the victim's situation**. In determining whether the victim's belief that he or she has no real or acceptable option is reasonable, the personal characteristics and circumstances of the victim should be taken into account…………[305]

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[305] Guidance Note on 'abuse of a position of vulnerability' as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Altru` li dan il-kwezit gie soddisfat ukoll. Jibqa' ghalhekk biex jigi kkunsidrat l-ghan li ghalih gew traffikati l-vittmi.

(ii) It-Tielet rikwezit: 'il-ghan' li ghalih persuna tigi traffikata:

(*a*) fil-produzzjoni ta' oġġetti jew fl-**għoti ta' servizzi**; jew
(*b*) fil-jasar jew prattiċi simili għall-jasar; jew
(*ċ*) fl-iskjavitù jew **xogħol furzat**; jew
(*d*) f'attivitajiet assoċjati mal-elemosina; jew
(*e*) f'xi **attivitajiet oħra illegali** mhux speċifikament provduti imkien f'dan is-sub-titolu

Fl-Explanatory Memorandum msemmi, nsibu:

> 92. With regard to the concept of "forced services", the Court likewise found, in Van der Müssele v. Belgium, that the words "forced labour", as used in Article 4 ECHR, were to be given a broad meaning and encompassed the concept of forced services (judgment of 23 November 1983, Series A, No.70, paragraph 33). From the standpoint of the ECHR, therefore, there is no distinction to be made between the two concepts……
>
> 95. The ECHR bodies have defined "servitude". The European Commission of Human Rights regarded it as <u>having to live and work on another person's property and perform certain services for them, whether paid or unpaid, together with being unable to alter one's condition</u> (Application No.7906/77, D.R.17, p. 59; see also the Commission's report in the Van Droogenbroeck case of 9 July 1980, Series B, Vol. 44, p. 30, paragraphs 78 to 80). Servitude is thus to be regarded as a particular form of slavery, differing from it less in character than in degree. Although it constitutes a state or condition, and is a "particularly serious form of denial of freedom" (Van Droogenbroeck case, judgment of 24 June 1982, Series A, No.50, p.32, paragraph 58), it does not have the ownership features characteristic of slavery…………

<u>Sfuttament fl-ghoti ta' servizzji u mhux biss fi prostituzzjoni</u>

Irid jigi emfassizzat li l-sfruttament jirrizulta anke fejn dawn in-nisa kienu qed jaghmlu xoghol **legali,** u cioe` fejn kienu jaghtu *massages* fil-veru sens tal-kelma. Hu precizament ghall-attivita simili li l-legislatur jirreferi bil-frazi **"ghoti ta' servizzi"** fl-artikolu 248A(1) tal-Kodici Kriminali.

Fil-fatt il-kundizzjonijiet ta' impjieg u l-hinijiet ta'xoghol esagerati tul is-sebat ijiem tal-gimgha li kellhom jissuggetaw rwiehom ghalihom dawn it-tlett nisa, ma kienux ikopru biss l-ghoti ta' servizzji leciti bhal ma huma *massages* fis-sens tradizzjonali; li taghti *massage* minghajr '*extras*', ma fih xejn hazin.

Gara izda, li l-isfruttament taghhom kien jestendi anke ghall-<u>atti ta' prostituzzjoni</u> kif ravvizat bl-artikolu 248B tal-Kodici Kriminali.

Kienu l-imputati li kienu jhegguhom jaghtu servizzji sesswali. Zhai ssemmi kif giet ordnata tixtri hwejjeg intizi biex jattiraw il-klijenti: *"Hot and sexy…. really tight, show her body shape…. low cut …Above the knees….That is what she was told because for that reason* ***if you do not wear hot and sexy clothes you will not get customers****.".*[306] Tixhed kif l-imputata qaltilha li tista taqla izjed b'dawn l-*extras*[307] tant li taghtha l-*condoms.*[308] Wang ukoll issemmi li l-imputata ghaddietilha *condoms.*[309] *Condoms* li gew mormija malli saru jafu li l-pulizija bdiet tinvestiga.

Zhai issemmi wkoll li meta rrifjutat taghti servizzji sesswali kellha <u>thallas lill-imputati ghall-introjtu mitluf</u>, l-ewwel darba €20, u f'zewg okkazzjonijiet ta' wara €30 bil-flus tircevihom l-imputata li kienet tkun il-hanut maghha.[310] Irrakontat kif l-imputata ordnatilha taghmel dak li xtaqu l-klijenti u kif din sfurzata tmur ma klijent li abbuzaha sesswalment w kien vjolenti maghha gimghatejn wara li bdiet fl-impjieg.[311]

Il-krudelta` tal-imputata tohrog aktar fil-berah meta jigi mfakkar dak li Shuang Zhai ddeskriviet dak li sehh meta klijent kien bengillha gisimha bid-daqqiet u pprova jifgahha. Ghalkemm l-imputata kienet taf li Zhai kienet bezghana minnu meta dan irritorna f'okkazzjoni ohra, mhux talli ma hallithiex taghmel rapport lill-pulizija izda sfurzata taqdieh: *"****she want to call the police but Winston's girlfriend refused****[312]* ***…..*** *the second time when the same client came she refused but* ***Winston's girlfriend said no you have to accept*** *…..Winston saw her upset appearance after everything happened and told his girlfriend to phone him if this guy came again[313]* ***…….".*** *G*halkemm fil-bidu l-imputati qalulha li jekk xi hadd ikun vjolenti jew f'sakra ma jaccetawhx, *"At the beginning this is what she had been told but what actually happened no. She told Winston's girlfriend this client abused me before but* ***Winston's girlfriend still said go……To go to the massage room with him, and Winston's girlfriend knew it was about sexual activity****."[314]*

Li tigi sfurzat tahdem sebat ijiem fil-gimgha, bla jiem ta' mistrieh, taht kontroll kostanti minghajr interruzzjoni tal-*cctv cameras*, mid-9am sa tard bil-lejl bla dubbju jikkostitwixxi **xoghol furzat**: *"There is a room for the massage only. If she*

[306] Fol.93-95
[307] Fol.125
[308] Fol.131-132
[309] Fol.187
[310] Fol.118
[311] Fol.152-153
[312] Fol.147
[313] Fol.148
[314] Fol.149

came out of the room not enough to half an hour she need to pay *__penalty__*…..*The owner's girlfriend said* ***no matter what is happening just stay there till half an hour, I don't mind what is happening just stay there half an hour, if not pay me****."*[315]

<u>Traffikar ghall-Prostituzzjoni: Artikolu 248B tal-Kodici Kriminali</u>

Phassada wkoll issemmi li l-klijenti *"They asked for sex"*. Hi kienet tirrifjuta izda drabi ohra, meta it-talba kienet issir fil-kors ta' *massage*, hi kienet taghmel kif mitlub ghax hekk ordnalha Gera: *"It is the request from the owner that he told* ***her if you want more money do this kind of thing****. The request from the owner said* ***if you want more money just do this thing****"*.[316] Ghalhekk ghalkemm ma gietx sfurzata fizikament mill-imputati indubbjament b'makkakerija tpoggiet f'sitwazzjoni fejn biex tpatti ghan-nuqqas ta' paga bazika, kellha tirrikorri ghal dan l-ghemil. Zhai issemmi li l-imputata qaltilha ***"as long as the client paid you, just satisfy them"***[317]

L-attivitajiet illegali li gew kostretti jwettqu, sabiex ikun f'posizzjoni jkollhom aktar flus buthom, jinkwadra kemm that l-artikolu 248A tal-Kodici Kriminali li jitkellem dwar "attivitajiet oħra illegali" kif ukoll taht l-artikolu 248B tal-Kodici:

> **248B.** Kull min, b'xi wieħed mill-mezzi msemmija fl-artikolu 248A(2) jittraffika persuna tal-età bil-għan li dik il-persuna tiġi sfruttata għall-prostituzzjoni jew f'attivitajiet pornografiċi jew fil-produzzjoni ta' materjal pornografiku jew forom oħra ta' sfruttament sesswali

Issir riferenza ghas-sentenza tal-Qorti tal-Appell Kriminali **Il-Pulizija vs Raymond Mifsud** li trattat *funditus* ir-reati ta' taffikar ta' persuni:[318]

> Illi il-ligi dwar ir-reat tat-traffikar tal-persuni ghal skopijiet ta' prostituzzjoni u cioe' l-artikolu 248B tal-Kap.9 gie introdott mill-legislatur permezz ta'l-Att III ta'l-2002, (sussegwentement emendat) sabiex tigi in linja mal-ligijiet internazzjonali li kienu qed jiggieldu kontra dan ir-reat gdid li kienu qed jiehu dimenzjoni dinjija, ewlenija fosthom l-Konvenzjoni tan-Nazzjonijiet Uniti Kontra r-Reati Organizzati Transnazzjonali tal-15 ta' Novembru 2000 (l-ewwel strument globali maħsub kontra n-networks kriminali u biex iħares lil persuni mill-iskjavitù, mill-isfruttament sesswali u mill-impjiegi illegali) u l-Protokoll għall-Prevenzjoni, Soppressjoni u Kastig tat-Traffikar tal-Persuni, Speċjalment ta' Nisa u Tfal[319], li jissupplementa din il-Konvenzjoni.
>
> Fl-artikolu 3 tal-protokoll it-traffikar huwa hekk definit:

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[315] Fol.103
[316] Fol.44
[317] Fol.100
[318] Per Onor. Imhallef Dr. Edwina Grima; Dec. 23 ta' Frar, 2017; Appell Nru: 128/2012
[319] Iffirmat minn Malta fl-14 ta' Dicembru 2002 u sussegwentement ratifikat fl-24 ta' Settembru 2003.

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organ.[320]"

Fejn allura jinghad illi:

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

Fl-istess nifs anke d-dritt komunitarju fl-2002, permezz tad-Decizjoni Kwadru tal-Kunsill 2002/629/JHA, liema d-decizjoni kwadru illum giet superata bl-implimentazzjoni tad-Direttiva 2011/36/EU, kellha l-ghan, bhall-Konvenzjoni u l-ligi taghna del resto, ***"li r-reat kriminali serju tat-traffikar tal-persuni jkun indirizzat mhux biss permezz ta' azzjoni individwali minn kull Stat Membru iżda permezz ta' approċċ komprensiv fejn id-definizzzjoni ta' l-elementi kostitwenti tal-liġi kriminali komuni għall-Istati Membri kollha, inklużi sanzjonijiet effettivi, proporzjonati u dissważivi, jifformaw parti integrali."***

Fl-artikolu 1 tad-Decizjoni Kwadru jinghad:

"Kull Stat Membru għandu jieħu l-miżuri neċessarji sabiex jiżgura li l-atti li ġejjin ikunu kastigabbli: ir-reklutaġġ, trasport, trasferiment, kenn, lqugħ sussegwenti ta' persuna, inkluż l-iskambju jew trasferiment tal-kontroll fuq dik il-persuna, fejn:

(a) isir użu minn sfurzar, forza jew theddid, inkluż il-ħtif, jew
(b) isir użu minn qerq jew frodi, jew
(ċ) ikun hemm abbuż ta' awtorità jew pożizzjoni ta' vulnerabbiltà, li tkun tali li persuna ma' jkolliex alternattiva reali u aċċettabbli iżda li tissottometti għall-abbuż involut, jew
(d) ħlasijiet jew benefiċċji jingħataw jew jiġu rċevuti sabiex jinkiseb il-kunsens ta' persuna li jkollha kontroll fuq persuna oħra għall-għan ta' l-isfruttament tax-xogħol jew servizzi ta' dik il-persuna, inkluż mill-anqas xogħol jew servizzi sfurzati jew obbligatorji, skjavitù jew prattiċi simili għall-iskjavitù, jew għall-għan tal-prostituzzjoni ta' oħrajn jew forom oħra ta' sfruttament sesswali, inkluża l-pornografija.

2. Il-kunsens ta' vittma tat-traffikar tal-persuni għall-isfruttament, mixtieq jew reali, għandu jkun irrelevanti fejn xi wieħed mill-mezzi msemmija fil-paragrafu 1 ikunu ġew użati.

Dan l-artikolu huwa eku tal-ligi introdotta fil-kodici penali taghna ftit xhur qabel rifless fid-dispost tal-artikolu 248B tal-Kap.9 li jaghmel referenza ghall-artikolu 248A(2) bhala l-mezzi adoperati ai fini tal-kummissjoni tar-reat meta kien hekk dispost qabel l-emendi introdotti fl-2010 u fl-2013:

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[320] L-istess definizzjoni moghtija fl-artikolu 248E tal-Kap.9 qabel l-emendi introdotti bl-Att VII tal-2010 fejn gie introdott il-kuncett tal-bejgh

"***Kull min, b'xi wieħed mill-mezzi msemmija fl-artikolu 248A(2) jittraffika persuna tal-età bil-għan li dik il-persuna tiġi sfruttata għall-prostituzzjoni jew f'attivitajiet pornografiċi jew fil-produzzjoni ta' materjal pornografiku jeħel, meta jinsab ħati, il-piena li hemm fl-artikolu 248A(1).***"

Fejn imbaghad l-artikolu 248A(2)(a) u (b) li jikkoncernaw l-akkuza in dizamina jindika bhala dawk il-mezzi:

(a) vjolenza jew theddid, inkluż is-serq ta' persuna;
(b) qerq jew ingann;
(ċ) użu ħażin tal-awtorità, influenza jew pressjoni
(d) li wieħed jagħti jew jirċievi ħlasijiet jew benefiċċji sabiex jottjeni l-kunsens tal-persuna li jkollha kontroll fuq persuna oħra;"

X'inhu l-ghan wara l-prosekuzzjoni ta' dan ir-reat serju? Ir-risposta tinsab fil-Preambolu 3 ghad-decizjoni kwadru surrefirta:- "**It-traffikar tal-bnedmin jinvolvi vjolazzjonijiet serji tad-drittijiet fundamentali tal-bniedem u d-dinjità umana u jinvolvi prattiċi bla ħniena bħall abbuż u l-qerq ta' persuni vulnerabbli, kif ukoll l-użu tal-vjolenza, theddid, jasar tad-dejn u sfurzar**."

…..

Issa kif tajjeb qal l-appellanti l-element materjali ai fini tal-kummissjoni tar-reat, u dan fit-termini tal-ligi kif kienet vigenti fl-2004 u cioe' fiz-zmien indikat fl-akkuza, kien jinvolvi azzjoni ta' reklutagg, trasport u trasferiment tal-persuni. Izda id-definizzjoni tal-ligi ma tieqafx hemm skont kif qed jipprospetta l-appellanti, ghaliex tinkludi ukoll "il-ħabi ta' dik il-persuna, … li wara tiġi riċevuta u jkun hemm il-bdil ta' kontroll fuq dik il-persuna, …. u tinkludi kull għemil li jiffaċilita id-dħul, transitu, residenza fi jew ħruġ mit-territorju ta' xi pajjiż għal xi wieħed mill-għanijiet imsemmija fl-artikoli preċedenti ta' dan is-sub-titolu, skont kif jista' jkun il-każ."

Issa l-appellanti allura ma jistax ighid li ma kienx involut fit-trasferiment jew trasport tat-tlett tfajliet u jitfa' l-htija fuq il-partner tieghu dak iz-zmien certu Tatiana Elkina, li l-kaz taghha diga ghadda in gudikat. Dan ghaliex huwa fatt ippruvat, kif tajjeb stqarret l-Ewwel Qorti fid-decizjoni impunjata, illi l-appellanti ha l-izbriga illi joffri residenza lil dawn it-tfajliet u anke laqghhom ma' irgiel ghal skopijiet ta' prostituzzjoni f'farmhouse li kienet proprjeta tieghu fejn hemmhekk inzammu mizmuma.

…………..

Illi malament jissottometti l-appellanti ukoll meta jishaq illi dawn it-tfajliet gew ittrasportati lejn Malta bil-kunsens taghhom u b'mod legali u anke jaghmel referenza ghal Protokoll su-iccittat meta kif inghad dan il-Protokoll u warajh id-Decizjoni Kwadru tal-Unjoni Ewropeja kienu konsoni meta inghad, u jerga jigi iccitat. illi:

Il-kunsens ta' vittma tat-traffikar tal-persuni għall-isfruttament, mixtieq jew reali, għandu jkun irrelevanti fejn xi wieħed mill-mezzi msemmija fil-paragrafu 1 ikunu ġew użati.

u hawn qed issir referenza ghal mezzi li dwarhom l-appellanti gie misjub hati ta'lingann u l-qerq, theddid u serq jew sekwestru tal-persuni. Illi jirrizulta mill-atti u senjatament mix-xhieda ta' dawn it-tlett tfajliet illi ghalkemm huma iddahhlu Malta b'mod legali, madanakollu qatt ma gew infurmati illi l-ghan tal-permanenza taghhom f'pajjizna kellu jkun sabiex jaghmlu xoghol ta' prostituzzjoni….. Illi di piu' mhuwiex minnu illi sabiex jissussisti dan ir-reat il-vittmi iridu jiddahhlu illegalment fil-pajjiz kif donnu qed jissugerixxi l-appellanti billi ddefinizzjoni ta' traffikar kif hawn fuq iccitata ma issemmi dan ir-rekwizit imkien.

Fil-procediment **Il-Pulizija v. ... Omissis ... Paul Ellul ... Omissis** intqal:[321]

> L-artikolu 248A tal-Kap. 9 jittratta dwar it-traffikar ta' persuni ta' l-eta` bil-ghan li jigu sfruttati "fil-produzzjoni ta' oggetti jew fil-ghoti ta' servizzi". Dan il-kaz jirrigwarda l-prostituzzjoni ta' nisa barranin, inkluz ittraffikar taghhom. Huwa l-artikolu 248B tal-Kap. 9 li jipprovdi dwar it-traffikar ta' persuni ghall-prostituzzjoni. Ghalhekk l-artikolu 248A tal-Kap. 9 mhuwiex applikabbli u, mill-provi, ma jirrizulta bl-ebda mod. Kwindi l-ewwel aggravju huwa milqugh. Kwantu ghat-tieni aggravju, l-appellant jghid illi l-ewwel Qorti ma setghetx issib htija skond l-artikolu 248B tal-Kap. 9 stante li l-elementi kostituttivi ta' dan ir-reat huma nieqsa. L-appellant jghid li dan ir-reat jippostula u ghandu bhala wiehed mill-elementi kostituttivi tieghu, l-element ta' traffikar. Skond l-appellant, mill-provi prodotti ma jirrizulta minn imkien li l-espressjoni "traffikar" kif spjegata fl-artikolu 248E tal-Kap. 9 effettivament tirrizulta li saret minnu. Jghid ukoll li lanqas ma jirrizulta ppruvat l-uzu tal-mezz attribwit fl-akkuza, u tabilhaqq ebda wiehed mill-mezzi msemmija fis-subartikolu (2) ta' l-artikolu 248A talKap. 9, biex b'hekk anki dana l-element kostituttiv tar-reat huwa nieqes.
>
> Is-subartikolu (1) ta' l-artikolu 248E tal-Kap. 9 jipprovdi testwalment hekk: "F'dan is-sub-titolu, l-espressjoni 'jittraffika persuna' jew 'jittraffika minuri' tfisser ir-reklutagg, trasport jew trasferiment ta' persuna, jew ta' minuri, skond kif jista' jkun il-kaz, inkluz il-habi ta' dik il-persuna, jew tal-minuri, li wara tigi ricevuta u jkun hemm bdil ta' kontroll fuq dik il-persuna, jew fuq il-minuri, u tinkludi kull ghemil li jiffacilita d-dhul, transitu, residenza fi jew hrug mit-territorju ta' xi pajjiz ghal xi wiehed millghanijiet imsemmija fl-artikoli precedenti ta' dan issub-titolu, skond kif jista' jkun il-kaz."
>
> Sabiex jissussisti l-element ta' "traffikar" huwa ghalhekk sufficjenti mqar att wiehed minn dawk elenkati fis-subartikolu appena citata. U hawn irid jigi osservat, kuntrarjament ghal dak li gie sottomess mill-appellant, illi l-frazi "li wara tigi ricevuta u jkun hemm bdil ta' kontroll fuq dik il-persuna" tikkwalifika l-att ta' "habi" tal-persuna sfruttata u ma tikkwalifikax l-att ta' "habi" tal-persuna sfruttata u ma tikkwalifikax l-atti ta' "reklutagg, trasport jew trasferiment" (fit-test Ingliz: "including harbouring and subsequent reception and exchange of control of that person, or minor"). Mix-xiehda ta' Yevgeniya Khonakhbeyeva kif ukoll minn dik ta' Tatiana Parisheva, din il-Qorti m'ghandha l-ebda dubju li dawn iz-zewg persuni mhux biss gew reklutati izda anke **giet facilitata r-residenza taghhom f'Malta bil-ghan li jigu sfruttati ghall-prostituzzjoni**. F'dan, l-appellant kellu sehem dirett. Yevgeniya Khonakhbeyeva xehdet illi Elena Ellul, mart l-appellant, kienet **ghenitha bid-dokumentazzjoni biex tidhol Malta u li kienet qaltilha li se tghinha ssib xoghol**, ghalkemm ma qaltilhiex x'tip ta' xoghol. Tatiana Parisheva xehdet illi giet Malta sabiex tahdem bhala waitress. Dawn iz-zewg persuni effettivament sabu ruhhom f'idejn l-appellant u z-zewg ko-imputati l-ohra, jaghmlu xoghol ta' prostituzzjoni. Inoltre ttehdulhom il-biljett ta' l-ajru u l-passaport u b'hekk sabu ruhhom f'sitwazzjoni li ma kinux liberi jaghmlu dak li jridu. Fir-rigward ta' l-appellant ghalhekk zgur jirrizultaw il-mezzi kontemplati fil-paragrafi (b) u (c) tas-subartikolu (2) ta' l-artikolu 248A tal-Kap. 9.

Imbghad f' **Il-Pulizija v. Carmelo Gravina ... Omissis** l-istess Qorti kif preseduta ddikjarat:[322]

> L-artikolu 248B jaghmel hati ta' reat kull min, "b'xi wiehed mill-mezzi msemmija fl-artikolu 248A(2) jittraffika persuna ta' l-eta` bil-ghan li dik il-persuna tigi sfruttata ghall-prostituzzjoni ...". ....

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[321] Per Onor. Imhallef Dr. David Scicluna; Dec. 19 ta' Settembru, 2006; Appell Kriminali Numru. 346/2005

[322] Dec.19 ta' Settembru, 2006; Appell Kriminali Numru. 345/2005

> Yevgeniya Khonakhbeyeva xehdet illi Elena Ellul kienet ghenitha bid-dokumentazzjoni biex tidhol Malta u li kienet qaltilha li se tghinha ssib xoghol, ghalkemm ma qaltilhiex x'tip ta' xoghol. Meta waslet Malta flimkien ma' habiba taghha, Elena Ellul marret ghalihom l-ajruport u hadithom id-dar taghha fejn bdew xoghol ta' prostituzzjoni ftit sighat biss wara l-wasla taghhom. Ix-xhud qalet illi l-ghada Paul Ellul hadhom f'dar tas-Sliema u hemm kienu jgibulhom il-klijenti l-imsemmi Paul Ellul u l-appellant. Sussegwentement gew trasferiti ghal appartament fl-Msida fejn kien joqghod maghhom l-appellant. Skond ix-xhud, l-appellant kien jghidilhom li "jekk ahna ma nobduhx kien se jbieghna kif fil-fatt kien biegh lil haddiehor". Tatiana Parisheva xehdet illi giet Malta sabiex tahdem bhala waitress u spiccat hi wkoll fl-appartament ta' l-Msida taghmel xoghol ta' prostituzzjoni. Fir-rigward ta' l-appellant ghalhekk zgur jirrizultaw il-mezzi kontemplati fil-paragrafu (c) tas-subartikolu (2) ta' lartikolu 248A tal-Kap. 9.

Fid-dawl tal-gurisprudenza appena enuncjata maghduda mar-rizultanzi processwali l-Qorti issib li l-ewwel imputazzjoni giet ippruvata sal grad rikjest fil-ligi fil-konfront taz-zewg imputati.

2. <u>It-Tieni Imputazzjoni: Artiklu 205 tal-Kodici Kriminali</u>

Dan l-artiklu jipprovdi:

> **205.** Kull min, biex jissodisfa ż-żina ta' ħaddieħor, iġiegħel bil-vjolenza, jew **iħajjar b'qerq,** persuna tal-età, għall-prostituzzjoni, jekk il-fatt ma jkunx jikkostitwixxi delitt akbar, jeħel, meta jinsab ħati, il-piena ta' priġunerija minn tlieta sa seba' snin:
>
> Iżda l-piena tkun ta' priġunerija minn erbgħa sa disa' snin, jekk id-delitt isir –
>
> (*a*) b'abbuż ta' awtorità, ta' fiduċja jew ta' relazzjonijiet familjari; inkella
> (*b*) bħala **drawwa jew bi ħsieb ta' qliegħ.**

In kwantu ghal dak li jrid ifisser il-legizlatur bil-kelma "ihajjar" issir riferenza ghat-test Ingliz

> **205.** Whosoever in order to gratify the lust of any other person, by the use of violence, compels or, by deceit, <u>induces</u> a person of age, to practise prostitution, shall, where the act committed does not constitute a more serious offence, be liable, on conviction, to imprisonment for a term not exceeding five years, with or without solitary confinement:

Mamo meta jikkunsidra r-reat ta' *lenocinium* jghid dan dwar l-artikoli 204 u 205, dak iz-zmien sections 218 u 219 rispettivament:

> Now the characteristic of the crime under Section 218 and, as we shall see, the crime under Section 219 is that the purpose of the agent is the gratification of the lust of others: .....

> Now "prostitution" means the yielding or offering of the body for promiscuous sexual intercourse or commonly for acts of lewdness, usually for payment…..[323]

Dwar l-artikolu 205 jghid:

> The requirement of the purpose of the offender to gratify the lust of others is common to this crime as to the preceding one. But in respect of this crime the victim can only be a woman[324] and of age. Moreover the crime always requires the use of violence or deceit.[325]

Mhemmx dubbju li l-impjegati Zhai u Wang gew imhajjra jigu Malta b'qerq. Huma gew f'pajjizna taht l-impressjoni li huma ser jizvolgu xoghol ta' *masseuses*. Kien dak il-kuntratt t'impjieg moghti lilhom u li ghalih inhareg il-*work permit*. Kien biss meta kien inghatlhom il-*work permit* li huma gew mgharrfa li mhux talli paga kif mifthiem ma Gera ma kienx ser ikollhom, izda li kellhom jirrikorru ghall-prostituzzjoni w atti sesswali ohra jekk riedu jaghmlu ftit flus b'zieda ma *commission* ta' bejn €5-€10 fuq kull massage: *"It is the request from the owner that he told **her if you want more money do this kind of thing**. The request from the owner said **if you want more money just do this thing**"*.[326]

Ghaldaqstant din l-imputazzjoni giet soddisfacentement ppruvata bil-piena ghal dan ir-reat tkun assorbita f'dik ravvizata ghall-ewwel imputazzjoni.

3. It-Tielet Imputazzjoni: Ghexu fuq qliegħ mill-prostituzzjoni

L-artikolu 7 tal-Kapitolu 63 jiddisponi testwalment:

> 7(1) Kull min, xjentement, ighix, ghal kollox jew f'parti, minn fuq il-qligh tal-prostituzzjoni ta' persuna ohra, jehel meta jinsab hati, il-piena tal-prigunerija ghal zmien ta' mhux izjed minn sentejn."
>
> (3) Persuna titqies, sakemm ma jigix ippruvat il-kuntrarju, illi xjentement tghix, ghal kollox, jew f'parti minn fuq il-qligh talprostituzzjoni, jekk jinsab illi hija tghix jew soltu tkun ma' persuna li tezercita l-prostituzzjoni, jew illi hija ikkontrollat jew mexxiet lil dik il-persuna jew kellha hakma fuqha b'mod li juri li hija qieghda tghin, thajjar jew iggieghel il-prostituzzjoni ta' dik il-persuna ma' persuna jew ma' persuni ohra.

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323 Notes on Criminal Law, Ist Year 206-207

324 Bl-Att IV tal-1994 dan l-artikolu li qabel kien jitkellem biss dwar "mara" sar jaqra "persuna" biex b'hekk sar applikabbli ghal kemm mara u ragel bla distinzjoni.

325 Notes on Criminal Law, Ist Year. Page 209

326 Fol.44: Xhieda Phassada

Għalkemm tal-atti sesswali kienu l-impjegati li tħallsu għalihom bħala *bonus,* mhemmx dubbju li kien permezz ta' dawn is-servizzji li ġew attirati il-klijenti. Jirriżulta ampjament pruvat li fuq kull servizz l-**imputati rċevew bejn is-77% u t-80% tiegħu**. Phassada tixhed li minn *massage* li jiswa €45 hi kienet tieħu €10 bil-€35 jibqgħu għal Gera. Semmiet ukoll kif mill-prezz totali ta' *massage* ta' 30 minuta li jiswa €25 hi kienet tieħu biss €5[327] bil-kumplament jittieħdu mis-sid. Zhai ukoll tgħid li fuq *massage* kienet titħallas biss €5 fuq kull *massage* ta' 30 minuta u €10 għall-*massage* ta' aktar.[328] Phassada ssemmi wkoll li l-flus kienu jinqabru bejn jum u tlett ijiem wara minn Gera jew it-tfajla tiegħu li hi Ciniża.[329]

Għaldaqstant din l-imputazzjoni ġiet soddisfaċentement ippruvata.

4. **Ir-Raba Imputazzjoni: Eżerċizzju ta' burdell**

Din l-imputazzjoni wkoll ġiet ppruvata. L-Artiklu 8 tal-Kapitolu 63 jipprovdi:

> **8.** (1) Kull min iżomm jew jeżerċita jew ikollu sehem ma' oħrajn fl-eżerċizzju ta' burdell jew ta' dar, ħanut jew lokal ieħor jew ta' xi parti minnhom li huma ffrekwentati jew magħduda bħala li huma ffrekwentati għal skop ta' prostituzzjoni jew għal skopijiet oħra immorali ....

Ġie pruvat li fil-ħwienet li kienu jinkrew minn Gera li servew sabiex fihom jingħataw servizzji sesswali bi ħlas u għaldaqstant din l-imputazzjoni ġiet ampjament ippruvata. Dak il-ħlas kien jirċievi l-parti sostanzjali tiegħu Gera. Mill-banda l-oħra Zhang kienet tgħin fil-ġestjoni tal-istess ħwienet tant li kienet hi li tagħti struzzjonijiet u tiddeċidi lill-impjegati dwar is-servizzji li kellhom jingħataw fihom u l-ħlas rispettiv. Kienet hi li kienet tieħu ħsieb, mal-imputat Gera, tiġbor il-flejjes provvenjenti minn dawn is-servizzji.

5. **Il-Ħames Imputazzjoni: Użu ta' ħanut għall-prostituzzjoni/atti immorali**

L-artikolu 9 tal-Att dwar il-Qorda tal-Kummerċ fil-Prostituzzjoni jiddisponi:

> **9.** Kull min għandu ħanut, alloġġ jew lukanda jew appartament privat u jħalli jew jippermetti li dak il-ħanut, alloġġ, lukanda jew appartament jew xi parti tagħhom jiġu wżati bħala post ta' laqgħa għal skop ta' prostituzzjoni jew għal skopijiet oħra immorali

[327] Fol.41-42
[328] Fol.151
[329] Fol.50

Ghalkemm il-hwienet kienu mikrija lil Gera, Tianxia Zhang ipprestat ko-operazzjoni diretta u essenzjali ghall-esekuzzjoni tad-delitt addebitat lilha w lil Gera b'din il-hames imputazzjoni.

6. **Imputazzjoni numru.6: Artikolu 251B tal-Kodici Kriminali**

Din l-imputazzjoni ma gietx soddisfacentement ppruvata peress li ma rrizulta l-ebda *course of conduct*.

Mill-provi jirrizulta li kien biss f'okkazzjoni wahda li ntuzat vjolenza kontra Zhai. Lanqas ma gie pruvat li sar xi ghemil da parti mill-imputati li kagun tieghu xi wahda mit-tfajliet hassitha mbezza li ser tintuza vjolenza kontriha jew kontra l-propjeta` taghha. Il-biza' li soffrew dawn l-impjegati kienet li jekk ma jobdux ghall-kundizzjonijiet inumani li mponew fuqhom l-imputati, kienu ser jitkeccew jew aghar minn hekk, kemm il-darba kienu ser jitilfu klijenti minhabba r-rifjut taghhom li jaghtu servizzji sesswali, kellhom jaghmlu tajjeb huma ghall-introjtu mitluf.

Imputazzjonijiet fil-konfront ta' Winston Gera wahdu.

7. **Imputazzjoni numru 7: Serq tal-mobile ta' Zhai Shuang.**

Din l-imputazzjoni tirrizulta pruvata. Peress li baqa' ma giex determinat l-valur tal-mobile, ma jistax jinghad li giet ippruvata l-kwalifika tal-valur. Lanqas ma gie pruvat li dan is-serq kien wiehed kwalifikat bil-hin tant li meta gie rapportat is-serq tal-mobile, kif jidher fil-Current Incident Report, dan kien xi hin qabel 4:30pm.[330] Ghalhekk gie pruvat biss serq semplici.

Galadarba qed jigi trattat is-serq tal-mobile, il-Qorti ma tistax ma tikkumentax kemm hi zbaljata l-abbli difiza meta fis-sottomissjoni orali taghha fit-tentattiv li tiskredita lill-vittmi, tghid li kieku dawn verament kienu vittmi ma kienux sejrin jaghmlu rapport fuq serq ta' mobile.

Jinghad fl-ewwel lok li kienet biss Shaung Zhai li nsterqilha l-mobile u dan kien meta kien gja` deciz li flimkien mar-rapprezentant tal-Ambaxxata Ciniza tirrikorri ghand il-pulizija. Kien propju in segwitu tad-decizjoni li jirrapurtaw l-abbuz perpetrat fuqha li l-ufficjal Ciniz taha parir taghmel rapport lill-pulizija. Gie muri kif ma kienitx taf x'jismu l-hanut u t-triq li fih kien jinsab, u biex tkun

[330] **Dok. JB4** a fol.26

f'posizzjoni taghmel r-rapport mal-pulizija, Jianmin hadha fuq il-post biex Zhai tiehu ritratt tal-isem tal-hanut. Kien f'dak il-hin li insteraq il-mobile.[331]

Huma tentattivi fjakki simili li jkomplu jimminaw il-kaz tal-imputati.

8. <u>**It-Tmien Imputazzjoni: Ksur tal-Artikolu 32(1)(b) tal-Att dwar l-Immigrazzjoni**</u>

L-artikolu 32(1)(b) tal-Kapitolu 217 tal-Ligijiet ta' Malta jipprovdi:

> Kull persuna li ….timpjega, jew tagħti xogħol lil, xi persuna li ma tkunx persuna eżenti u li ma jkollhiex liċenza mogħtija lilha għal dak l-impieg jew xogħol skont id-disposizzjonijiet ta' dan l-Att, jew b'mod ieħor tgħin jew tassisti lil xi persuna li ma tkunx persuna eżenti fl-egħmil ta' reat maħsub fl-artikolu 23….

Fl-artikolu 2 tal-Att dwar l-Immigrazzjoni insibu it-tifsira ta' "persuna ezenti":

> "persuna eżenti" tfisser kull persuna li għaliha it-Taqsima IV ta'dan l-Att ma tapplikax skont l-artikolu 4 tal-istess Att

Skond Ryan Spagnol, rapprezentant ta' Identity Malta, <u>Wannipha Passada</u> ma kellhiex u lanqas ma jirrizulta li qatt applikat ghal *residence permit*. Ma kellha l-ebda permess biex tahdem hawn Malta. Dan jammettieh Gera stess fl-interrogazzjoni tieghu meta jghid li permess ma kellhiex ***"le ghax dik igibli l-karti biex napplikalha"***[332] u ghalkemm kienet ilha tahdem mieghu xhur ***"qed nistenniha iggibli l-karti …u napplikala ghal work permit***[333]***"***..

Hi l-istess Phassada li tikkonferma li ma kienet ilha impjegata ma Gera 7 xhur, *work permit* ma kellhiex u qatt ma rregistrat ghal xoghol f'Malta ***"the owner said no problem".***[334]

Spagnol ukoll jixhed li sakemm l-imputata <u>Tianxia Zhang</u> baqghet tghix mal-istess cittadin Malti, din ma kellhiex permess tahdem f'Malta.[335] Il-provi madanakollu, juru li din kienet qed tahdem fil-hwienet ta' Gera. Tixhdu Phassada meta tghid li meta kienet tinqabbad b'hafna xoghol l-imputata kienet tmur tghinha fil-*massages*.[336]

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[331] Fol.1143
[332] 12:09:23-12:09:42
[333] 12:09:45
[334] Fol.42
[335] Fol.222
[336] Fol.52

Gera stess fil-kors tal-istqarrija tieghu jammetti dan, kemm fil-bidu nett tal-ewwel interrogazzjoni, kif ukoll fil-kors tat-tieni stqarrija. Hu l-istess imputat li jammetti li ghalkemm l-imputata ma tistax tahdem hi xorta tghinu fil-hanut (22:12:50) billi tohodlu hsieb appuntamenti u *"jekk ninqabbdu …short of staff….[taghmel il-massaggi]"(22:13:38).*

B'hekk intwera kif f'aktar minn okkazzjoni wahda, Gera haddem mieghu persuni mhux ezenti skond dan l-artikolu meta haddem lill-imputata w lil Phassada.[337]

Minkejja dan, l-artikolu indikat mill-Avukat Generali fin-nota ta rinviju ghall-gudizzju, hu l-artikolu 32(b) tal-Att dwar l-Immigrazzjoni u mhux l-artikolu korrett u cioe` l-artikolu 32(1)(b) tal-Att. Ghalhekk ma tistax tinstab htija dwar din l-imputazzjoni.

9. Id-Disa Imputazzjoni

Din l-imputazzjoni hi dik ravvizata bir-regolament 7 ta' dik li kienet il-Ligi Sussidjarja 343.23 jew ahjar l-Avviz Legali 110 tal-1993.

Minkejja li nghataw *work permits* minn Identity Malta f'Mejju, 2017[338], jirrizulta li Lili Wang u Shuang Zhai ma kienux registrati ma Jobsplus wara li wasslu Malta.[339]

Madanakollu dan l-istrument legali baqa' ma giex indikat korrettament mill-Avukat Generali fl-artikoli indikati minnu fin-nota ta' rinviju ghall-gudizzju. Fil-fatt l-Avukat Generali indika biss "Avviż Legali 110 tal-Liġijiet ta' Malta" *[sic]* li anke legalment ma taghmel l-ebda sens tenut kont li jezistu ghexieren ta' Avvizi Legali Nru.110.

Ghalhekk din il-Qorti ma tistax issib htija dwar din l-imputazzjoni ghalkemm manifestament jirrizulta.

337 Fol.37
338 Fol.776 u Fol.782
339 Fol.775 u Fol.781. Xhieda Joseph Saliba, Jobsplus

10. L-Ghaxar Imputazzjoni

Simili ghad-disa imputazzjoni, ir-reat addebitat hu ravvizat bir-regolament 3 tal-Avviz Legali 110 tal-1993. Izda peress li dan l-Avviz Legali gie indikat erronjament, din il-Qorti ma tistax issib htija dwar din l-imputazzjoni.

11. L-Imputazzjoni Numru 11: Ksur tar- Regolamenti dwar Attivitajiet Turistici

Ma ngabet l-ebda prova dwar kif kienu licenzjati dawn il-hwienet u ghalhekk ma tistax tinstab htija dwar din l-imputazzjoni.

L-addebitu tar-Recidiva

Filwaqt li Tianxia Zhang ghandha fedina penali nadifa mhux l-istess jista' jinghad ghal Winston Gera li mill-fedina penali tieghu jirrizulta li mhux l-ewwel darba li xellef dufrejh mal-gustizzja. Kien biss f'zewg okkazzjonijiet f'Dicembru, 2003, li gie kundannat ghall-piena tal-multa, bil-bqija tas-sentenzi jirrigwardaw sanzjonijiet taht l-Att dwar il-Probation jew ammendi. Ghaldaqstant l-addebitu tar-recidiva ai termini tal-artikolu 50 ma jirrizultax fil-konfront ta' Gera.

VIII. Il-Piena

Il-Qorti, meta giet biex tikkonsidra l-piena, qiset li fir-rigward tal-ewwel hames imputazzjonijiet japplika l-principju tal-konkors formali ta' reati, fejn ghalhekk ghandha tinghata l-piena l-aktar oneruza u cioe` dik ravvizata bl-artikoli 248A u 248B tal-Kodici Kriminali.

Fiz-zmien li sehh ir-reat ta' traffikar ta' persuni, dawk ir-reati kienu jgorru piena ta' prigunierija ta' bejn l-erba (4) snin u tnax (12) il-sena.

Fis-sentenza gja` citata intqal:[340]

[340] **Il-Pulizija vs Raymond Mifsud**, per Onor. Imhallef Dr. Edwina Grima; Dec. 23 ta' Frar, 2017; Appell Nru: 128/2012

L-appellanti imbaghad jilmenta illi gjaldarba kien jezisti l-konkors formali jew idejali tar-reati addebitati lill-appellanti ikkontemplati fil-Kapitolu 63 tal-Ligijiet ta' Malta mar-reat ravvizat fl-artikolu 248B tal-Kodici Kriminali, allura l-Ewwel Qorti malament applikat id-dispost ta'l-artikolu 17(b) meta giet biex tikkomputa l-piena ghal dawn ir-reati billi kellha tinghata l-piena biss ghar-reat l-iktar gravi u cioe' dak ikkontemplat flartikolu 248B.

Illi dina l-ipotezi tal-konkors formali tar-reati giet imfissra fl-artikolu 78 tal-Kodici penali Taljan tal-1889:

"Colui che con un medesimo fatto viola diverse disposizioni di legge, e' punito secondo la disposizione che stabilisce la pena piu' grave."

Dwar dan il-Professur Mamo fin-Noti tiegħu dawar il-Proċedura (paġina 45) jgħid hekk:

' In any such case if the agent is tried for any one of the several violations of the law arising out of that fact, be it even the least serious, and a judgement is given, it shall not be lawful to subject the agent to another trial for the more serious violations. This principle, first expressly affirmed in 'Rex versus Rosaria Portelli' has now become settled law."

"Fil-fatt fit-2 ta' Diċembru, 1939, l-Imħallef Harding fil-każ 'Camilleri versus Cilia' kien qal li huwa prinċipju stabbilit fil-ġurisprudenza tagħna li meta mill-istess fatt, mibni fuq l-istess intenzjoni, jinkisru żewġ drittijiet jew aktar, m'hemmx pluralita' ta' offiżi iżda offiża waħda bil-vjolazzjoni li jkunu iżgħar jkunu assorbiti fil-vjolazzjoni l-aktar serja. U jekk persuna tkun iġġudikata għal waħda mill-vjolazzjonijiet u jkun meħlus jew jinsab ħati, is-sentenza iżżomm kull prosekuzzjoni ġdida li tista' ssir għal kull vjolazzjoni oħra, ukoll jekk il-vjolazzjoni li jkun tressaq fuqha l-ewwel darba tkun lanqas waħda serja.[341]"

Dwar il-konkors formali l-Professur Anthony Mamo fin-Noti tiegħu ikompli jgħid hekk:

"The first form of the formal or Ideal concursus arises where the same 'fact' constitutes an offence under two or more provisions of the law. The two elements are, therefore, one fact and several violations of the law.... It is essential that the violations of the several provisions of the law be the result of a single action on the part of the offender and the same criminal determination.....in other words, they are accompanied by one formal element of the offence. That which therefore prevails in determining whether the fact was one is the assessment of the intention and the purpose of the agent. But, on the other hand, it must be noted that the 'fact' may consist of several acts or a series of acts which, being inspired by one single criminal purpose, constitute together one single deed or transaction.' (page 152)." Afferrati dawn il-principji gurisprudenzjali ghandu johorg allura illi l-appellanti ghandu ragun f'dan l-aggravvju minnu intentat billi gjaldarba kien jirrizulta reita' ghal offiza tat-traffikar tal-persuni, l-mezzi adoperati ai fini tal-konsumazzjoni tar-reat u li allura wasslu ghal kummissjoni ta' reati ohra kellu iwassal biex tigi erogata piena biss ghar-reat l-iktar gravi…..

[341] Il-Pulizija vs Gregory Paul Brincat et – App.Inf. 20/09/2012

Issir riferenza ghall-konsiderazzjonijiet tal-Qorti tal-Appell Kriminali fis-sentenza taghha I**l-Pulizija vs Anthony Cassar et**:[342]

> Illi l-piena erogata trid tkun tali illi taghmel gustizzja u li tfittex li tohloq bilanc bejn il-gravita' tal-kaz u c-cirkostanzi attenwanti li jista' jkun hemm. Illi l-artikolu 142(1) tal-Criminal Justice Act 2003 fl-Ingilterra jistabbilixxi hames principji li ghandhom jigu segwiti fl-imposizzjoni tal-piena bhala:
>
> **(a) the punishment of offenders**
> **(b) the reduction of crime (including its reduction by deterrence)**
> **(c) the reform and rehabilitation of offenders**
> **(d) the protection of the public**
> **(e) the making of reparation by offenders to persons affected by their offence.**
>
> Illi allura min hu imsejjah biex jiggudika ma ghandux ihares biss l-interessi tal-persuna kkundannata izda ghandu jara illi jhares l-interessi tal-vittma jew vittmi tar-reat u s-socjeta in generali billi jaghti dik il-piena li ghandha isservi bhala kastig ghal min jikkometti r-reat, li tara li twassal ghat-tnaqqis tal-kummissjoni ta' reati ohra, li tista' twassal ghar-rijabilitazzjoni u r-riforma tal-hati, li taghti il-harsien mehtiega lil pubbliku u li l-hati jaghmel reparazzjoni ghal hazin li jkun ghamel.
>
> Hu veru ukoll dak li qal l-insinji Leo Page fil-ktieb tieghu, The Problem of Punishment, fis-sens li –
>
> **' …. The selection of the best treatment of an offender is a much more difficult problem than the question of his guilt.'**
>
> **Hu pero' ugwalment veru dak li inghad ghap-propositu tal-kwistjoni tal-piena fil-Criminal Law Review, July 1961, p.482 –**
>
> **'The objects of which Judges commonly and properly have in mind, when imposing sentence, include not only the punishment and reformation of the offender, but also, and perhaps predominantly, the protection of the public.'**
>
> **Mr. Justice Birkett, f'konferenza li hu ta taht l-awspicji tal-Clarke Hall Society, - li hi socjeta intiza ghat-trattament riformatiku tal-hati – intitolata 'Criminal Justice Problems and Punishment' qal hekk –**
>
> **'The Court's primary consideration must be the welfare of the community. To fail to be severe in certain cases is to do wrong to the community and to injure its interests.'[Il-Pulizija vs Lorenzo Baldacchino]".**

Gie kkunisdrat ukoll li l-imputat mhux xi *first-time offender,* u minflok gharaf zbalji kommessi fil-passat, ghazel li jwettaq reati li jqanqlu stmerrija w ghajb.

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[342] Per Onor. Imhallef Dr. Edwina Grima LL.D.; Dec.3 ta' Lulju, 2020; Appell Numru: 113/2014

Fil-fatt ir-reati mwettqa mill-imputati wrew l-estremitajiet ta' hruxija li dawn kienu kapaci jhaddnu w jinfliggu fuq persuni ohra. Intweriet r-rebgha taghhom, fejn b'mod mill-aktar koddard ikkalpestaw lid-dghajjef, lill-vulnerabbli. Irrendew persuni gja vulnerabbli minhabba l-kondizzjonijiet taghhom, f'oggetti, f'ghodda li ntuzat minnhom biex jiggeneraw il-qliegh. Nezzawhom mid-dinjita` umana w cahhduhom mid-drittijiet l-aktar bazici. L-isfruttament ta' dawn it-tfajliet kien wiehed estensiv ghaliex estenda mhux biss ghall-**skop ta' prostituzzjoni izda anke fl-ghoti ta' servizzji.**

Ittiehed konsiderazzjoni tal-fatt li l-imputati ma wrew lanqas l-icken rimors ghall-ghemilhom, ghat-tbghatija li kkaggunaw lil dawn it-tfajliet. Dawn huma bnedmin bla skruplu, bla inibizzjoni li ma baqalhomx post fis-socjeta` sakemm jigu tassew rijabilitati.

Issir riferenza ghal dak li nsibu fl-**Explanatory Memorandum** tal- ***Council of Council of Europe Convention on Trafficking (E.T.S.197)***:

1. Trafficking in human beings is a major problem in Europe today. Annually, thousands of people, largely women and children, fall victim to trafficking for sexual exploitation or other purposes, whether in their own countries or abroad. All indicators point to an increase in victim numbers. Action to combat trafficking in human beings is receiving worldwide attention because trafficking threatens the human rights and the fundamental values of democratic societies. ……

2. Trafficking in human beings, with the entrapment of its victims, is the modern form of the old worldwide slave trade. It treats human beings as **a commodity** to be bought and sold, and to be put to forced labour, usually in the sex industry but also, for example, in the agricultural sector, declared or undeclared sweatshops, for a pittance or nothing at all. Most identified victims of trafficking are women but men also are sometimes victims of trafficking in human beings. Furthermore, many of the victims are young, sometimes children. All are desperate to make a meagre living, only to have their lives ruined by exploitation and rapacity…….

41. The Convention is based on recognition, already stated in the Preamble in paragraph 5 of Recommendation No. R(2000)11 of the Committee of Ministers to member States on action against trafficking in human beings for the purpose of sexual exploitation, that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and integrity of the human being. The recognition of trafficking as a violation of human rights would have consequences for some legal systems which have introduced special protection measures in cases of infringement of fundamental rights. …..

Il-legizlatur Malti wkoll irrikonoxxa l-gravita` ta' dan l-ghemil tant li ***b'Att XIII tal-2018,*** zied il-pieni ghal dawn ir-reati billi gholla l-piena minima minn wahda ta' erba snin prigunerija ghal piena ta' sitt snin prigunerija.

Kif intqal izda, il-piena applikabbli fil-kaz in dezamina hi dik li kienet precedentement fl-2017, cioe` bil-piena minima tkun dik ta' erba snin prigunerija.

Hu dmir tal-Qorti li taghti messagg cjar u inekwivoku li atti simili ma ghandhomx post fis-socjeta` taghha. Ghall-persuni li jaghzlu jittrafikaw bnedmin bhalhom, irid jasal zmien fejn huma wkoll rridu jahsdu dak li jkunu zerghu.

Gie kkunsidrat ukoll li l-vittmi kienu tlieta (3) u r-reati twettqu fuq medda ta' xhur. Phassada semmiet li kienet ilha fl-impjieg ta' Gera seba xhur filwaqt li Zhai u Wang gew suggetti ghal dan it-trattament inuman u viljak minnufih mal-wassla taghhom f'Malta xahrejn qabel l-arrest tal-imputati.

Ghaldaqstant isib applikazzjoni wkoll l-artikolu 18 tal-Kodici Kriminali.

IX. Decide

Ghal dawn il-mottivi, il-Qorti

(a) Fil-konfront ta' **Winston Gera**-

Filwaqt li tillibera lill-imputat mill-imputazzjonijiet numri sitta (6), tmienja (8), disa (9), ghaxra (10) u hdax (11) kif ukoll tilliberah mill-imputazzjoni ta' serq ikkwalifikat izda mhux minn dak ta' serq semplici,[343] wara li rat l-artikoli 17(b) 18, 31, 205(b), 248A(1)(2)(3), 248B, 248E(1) u 284 tal-Kodici Kriminali w l-artikoli 7(1)(3), 8(1)(3) u 9 tal-Ordinanza dwar il-Qirda tal-Kummerċ fil-Prostituzzjoni, Kapitolu 63 tal-Ligijiet ta' Malta, issibu hati tal-imputazzjonijiet l-ohra kollha w tikkundannah ghal **seba' snin u xahar prigunerija.**

(b) Fil-konfront ta' **Tianxia Zhang –**

Filwaqt li tillibera lill-imputata mis-sitt (6) imputazzjoni, wara li rat l-artikoli 17(b), 18, 31, 205(b), 248A(1)(2)(3), 248B, 248E(1) tal-Kodici Kriminali, kif ukoll l-artikoli 7(1)(3), 8(1)(3) u 9 tal-Ordinanza dwar il-Qirda tal-Kummerċ fil-Prostituzzjoni, Kapitolu 63 tal-Ligijiet ta' Malta, issib lill-imputata hatja tal-imputazzjonijiet l-ohra kollha, u tikkundannaha **seba' snin prigunerija.**

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[343] Rigward l-imputazzjoni numru 7 qed tinstab htija limitatament in kwantu ghas-serq semplici.

A tenur tal-artiklu 14 tal-Ordinanza dwar il-Qirda tal-Kummerċ fil-Prostituzzjoni, Kapitolu 63 tal-Ligijiet ta' Malta, qed tħassar kull liċenza li ghandhom l-imputati (senjatament Winston Gera) dwar il-*massage parlours* mertu ta' dawn il-proceduri.

Ai termini tal-artikolu 23 tal-Kodici Kriminali, qed tordna l-konfiska ghaf-favur tal-Gvern ta' Malta tal-*massage parlours* kollha w cioe` Tian Oriental Massage Parlour, Yuan Oriental Massage Parlour, Mandarin Oriental Massage Parlour u Oriental Massage Parlour.

A tenur tal-istess artikolu, qed tordna l-konfiska tal-fl<u>ejjes</u> kollha esebiti in vista tal-fatt li gie ppruvat u kkonfermat mill-istess imputati, li l-uniku introjtu taghhom kien minn dawn il-hwienet.

Il-Qorti giet prekluza milli taghmel ordni ai termini tal-Artikolu 23B tal-Kodici Kriminali, in vista tal-fatt li ma giex determinat l-ammont globali tar-rikavat li gie mir-reati li dwarhom qed tinstab htija.

Tordna notifika ta' din is-sentenza lill-Kummissarju ghat-Taxxi sabiex jinvestiga d-dhul legittimu tal-hatja b'dan illi, wara rikors appozitu, ghandu jinghata kopja tal-*VAT books* u kotba (inkluz *diaries)* esebiti, kif ukoll kwalunkwe materjal iehor esebit li jidhirlu opportun ghal dan il-ghan. Tali kopji ghandhom isiru taht is-sorveljanza tar-Registratur tal-Qorti.

Tordna notifika wkoll lill-Kummissarju tal-Pulizija sabiex jinvestiga jekk jezistux l-estremi legali ghall-reat ta' *money laundering* fil-konfront tal-hatja.

Ghaldaqstant u sabiex ma jigux stultifikati investigazzjonijiet potenzjali, tichad t-talba ghall-konfiska tad-dokumenti esebiti.

Inoltre` b'applikazzjoni tal-artikolu 533 tal-Kapitolu IX tal-Ligijiet ta' Malta qed tordna lil imputati jhallsu lir-Registratur ta' din il-Qorti s-somma ta' **€778.50** kull wiehed rapprezentanti spejjez peritali.

Finalment sabiex ma tinholoqx vittimizazzjoni sekondarja fuq il-vittmi, tordna divjet fuq isimhom fil-gazzetti lokali u fuq il-mezzi tax-xandir.

Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)
Magistrat