THE COURT OF CRIMINAL APPEAL

The Hon. Mr. Justice Aaron M. Bugeja M.A. (Law), LL.D. (melit)

Appeal number: 14/2018

The Police
vs.
David TSAKOS

Sitting of the 15th April 2021

The Court:

1. Having seen that this is an appeal lodged by David TSAKOS from a judgment delivered by the Court of Magistrates (Malta) on the 16th January 2018 against David TSAKOS holder of identity card number 48692A, who was charged with having (in brief):
    i. Uttered insults and/or threats to PC 1418 J. Sammut lawfully charged with a public duty while in the act of discharging such duty or because of all having discharged such duty;
    ii. Also accused with having disobeyed the lawful orders of PC 1418 J. Sammut a person entrusted with the public service or hindered or obstructed same whilst in the exercise of such dutites or for having unduly interfered with the exercise of such duties;

iii. Also accused of having disturbed public peace;
iv. Also accused of having uttered obscene and/or indecent words or made obscene acts or gestures.

2. By means of the said judgment, the Court of Magistrates (Malta), after having seen the charges brought against the accused, declared the accused guilty of all the charges brought against him and conditionally discharged him for a period of six months from the date of judgment in terms of Section 22(1) of Chapter 446 of the Laws of Malta and also condemned him to payment of a fine (multa) of eight hundred euro (€800).

3. TSAKOS David filed an appeal wherein he requested this Court to revoke and annul the judgment where he was found guilty thereby acquitting him. The appellant, in brief, argued as follows:

i. The Court of Magistrates made a wrong interpretation of the evidence produced and did not observe the rule of the level of proof that needs to be established for the finding of guilt in the accused. The only witness that the Prosecution produced, Carmel Cesare, confirmed the version of facts given by the accused appellant and contradicted the version of facts as given by PC 1418 in his affidavit. In case of doubt, the case should be decided in favour of the accused. Moreover, the accused appellant has a clean criminal record.
ii. The judgment is also unfair because the Court of Magistrates (Malta) did not specify on which of the charges the accused was declared guilty so in this case one assumes that the declaration of guilt was done in regards to all the charges brought against him. The accused appellant moreover, was not aware that PC 1418 was a police officer in execution of his legitimate duties so he had no intention of interfering with the lawful exercise of his duties.

Considers the following:

4. On the 7th April 2017, PC 1418 Jeremy Sammut was on duty in Triq l-Ankri at St. Paul's Bay together with Carmel Cesare who was

representing the Cleansing Department. PC 1418 summoned two men who were seen discarding garbage bags in a spot where members of the public were not allowed to deposit waste and as he was exercising his lawful duties, a car driven by the accused David Tsakos pulled by. The appellant, who lived in that same street, recognised the men who were being spoken to by PC 1418 and stopped by to see what was happening. He called out to the Police Officer, who was dressed as a lay person and hence without an official uniform, and started using foul language while asking the latter who he was.

5. It was at this stage that PC 1418 identified himself as a policeman, showed the accused a police identification document, and requested him to keep walking and to not interfere with official police work. Tsakos promptly retaliated and created disturbance and commotion. After a short verbal exchange between PC 1418 and the appellant Tsakos, the latter walked into his apartment.

6. PC 1418 took note of the appellant's vehicle registration number and the following day made contact with him requesting him to present himself at Police Headquarters for further questioning regarding this incident. Tsakos was informed that legal action was going to be taken.

Considers further:

7. First of all this is an appellate Court tasked with the revision of the judgment delivered by the Court of Magistrates (Malta) as a Court of

Criminal Judicature. This Court does not change the findings of fact, legal conclusions and the decisions made by the Court of Magistrates when it appears to it that the Court of Magistrates was legally and reasonably correct. In the judgment delivered by the Court of Criminal Appeal in its Superior Jurisdiction in the case **Ir-Repubblika ta' Malta vs Emanuel Zammit**[1] it was held that this Court makes its own detailed analysis of the record of the proceedings held before the Court of first instance in order to see whether that Court was reasonable in its conclusions. If as a result of this detailed analysis this Court finds that the Court of first instance could not reasonably and legally arrive at the conclusion reached by it, then this Court would have a valid, if not impelling reason, to vary the discretion exercised by the Court of first instance and even change its conclusions and decisions.

[1] 21st April 2005. See also, inter alia, **Ir-Repubblika ta' Malta vs Domenic Briffa**, 16 th October 2003; **Ir-Repubblika ta' Malta vs Godfrey Lopez** and **Ir-Repubblika ta' Malta v. Eleno sive Lino Bezzina**, 24th April 2003, **Ir-Repubblika ta' Malta vs Lawrence Asciak sive Axiak** 23rd January 2003, **Ir-Repubblika ta' Malta vs Mustafa Ali Larbed**; **Ir-Repubblika ta' Malta vs Thomas sive Tommy Baldacchino**, 7th March 2000, **Ir-Repubblika ta' Malta vs Ivan Gatt**, 1st December 1994; **Ir-Repubblika ta' Malta vs George Azzopardi**, 14th February 1989; **Il-Pulizija vs Andrew George Stone**, 12th May 2004, **Il-Pulizija vs Anthony Bartolo**, 6th May 2004; **Il-Pulizija vs Maurice Saliba**, 30th April 2004; **Il-Pulizija vs Saviour Cutajar**, 30th March 2004; **Il-Pulizija vs Seifeddine Mohamed Marshan** et, 21st Octuber 1996; **Il-Pulizija vs Raymond Psaila** et, 12th May 1994; **Il-Pulizija vs Simon Paris**, 15th July 1996; **Il-Pulizija vs Carmel sive Chalmer Pace**, 31st May 1991; **Il-Pulizija vs Anthony Zammit**, 31st May 1991.

In **Ir-Repubblika ta' Malta vs Domenic Briffa** it was further stated:

Kif gie ritenut diversi drabi, hawn qieghdin fil-kamp ta' l- apprezzament tal-fatti, apprezzament li l-ligi tirrizerva fl- ewwel lok lill-gurati fil-kors tal-guri, u li din il-Qorti ma tiddisturbahx, anke jekk ma tkunx necessarjament taqbel mija fil-mija mieghu, jekk il-gurati setghu legittimament u ragonevolment jaslu ghall-verdett li jkunu waslu ghalih. Jigifieri l-funzjoni ta' din il-Qorti ma tirrizolvix ruhha f'ezercizzju ta' x'konkluzjoni kienet tasal ghaliha hi kieku kellha tevalwa l-provi migbura fi prim'istanza, imma li tara jekk il-verdett milhuq mill-gurija li tkun giet "properly directed", u nkwadrat fil-provi prodotti, setax jigi ragonevolment u legittimament milhuq minnhom. Jekk il- verdett taghhom huwa regolari f'dan is-sens, din il-Qorti ma tiddisturbahx (ara per ezempju Ir-Repubblika ta' Malta v. Godfrey Lopez u r-Repubblika ta' Malta v. Eleno sive Lino Bezzina decizi minn din il-Qorti fl-24 ta' April 2003, Ir-Repubblika ta' Malta v. Lawrence Asciak sive Axiak deciza minn din il-Qorti fit-23 ta' Jannar 2003, Ir-Repubblika ta' Malta v. Mustafa Ali Larbed deciza minn din il-Qorti fil-5 ta' Lulju 2002, ir-Repubblika ta' Malta v. Thomas sive Tommy Baldacchino deciza minn din il-Qorti fis-7 ta' Marzu 2000, u r-Repubblika ta' Malta v. Ivan Gatt deciza minn din il-Qorti fl-1 ta' Dicembru 1994).

8. In the ordinary course of its functions, this Court does not act as a court of retrial, in that it does not rehear the case and decide it afresh; but it intervenes when it sees that the Court of Magistrates, would have mistakenly assessed the evidence or wrongly interpreted the Law - thus rendering its decision unsafe and unsatisfactory. In that case this Court has the power, and indeed, the duty to change the findings and decisions of the Court of Magistrates or those parts of its decisions that result to be wrong or that do not reflect a correct interpretation of the Law.

9. Two very important articles of Maltese **Law of Evidence** are articles 637 and 638 of the Criminal Code. According to article 637 of the Criminal Code:

> 637. Any objection from any of the causes referred to in articles 630, 633 and 636, shall affect only the credibility of the witness, as to which the decision shall lie in the discretion of those who have to judge of the facts, regard being had to the demeanour, conduct, and character of the witness, to the probability, consistency, and other features of his statement, to the corroboration which may beforthcoming from other testimony, and to all the circumstances of the case: Provided that particular care must be taken to ensure that evidence relating to the sexual history and conduct of the victim shall not be permitted unless it is relevant and necessary.

10. Furthermore, article 638 of the Criminal Code states that:

> (1) In general, care must be taken to produce the fullest and most satisfactory proof available, and not to omit the production of any important witness.
> (2) Nevertheless, in all cases, the testimony of one witness if believed by those who have to judge of the fact shall be sufficient to constitute proof thereof, in as full and ample a manner as if the fact had been proved by two or more witnesses.

11. These principles have been confirmed, time and again in various judgments delivered by this Court[2] Moreover as it was held in **Il-Pulizija vs Joseph Thorne**[3],

> mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghall-liberazzjoni tal-persuna akkuzata. Imma l- Qorti, f' kaz ta' konflitt fil-provi, trid tevalwa l-provi skond il-kriterji enuncjati fl-artikolu 637 tal-Kodici Kriminali w tasal ghall-konkluzzjoni dwar lil min trid temmen u f'hix ser temmnu jew ma temmnux'.

12. This jurisprudence shows also that the main challenge faced by Courts of Criminal Jurisdiction is the discovery of the truth, historical truth, behind every notitia criminis. Courts of Criminal Jurisdiction are legally bound to decide cases on the basis of direct and indirect evidence brought before them. But evidence and testimony produced in criminal trials do not necessarily lead the Court to the discovery of the historical truth. A witness may be truthful in his assertions as much as he may be deceitful. Unlike a mortal witness, circumstantial evidence cannot lie. But if this evidence is not univocal, it may easily deceive a Court of Criminal Jurisdiction thus leading it to wrong conclusions.

13. A Court of Criminal Jurisdiction can only convict an accused if it is sure that the accused committed the facts constituting the criminal offence with which he stands charged, and this on the basis that the Prosecution would have proven their case on a level of

[2] **Il-Pulizija vs Joseph Bonavia** per Judge Joseph Galea Debono dated 6 ta' November 2002; **Il-Pulizija vs Antoine Cutajar** per Judge Patrick Vella, decided on the 16th March 2001; **Il-Pulizija vs Carmel Spiteri** per Judge David Scicluna, decided on the 9th November 2011; **Ir-Repubblika ta' Malta vs Martin Dimech**, Court of Criminal Appeal (Superior Jurisdiction), decided on the 24th September 2004. 3 Decided on the 9th July 2003 by the Court of Criminal Appeal presided by Mr. Justice Joseph Galea Debono.

[3] Decided on the 9th July 2003 by the Court of Criminal Appeal presided by Mr. Justice Joseph Galea Debono.

sufficiency of evidence of proof beyond a reasonable doubt. Courts of Criminal Jurisdiction need only to be sure of an accused's guilty; they do not need to be absolutely sure of his guilt. But if a Court of Criminal Jurisdiction is sure[4] of an accused's guilt, then it is obliged to convict and mete out punishment in terms of Law. These principles relating to the level of sufficiency of evidence also reflect the standard adopted by the English Courts of Criminal Justice and they were also expressed by Mr. Justice William Harding as applicable to the Maltese Courts of Criminal Jurisdiction in the appeal proceedings **Il-Pulizija vs Joseph Peralta** decided on the 25th April 1957 as being at the basis of a conviction reached by a Maltese Court of Criminal Jurisdiction.

14. However, if Defence Counsel manage to propound sound factual and legal arguments such that, on a balance of probabilities, manage to create a reasonable doubt in the mind of the Court as to the guilt of the accused, then the Court of Criminal Jurisdiction is obliged to acquit the accused.

15. Maltese Law entrusts the Court of First Instance with the exercise of analysis and assessment of the evidence of the case. The Court of Magistrates is one such Court. That Court is normally best placed to make a thorough assessment of the evidence brought before it as it would have, most of the time, physically lived through those proceedings, and also being able to make a proper assessment of the witnesses who would have testified before it, thus

[4] **R v Majid**, 2009, EWCA Crim 2563, CA at 2.

making full use of the criteria mentioned in articles 637 and 638 of the Criminal Code.

16. But even where, for some reason, the Court of Magistrates would not itself have heard the witnesses, the law still entrusts that Court with the primary analysis and assessment of the facts of a case as well as the eventual decision on the guilt or innocence of the accused. On the otherhand, the Court of Criminal Appeal is a court of second instance, entrusted with the analysis of whether, on the basis of the evidence and legal arguments submitted, the Court of Magistrates could legally and reasonably arrive at the conclusions reached in its judgment.

17. The Court of Criminal Appeal does not disturb the conclusions reached by the Court of Magistrates lightly or capriciously. In the case **Il-Pulizija vs Lorenzo Baldacchino** decided by the Criminal Court on the 30 th March 1963 by Mr. Justice William Harding it was held as follows: -

> Ma hemmx bżonn jinghad li l-komportament tax-xhud (demeanour) hu fattur importanti ta' kredibilita (ara Powell, On Evidence, p. 505), u kien, ghalhekk, li inghad mill-Qrati Ingliżi segwiti anki mill-Qrati taghna, illi "great weight should be attached to the finding of fact at which the judge of first instance has arrived" (idem, p. 700), appuntu ghaliex "he has had an opportunity of testing their credit by their demeanour under examination".

18. To recapitulate, in **Il-Pulizija vs. Vincent Calleja** decided by this Court on the 7th March 2002, the Court of Criminal Appeal, as a court of revision of the sentence of the Court of Magistrates does not pass a new judgment on the facts of the case but makes its own independent evaluation and assessment of the facts of the case in order to see whether the decisions reached by the Court of

Magistrates were “unsafe and unsatisfactory”. This Court does not substitute the decision of the Court of Magistrates unless that decision is deemed “unsafe and unsatisfactory”. If this Court finds that on the basis of the evidence and legal arguments submitted to it the Court of Magistrates could legally and reasonably arrive at its conclusions mentioned in its judgment, then this Court does not vary the conclusions reached by that Court : – even if this Court, as a Court of Criminal Appeal could have arrived at a different conclusion to that reached by the Court of Magistrates had it been tasked with the same role.

19. In **Ir-Republika ta’ Malta vs. Ivan Gatt** delivered by the Court of Criminal Appeal on the 1st. December, 1994, it was held that where an appeal was based on the evaluation of the evidence the exercise to be carried out by this Court was to examine thoroughly the evidence and see if there are contradictory versions tendered by witnesses. If it results to the Court that there were contradictory versions – as in most cases there would be – this Court has to assess whether any one of these versions could be freely and objectively believed without going against the principle that any doubt should always go in accused ’s favour. If the said version could have been believed by the Court of First Instance, the duty of this Court was to respect that discretion and that evaluation of the evidence even if in the evaluation conducted by this Court, this same Court came to a conclusion different from the one reached by the jury. This assessment made by the Court of First Instance will not be disturbed and replaced by the assessment of this Court unless it was evident that the Court of First Instance would have made a manifestly wrong assessment and evaluation of the evidence and

consequently that they could not have reasonably and legally have reached that conclusion.[5]

Considers further

20. This Court observes that there is agreement between all parties to the case that on the 7th April 2017, a verbal exchange happened between Police Officer PC 1418 Jeremy Sammut and the appellant TSAKOS and that this happened in the presence of Carmel Cesare who was on duty as a representative of the Cleansing Department. The point of contention relates to the content of this verbal exchange because whereas in his affidavit PC 1418 mentions how the appellant directed a string of foul language towards him while he was duly performing his lawful duties, the appellant testifies that he never uttered threats or insults in respect of the police officer and neither did he interfere with the lawful exercise of duties of PC 1418.

21. In the first of his grievances, the appellant argues that the Prosecution witness Carmel Cesare gave a version of facts which corroborated that given by him and which therefore contradicts the testimony provided by PC 1418 by means of an affidavit. The appellant also challenges the testimony given by PC 1418 on the grounds that it was only given by means of an affidavit and the Court of Magistrates, in this way, could not examine the demanour of the witness in the same way as it did with the witness of the Prosecution and with the accused who also chose to take the witness stand.

[5]See **Ir-Republika ta' Malta vs. Mustafa Ali Larbed** decided by the Court of Criminal Appeal on the 5th July, 2002.

22. That, whereas it is true that PC 1418 Jeremy Sammut did not testify viva voce - neither before the Court of Magistrates nor before the Court of Appeal - and therefore could not be observed in his demaneour during his deposition, this does not mean that his deposition is less admissible as evidence than that which is tendered by a witness in open court. Neither can the evidence tendered by means of an affidavit be considered less credible simply because the person tendering his versrion of facts is not doing so by taking the witness stand. The Court may rely on the contents of any such deposition to proclaim a declaration of guilt against the accused in the same way as it can rely on the version of facts given by one witness who would have tendered evidence in open court in the presence of the accused.

23. In this regard, the Court makes reference to the provisions of Article 360(A) sub-article 2 of the Criminal Code which states the following:

> The person whose affidavit was served on the accused as provided in sub-article (1) shall not be summoned to testify in the proceedings if the accused fails to give notice of the intention to cross-examine that person as provided in that sub-article and the said affidavit shall be admissible in evidence as proof of its contents in those proceedings in the same way as if it had been testimony given viva voce in the presence of the accused.

24. It thus follows that the inadmissibilty of the affidavit served in accordance with the provisions of Article 360A(1) of the Criminal Code cannot be raised and the contents thereof can only be questioned during cross-examination if the accused gives notice in terms of Article 360A(2) of the Criminal Code of his intention to cross examine the witness who has made the affidavit. Jurisprudence has even extended the provisions of Article 360A(2) of the Criminal Code

to include those instances where the accused would not have been served with the affidavit before the first sitting in which case it is possible for the accused to ask for an adjournment to be able to prepare for cross-examination. In this regard, in the case **Il-Pulizija vs. Rose known as Rosette Dimech**,[6] the Court of Criminal Appeal stated the following:

> Dan il-punt diga` gie deciz diversi drabi minn din il-Qorti. Hekk, per ezempju, fis-sentenza ta' l-1 ta' Ottubru 2003 fl-ismijiet **Il-Pulizija v. Jesmond Calafato**, din il-Qorti qalet hekk:
>
> > "Desiderabbli kemm hu desiderabbli li l-imputat ikun mgharraf li jekk irid jikkontro-ezamina lill-persuna li tkun ghamlet l-affidavit - mhux semplicement jekk ikun irid jikkontesta t-tahrika - huwa ghandu jinforma b'dan b'ittra registrata lill-Kummissarju tal-Pulizija hmistax-il jum qabel id-data ta' l-ewwel seduta, **imkien fil-ligi ma hemm xi obbligu li mat-tahrika u l-affidavit ghandu jkun hemm xi avviz jew twissija f'dan is-sens** lill-istess imputat. Wara kollox fil-kamp penali kulhadd hu presunt li jaf il-ligi. L-Artikolu 360A(1) jipprovdi, fit-tieni proviso, li jekk jirrizulta li ma kienx possibbli ghall-imputat li jaghti l-avviz imsemmi lill-Kummissarju tal-Pulizija fi zmien hmistax-il gurnata msemmija, dak l-avviz jista' jinghata fl-ewwel seduta, u x-xhud in kwistjoni jigi mharrek u kontro-ezaminat fis-seduta ta' wara. Fi kliem iehor, fil-kaz in dizamina l-ewwel qorti ma setghetx tinjora l-affidavit u tillibera semplicement ghax il-prosekuzzjoni ma ghamlitx xi haga **li ma kinitx obbligata li taghmel**.

25. Now, during the sitting dated 14th November 2017 before the Court of Magistrates (Malta), the accused, not having been so served before the first sitting, was served with the charges issued against him. The Court also ordered PC1418 to prepare an English translated version of the affidavit and **to serve it on the accused at least 15 days before the next sitting.** The accused also asked for an adjournment in order for him to be able to consult with a lawyer and the Court acceded to the request and adjourned the sitting to the 16th January 2018.

[6] Decided on the 19th January 2005.

26. Now, given that the accused was not served with the affidavit before the first sitting, the time frame prescribed in Article 360A(2) could not run against him. However, this Court observes that despite that the Court of Magistrates granted the accused an adjournment of the sitting for two months later, the appellant still failed to summon PC1418 for the purpose of cross-examination. In this way, it is safe to say that the Court of Magistrates granted the accused enough time and opportunity to summon PC1418 for cross-examination purposes – something however that the appellant did not do for reasons known only to him. The version of events given by PC 1418 by means of his affidavit is **admissible evidence** and therefore could be taken into consideration by the Court of Magistrates (Malta) in its deliberation of this case.

27. The substantive question raised by the appellant in his appeal is whether the Court of Magistrates (Malta) could, legally and reasonably, arrive to its decision of guilt against the accused by embracing the version of events tendered by PC 1418 in his affidavit and by considering this version as being more credible and truthful than the deposition of the accused.

28. In this regard, the Court makes reference to a fundamental rule of procedure that has already been previously mentioned earlier on, namely Article 638(2) of the Criminal Code, on the basis of which the Court of Magistrates (Malta) could arrive to a safe and satisfactory judgment by relying on the testimony of just **one witness:** any such evidence being deemed sufficient to constitute proof in as full and ample manner as if the fact had been proved by two or more witnesses. This rule of evidence was amply discussed

by the Criminal Court in its address speech to the jury in the case **Ir-Repubblika ta Malta vs. Martin Dimech,**[7] confirmed on appeal, wherein it was held as follows:

> Ifisser li hawnhekk ma nimxux bin-numru tax-xhieda …. **Jista' jkollok kemm ikollok xhieda li qed jghidu mod, jekk ikollok xhud wiehed biss li qed jghid mod iehor u inti xorta meta tkun qist ic-cirkostanzi kollha tal-kaz, meta tkun applikajt il-bwon sens tieghek ghac-cirkostanzi kollha tal-kaz, u jidhirlek li ghandek tiskarta dawn l-ghaxar xhieda u toqghod fuq dak ix-xhud wiehed biss, inti tista' tiddeciedi l-kaz a bazi ta' dak ix-xhud wiehed biss**[8]. U dan japplika sija jekk dak ix-xhud ikun xhud tal-prosekuzzjoni u sija jekk dak ix-xhud ikun xhud tad-difiza bid-differenza dejjem infakkarkom li lprosekuzzjoni trid tipprova sal-grad tal-konvinciment morali waqt li d-difiza jkun bizzejjed jekk tipprova sal-grad tal-probabbli. Mela din ir-regola ukoll qed taraw tax-xhud wiehed biss tapplika ugwalment, kemm ghall-kaz talprosekuzzjoni, kemm ghall-kaz tad-difiza. Fi kliem iehor ilbottom line x'inhija? Mhux in-numru li jghodd imma l-kwalita` tax-xhud. X'taccetta jew ma taccettax jiddependi mill-kwalita` tax-xhud, inti kemm sa temmnu jew ma temmnux.

29. PC1418 testified that on the 7th April 2017 he was on official duties together with Carmel Cesare and the incident with the appellant broke out while he was addressing two persons who had been caught discarding waste illegally. PC1418 says that he observed a Fiat Punto bearing registration number JBM 758 driving close by and the person at the wheel was the appellant. According to the testimony of PC 1418, the appellant was seen getting out of the car and heading straight to where he was executing his official duties and started shouting out to him ‘Who the fuck are you?’ and ‘What are you doing?’ At that point PC1418 states that he identified himself as a policeman by means of an official police identity card and instructed the appellant to walk on.

[7] Decided on the 24th of September 2004
[8] Emphasis of this Court

30. PC1418 adds that the appellant promptly retailated and replied 'I will not keep walking because I pay my taxes too. That card is fake you piece of shit. Leave them alone. Fuck you. fuck the police. You keep walking or I'll fucking kill you'. PC1418 also mentions how at this point he once more ordered the appellant not to interfere with police work and warned him that his actions were illegal to which the appellant replied 'I will fucking break you piece of shit'.

31. The appellant tendered his version of facts both before the Court of Magistrates as well as before this Court. TSAKOS claims that he neither knew that PC1418 was a police officer nor did he utter insults, offensive language and threats towards him. PC1418 states to have shown TSAKOS an identification document thereby identifying himself as a police officer. However, the appellant says that he was not given the chance to have a good look at the identification card.

32. Upon cross-examination TSAKOS even denies having ever used foul language against the police officer but says that it was the police officer who told him 'to fucking keep walking'. He further denies having confronted the police officer and telling him that his identification document was fake. TSAKOS declared to never have retailated at PS 1418's instructions to keep walking. He also gives a version of facts where he says to not have spoken to the police officer at first but only to the two gentlemen who were being spoken to by the policeman and asked if he could assist them.

33. However in this case, there is also the version of facts given by Carmel Cesare who was an eye witness to the incident and

testified both before the Court of Magistrates as well as before the Court of Appeal. Cesare confirmed that PC1418 Jeremy Sammut was on duty as a police officer with him on the date of the incident. He recounted that while PC1418 was engaged in the execution of his duties in respect of two individuals, the appellant stopped to inquire what was happening and the police officer told him that it was not him that he was addressing. He also confirmed that PC1418 was not wearing a police uniform **but** he showed TSAKOS a police identification card and he remembered that the appellant **did not believe** PC1418 to be a police officer.

34. Cesare claimed that TSAKOS behaved in such a manner that gave the impression of how **he could not care less** about the identification document which PC1418 had shown him. The witness confirms the version of facts given by PC1418 when recalling how the appellant used the words 'Fuck the police' in the course of the verbal exchange that arose between the two. Cesare confirms that both parties raised their voices but whereas TSAKOS used foul language, PC 1418 only kept telling the former to keep walking and never told TSAKOS 'Tindaħalx'. Cesare also describes TSAKOS' behaviour as aggressive towards the police officer. He then confirms that this incident did not last long and that eventually, TSAKOS kept on walking and entered a block of apartments that was close by.

Considers further

35. That, in view of the above, there was nothing in fact and at law on the basis of which the Court of Magistrates (Malta) could not legally and reasonably rely on the testimony of PC1418 rather than on the version of the appellant. The version of facts given by PC1418 was considered to be more truthful than that of the appellant also because it was corroborated by the testimony of Cesare - a third party to the event - who was present on the scene of the incident and who witnessed it first hand. Therefore, contrary to what the appellant is arguing, the Court of Magistrates (Malta) was not in doubt as to which version of facts to embrace as a true account of the incident involving PC1418 and the appellant. The Court of Magistrates (Malta) believed the version of PC1418 and Cesare combined.

36. That therefore, the first grievance of the appellant is being rejected.

Considers further

37. That, the second grievance of the appellant requires an examination of the elements of the offence contemplated in Article 95 of the Criminal Code which reads as follows:

> Whosoever, in any other case not included in the last preceding two articles, shall revile, or threaten, or cause a bodily harm to any person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty, shall, on conviction, be liable to the punishment established for the vilification, threat, or bodily harm, when not accompanied with the circumstances mentioned in this article, increased by two degrees and to a fine (multa) of not less than eight hundred euro (800) and not more than five thousand euro (5,000).

38. It has been widely accepted by Maltese jurisprudence that this provision is based on Article 341 of the Codice Penale Italiano which speaks of oltraggio a pubblico ufficiale.[9] This legal provision was introduced in our Criminal Code with the aim of protecting officers of the law in the lawful execution of their duties from insults, threats and vilification. With reference to the ratio legis of Article 341 of the Codice Penale Italiano, the Court of Cassation says the following:

> Ora, come piu' volte sostenuto dalla stessa Corte Costituzionale, si preferisce considerare oggetto di tutela l'interesse al buon andamento della pubblica amministrazione, attuato mediante la difesa dell'onore e del prestigio della stessa.[10]

39. The material element of the offence is the act of vilification and/or the threat. These can take a verbal or even a written form, including a drawing or a picture. The aim is to target the reputation of the person to whom any such acts are directed. The victim of this offence must necessarily be a public official and the vilification and/or threats must take place (i) during the course of the lawful exercise of his functions or (ii) because of his having discharged such duty or (iii) with intent to intimidate or unduly influence him in the discharge of such duty. In this regard, the Court of Cassation explains the following:

> Ai fini della configurabilita' del reato di oltraggio a pubblico ufficiale, quale ora prevvisto dall'art. 341 bis c.p., per un verso, l'obiettivo capacita'

[9] There is a difference between the offence as integrated into our Criminal Code and that as found in the Codice Penale Italiano in that under Italian law for the offence to subsist the offence must have taken place in a public place or in a place exposed to the public. Even a prison cell is considered a public place under Italian law insofar as it is a place which is not in the possession of the accused 'Ai fini del delitto di oltraggio a pubblico ufficiale, la cella e gli ambienti penitenziari sono da considerarsi lugo aperto al pubblico non essendo nel 'possesso' del detenuti ai quali non compete alcuno 'ius excludendi alios; tali ambienti, infatti, si trovano nella piena e completa disponibilita dell'amministrazione penitenziaria, che ne puo' fare uso in ogni momento per qualsiasi esigenza d'istituto (Cassazione penale, Sez. VII ordinanza n. 21506 del 4 maggio 2017).

[10] Art. 341 bis codice penale - Oltraggio a pubblico ufficiale - Brocardi.it

> offensiva di determinate espressioni verbali non puo' dirsi elisa dalla facilita' e dalla frequenza con le quali esse vengono adoperate, ben potendo le medesime dar lugo alla riconoscibilita' del reato quando siane inserite in un contesto che esprima, **senza possibilita' di equivoci, disprezzo e disistima per le funzioni di pubblico ufficiale**;[11] per altro verso, una critica, anche accesa, nei confronti del pubblico ufficiale non puo' essere considerata penalmente rilevante se non quando sia tale da minare la dignita' sociale del destinatario, e, attraverso di lui, la considerazione della pubblica amministrazione che egli, in quel momento, impersona (Nella specie, in applicazione di tali principi, la Corte ha ritenuto che legittimamente fosse stata affermata la sussistenza del reato in caso in cui l'imputato, a fronte dell'intervento pubblico ufficiale in un locale pubblico in cui era insorta una lite tra avventori, aveva rivolto al suo indirizzo l'espressione: ''io vado dove voglio, vaffanculo.''[12]

40. The victim of the vilification, threats and/or insults must have been acting on official police duties to the extent that a policeman who happens to be wearing a uniform but not being on official duties, cannot be regarded as the passive subject of the offence contemplated in the provisions of Article 95 of the Criminal Code. In this regard in the case **Il-Pulizija vs. Wayne Deguara,** the Court of Criminal Appeal[13] stated that in order for the offence contemplated in the provisions of Article 95 of the Criminal Code to subsist, there is the requirement that:

> Il-kliem denunzjat bħala inġurjuż, ikun ingħad lil wieħed li għandu kwalifika ta' uffiċjal pubbliku u li jkun **filwaqt ta' dan ikun fl-att tas-servizz ''officio durante ad contemplazione officii''.[14]**
>
> Fil-fatt, jekk persuna li tkun pulizija tinzerta f'post u tigi inġurjata jekk ma tkunx hemm fuq xi ordni speċifiku iżda b'sempliċi kumbinazzjoni, allura dan id-delitt ma jeżistix. Fis-sentenza fl-ismijiet Il-Pulizija v Carmel Farrugia l-Qorti tal-Appell Kriminali qalet li "jekk l-kliem li jintqal mill-agent lejn uffiċjal pubbliku, jintqal b'sens ta' kritika, l-kritika sakemm ma tiddeġenerax f'ingurja ma tista b'ebda mod tigi penalizzata, anke jekk dik il-kritika tieħu l-forma ta'

[11] Emphasis of this Court.
[12] Cassazione penale, Sez. VI, sentenza n. 51613 del 2 dicembre 2016.
[13] Decided on the 5th January 2021.
[14] Emphasis of this Court.

rimarka ironika jew addirittura sarkastika. F'dak il-kaz ir-reat in diżamina ma jirriżultax.

41. By way of corollary to this, this Court observes that there can be a situation in which a police officer is not wearing his official uniform but still be on official police duties in which case jurisprudence teaches how the offence would still subsist but on condition that the **active subject of the offence is aware of that the victim of the offence is a police officer.** In **Il-Pulizija vs. Wayne Deguara**, the Court of Criminal Appeal explained this principle by making reference to the teachings of Professor Mamo in this regard:

> Illi finalment ir-reat irid necessarjament jigi kommess fil-konfront ta' ufficcjal pubbliku jew ta' persuna nkarigat skont il-ligi minn servizz pubbliku. Il-Professur Mamo fin-notamenti tiegħu jgħid:
>
> "This offence arises even though the person charged with the public duty **may not at the time of discharging such duty be wearing his uniform or badge**[15] etc of office, provided the offender was aware of his status as such person."

42. In this regard, Professor Mamo mentions how this principle was affirmed several times by our Courts and quotes the case of **La Polizia vs. Giuseppe Borg** (Criminal Appeal 24.11.1917):[16]

> Nel reato di oltraggio a pubblico ufficiale od impiegato pubblico oltre il dolo specifico desunto dal fine dell'agente, e' necessario ad integrare l'elemento morale ed intenzionale del reato, la scienza della qualita' ufficiale dell'oltraggiato ma questa scienza puo' sussistere indipendentemente dalla questione se il pubblico ufficiale portasse o no la divisa della sua carica al tempo dell'oltraggio; il reato puo' avverarsi anche se l'ufficiale non indossasse tale divisa a patto, ben inteso, che risulti della scienza nell'oltraggiante della qualita' ufficiale dell'oltraggiato (Law Reports, Vol. XXXII part I page 1086).

[15] Emphasis of this Court
[16] Notes on Criminal aw Vol:II by Prof. Sir A.J., Mamo p. 47

43. With regards to the intentional element of the offence, this Court observes that what must be proven beyond reasonable doubt is that TSAKOS wilfully uttered insults and threats towards the police officer with the intention of vilifying and/or threatening PC1418 while he was lawfully exercising his duties.

44. Now, applying the above principles to the case at hand, this Court has no doubt that:

i) PC1418 was acting on official duties, albeit not in uniform;

ii) TSAKOS uttered offensive language to PC1418 while the latter was lawfully charged with a public duty;

iii) According to PC1418, TSAKOS uttered threats to PC1418 while lawfully charged with a public duty;

iv) TSAKOS knew that PC1418 was a police officer because PC1418 showed him an identification document - and according to Carmel Cesare, aside from showing him a document, PC1418 also kept insisting on the fact that he was a police officer. The fact that Cesare states that the appellant seemed not to believe that PC1418 was a police officer does not exclude this element on account of the fact that Cesare confirms that PC1418 not only insisted with the appellant that he was a police officer on duty and executing his duties, but also showed the appellant his identification tag which appellant seems to have completely ignored.

v) TSAKOS wilfully uttered these words with the intention of (threatening or) vilifying PC 1418.

45. Insofar as the first charge is concerned, the Court is therefore satisfied that the Court of Magistrates (Malta) could have legally and reasonably found the appellant guilty.

Considers further

46. The second, third and fourth charges against the appellant are the contraventions mentioned in Article 338(bb)(dd)(ee) of the Criminal Code, falling under sub-title I : 'Of Contraventions Affecting Public Order'. This Court reaffirms that from the evidence produced, it emerges beyond a reasonable doubt that :

i) the incident took place in Triq l-Ankri, in a place therefore which is public by its nature;
ii) TSAKOS uttered obscene and indecent words;
iii) TSAKOS raised his voice during his argument with PC1418;
iv) TSAKOS disobeyed the lawful orders of PC1418 entrusted with a public service when he persisted in directing foul language towards the PC1418 instead of walking on as instructed and hindered / obstructed PC 1418 in the exercise of his duties by interfering at the point when PC 1418 was exercising his authority in respect of two men who were dumping waste illegally.

47. This Court finds that from this evidence, the Court of Magistrates (Malta) could legally and reasonably find the appellant guilty of the second and fourth charges proferred against the appellant.

48. The question regarding the offence of breach of the peace requires further elaboration. In his affidavit PC1418 claims that the

appellant referred to him as “you piece of shit” and also told him “fuck you” and “Fuck the Police”. PC1418 raises the stakes when he claims that the appellant also went as far as telling him you keep walking or ill fucking kill you”. And later when PC1418 drew the attention of the appellant that he was on official police work and that what the appellant was doing was in breach of the law, PC1418 states that the appellant’s reply was : “I will fucking break you piece of shit”. And PC1418 claims that with his yelling and swearing the appellant created a disturbance and commition.

49. Carmel Cesare does not confirm having heard these last expressions. Cesare confirms that he heard the appellant raise his voice while addressing PC1418 even after the latter clearly identified himself as a police officer by words and identification tag. Cesare confirms also that he heard the appellant tell PC1418 the expression “fuck the Police”, among others. But Cesare does not confirm hearing the appellant making the threatening words and phrases expressed by PC1418. Nor did he recall any physical contact between PC1418 and the appellant.

50. This Court noted that Cesare’s command of the English language leaves much to be desired – as shown by the fact that he could not testify in English. Hence this could also explain this omission. Whatever the reason, Cesare does however confirm that the tone that TSAKOS used towards PC1418 was confrontational, aggressive, albeit not very aggressive. In Maltese he says “Jigifieri mhux ser nghid li kien daqshekk agressiv, qed tifhem? Imma l-attitudni li uza hekk deher”. Essentially the fact that TSAKOS’ behaviour looked threatening was also due to the fact that TSAKOS

was a big man and that his tone of voice was aggressive towards PC1418. Cesare confirms that there was only a verbal exchange with no contact or consequence between the two.

51. In the criminal appeal **Il-Pulizija vs Rocco D'Alessandro** decided on the 20th May 2013 by Mr Justice Lawrence it was held that :

> Minħabba li l-ewwel imputazzjoni hija kusr volontarju tal-bon-ordni jew tal-paċi pubblika, il-Qorti qed tirreferi għassentenza 'Il-Pulizija versus Michael Camilleri et' tas-27 ta' Frar 2008 tal-Qorti tal-Appell Kriminali kif preseduta mill-Imħallef Dr.David Scicluna. F'dik is-sentenza nsibu dan li ġej dwar in-natura ta' din il-kontravenzjoni.
>
> 'Issa, kif gie spjegat fl-Appell Kriminali fl-ismijiet 'Il-Pulizija v. Paul Busuttil' deciz fit-23 ta' Gunju 1994:
> "Skond gurisprudenza kostanti tal-Qrati tagħna, dan ir-reat javvera ruħu meta jkun hemm dak li fil-common law Ingliża kien jissejjah 'a breach of the peace'. Din lekwiparazzjonita' dana r-reat mal-kunċett Ingliz ta' 'a breach of the peace' tirrisali għal zmien Sir Adriano Dingli li proprju f'kawza deciza minnu fl-10 ta' Gunju, 1890, fl-ismijiet 'Ispettore Raffaele Calleja v. Paolo Bugeja et.,' kien qal hekk:
> 'Che il buon ordine e la tranquillita` pubblica sta nella sicurezza, o nella opinione ferma della sicurezza sociale, - nel rispetto dei diritti e dei doveri sia degli individui in faccia all'autorita` pubblica, sia degli individui stessi fra loro, e ogni atto che toglie o diminuisce la opinione della sicurezza pubblica, o della sicurezza individuale, e` violazione dell'ordine pubblico, indipendentemente dalla perpetrazione di altro reato'(Kollez. Vol. XII, p. 472, 475).1 Vol. LXXVIII.v.277.
>
> A skans ta' ħafna repetizzjoni, din il-Qorti tagħmel referenza għall-ġurisprudenza miġbura fl-artikolu intitolat 'Calleja v. Balzan: Reflections on Public Order' pubblikat
> fil-Vol. X ta' The Law Journal - Id-Dritt (University of Malta, Autumn 1983) pagna 13 et seq., u specjalment pagni 28 sa 31. B'zieda ma' dak li hemm f'dak l-artikolu wiehed
> jista' jghid li r-reat ta' 'breach of the peace' fil-ligi Skoċċiza jirrikjedi wkoll ċertu element, imqar f'ammont żgħir hafna, ta' allarm. Fi kliem McCall Smith u Sheldon, fil-ktieb tagħhom. 'Scots Criminal Law', Edinburgh, Butterworths, 1992):
> 'The essence of the offence is the causing of alarm in the minds of the lieges. This alarm has been variously defined by courts. In Ferguson v. Carnochan (1889) it was said not necessarily to be 'alarm in the sense of personal fear, but alarm lest if what is going on is allowed to continue it will lead to the breaking of the social peace'. Alarm may now be too strong a term: in Macmillan v. Normand (1989) the offence was committed when

abusive language caused ‘concern’ on the part of policemen at whom it was directed’ (p.192).

Naturalment huwa kwazi impossibbli li wieħed jiddeċiedi aprioristikament x’jammonta jew x’ma jammontax f’kull kaz għar-reat ta’ ksur volontarju tal-bon ordni u l-kwiet talpubbliku. Kif jgħid awtur ieħor Skoċċiż, Gerald H. Gordon, fit-test awtorevoli tiegħu ‘The Criminal Law of Scotland’ (Edinburgh, 1978):
‘Whether or not any particular acts amount to such a disturbance is a question of fact depending on the circumstances of each case, and strictly speaking probably no case on breach of the peace can be regarded as an authority of general application’ (p.985, para. 41- 01).

U aktar ‘il quddiem l-istess awtur jghid:
‘T. Although it has been held not to be a breach of the peace merely to annoy someone, such annoyance could amount to a criminal breach of the peace if the circumstances were such that it was calculated to lead to actual disturbance’ (p. 986, para. 41-01).

Fl-Appell Kriminali fl-ismijiet Il-Pulizija v. Joseph Spiteri deciz fl-24 ta’ Mejju 1996, din il-Qorti diversament presjeduta żiedet tgħid hekk:
“Il-Qorti hawnhekk tixtieq tippreciza a skans ta’ ekwivoċi li l-kuncett ta’ ‘breach of the peace’ kif abbraccjat fl-Iskozja huwa aktar wiesa’ minn kif gie interpretat mill-qrati Inglizi. Fi kliem Jones u Christie fil-ktieb taghhom ‘Criminal Law’ (Edinburgh, Sweet & Maxwell, 1992), b’referenza għal-liġi Skoċċiża in materja:
‘While the major part of the criminal law of Scotland could indeed be expressed in some facile, breach-of the-peacetype phrase, such as ‘doing things (or refraining from
doing things) which cause, or could reasonably cause alarm or disturbance’, this would lead inevitably to complete uncertainty as to what exactly the law did prohibit. At present there is considerable uncertainty as to what breach of the peace itself properly covers; and it would thus be most unwelcome to extend that uncertainty by enlarging the scope of breach of the peace at the expense of other, fairly well defined offences. But this is, of course, something of a vicious circle. It is precisely because breach of the peace has become so ill-defined that it has proved possible for it to stray into fields occupied by other offences. The only way to halt this process is for breach of the peace to be defined in a clearer and more limited fashion than is currently the case. Regrettably, however, there is little indication that this is likely to be so’ (p. 295).

Il-kuncett Ingliz ta’ ‘breach of the peace’ li, kif ingħad, il-Qrati tagħna jidher li fil-massima segwew, gie spjegat mill-Professur A.T.H. Smith fil-ktieb tiegħu ‘Offences Against Public Order’ (London, Sweet & Maxwell, 1987) hekk:

‘Because of the association between ‘peace’ and ‘quiet’, there is a natural tendency to suppose that a breach of the peace is ‘any behaviour that disturbed or tended to disturb the tranquillity of the citizenry’. But if any legal

expression is a term of art, breach of the peace is one of them. Recently the courts have refined the concept, and established very clearly that it is allied to harm, actual or prospective, against persons or property. The leading mo dern authority is undoubtedly the decision of the Court of Appeal in Howell T. Watkins L.J. said:

'T. Even in these days when affrays, riotous behaviour and other disturbances happen all too frequently, we cannot accept that there can be a breach of the peace unless there has been an act done or threatened to be done which either actually harms a person, or in his presence his property, or is likely to cause such harm, or which puts someone in fear of such harm being done' (p.182).

Minn dana kollu din il-Qorti tara li, bħala regola, ikun hemm il-kontravvenzjoni kontemplata fil-paragrafu (dd) ta' l-art. 338 tal-Kap. 9 meta jkun hemm għemil volontarju li minnu nnifsu jew minħabba c-cirkostanzi li fihom dak l-għemil iseħħ inissel imqar minimu ta' inkwiet jew thassib f'moħħ persuna (li ma tkunx l-akkużat jew imputat) dwar l-inkolumita` fiżika ta' persuna jew dwar l-inkolumita` ta' proprjeta`, kemm b'rizultat dirett ta' dak l-għemil jew minħabba l-possibilita` ta' reazzjoni għal dak l-għemil. Naturalment dawn iċ-ċirkostanzi jridu jkunu tali li oġġettivament inisslu l-imsemmi nkwiet jew tħassib.'

Il-Qorti kkwotat minn din is-sentenza 'in extenso' għaliex l-ispjegazzjoni mogħtija tista' tgħin biex il-Prosekuzzjoni tkun tista' tiddeċiedi aħjar meta għandha tagħti din l-imputazzjoni u meta le.

Minn dan il-każ jirriżulta li l-prinċipju li Qorti għandha ssegwi biex tara jekk kienx hemm ksur tal-ordni pubbliku huwa jekk mill-atti jirriżultax xi għemil volontarju li minnu nnifsu jnissel xi minimu ta' inkwiet jew tħassib f'moħħ persuna dwar l-inkolumita' fiżika ta' persuna jew proprjeta'.

52. If Carmel Cesare's version of events were to be believed, then TSAKOS' words and behaviour towards PC1418 were objectively confrontational and aggressive. TSAKOS' big physical stature added a menacing touch to this behaviour, even though TSAKOS did not make any physical contact with PC1418. Moreover, from a subjective perspective, the words used and the confrontational / aggressive behaviour of the appellant towards PC1418 (and the threats received according to PC1418) while not actually harming PC1418 or his property, were such as to raise the concern that such harm was, in the heat of the argument, likely to be caused, or to put

someone (not being the accused or appellant) in fear of such harm being done. PC1418 confirms this. And objectively, a reasonable man in those circumstances would surely have felt that way.

53. Consequently the Court is satisfied that the Court of Magistrates (Malta) could have legally and reasonably found the appellant guilty of the second, third and fourth charges.

54. The second grievance of the appellant is therefore being rejected.

Considers further

55. That the appellant contends that the punishment imposed by the Court of Magistrates (Malta) is excessive. In this regard this Court makes reference to the Court of Criminal Appeal judgment of **The Republic of Malta vs. Kandemir Meryem Nilgum and Kucuk Melek** decided on the 25th August 2005:

> It is clear that the first Court took into account all the mitigating as well as the aggravating circumstances of the case, and therefore the punishment awarded is **neither wrong in principle nor manifestly excessive**[17], even when taking into account the second and third grounds of appeal of appellant Melek. As is stated in Blackstone's Criminal Practice 2004 (supra):
>
> "The phrase 'wrong in principle or manifestly excessive' has traditionally been accepted as encapsulating the Court of Appeal's general approach. It conveys the idea that the Court of Appeal will not interfere merely because the Crown Court sentence is above that which their lordships as individuals would have imposed. The appellant must be able to show that the way he was dealt with was outside the broad range of penalties or other dispositions appropriate to the case. Thus in Nuttall (1908) 1 Cr App R 180, Channell J said, 'This court will...be reluctant to interfere with sentences which do not seem to it to be wrong in principle, though they may appear heavy to individual judges' (emphasis added). Similarly, in Gumbs (1926)

[17] Emphasis of this Court.

19 Cr App R 74, Lord Hewart CJ stated: '...that this court never interferes with the discretion of the court below merely on the ground that this court might have passed a somewhat different sentence; for this court to revise a sentence there must be some error in principle." Both Channell J in Nuttall and Lord Hewart CJ in Gumbs use the phrase 'wrong in principle'. In more recent cases too numerous to mention, the Court of Appeal has used (either additionally or alternatively to 'wrong in principle') words to the effect that the sentence was 'excessive' or 'manifestly excessive'. This does not, however, cast any doubt on Channell J's dictum that a sentence will not be reduced merely because it was on the severe side – an appeal will succeed only if the sentence was excessive in the sense of being outside the appropriate range for the offence and offender in question, as opposed to being merely more than the Court of Appeal itself would have passed."2

This is also the position that has been consistently taken by this Court, both in its superior as well as in its inferior jurisdiction.

56. The principle in **Kandemir** was also embraced by the Court of Criminal Appeal in **Ir-Repubblika ta' Malta vs. Marco Zarb**, decided on the 15th December 2005 that being that, a Court of Criminal Appeal does not overturn a judgment given by the Court of Magistrates by reason of the fact that the punishment as inflicted by the latter is greater in quantum than that which would have been imposed by the former. For a judgment of the Court of Magistrates to be overturned, the appellant must prove that the punishment handed down by the First Court was either wrong in principle or was manifestly excessive.

57. In this case the Court of Magistrates (Malta) handed a conditional discharge for a period of six months (and not a suspended sentence as mentioned in the appeal application on page 51 of the records) together with a fine (multa) of eight hundred Euro (€800). This punishment, is clearly neither wrong in principle nor is it outside the parameters prescribed at law in terms of Article 17(d) of the Criminal Code. Moreover, insofar as the fine (multa) is

concerned, the Court of Magistrates clearly imposed a fine in its minimum in terms of Article 95 of the Criminal Code.

58. Also, it has been repeatedly emphasized by our Courts[18] as well as by jurists, that officers which are entrusted by the State to safeguard public order should be offered maximum protection at law. By way of corollary to this, an offence directed towards a public officer while he is lawfully discharging his duties, is to be regarded as a serious crime and this seriousness can only be reflected in the punishment imposed upon a declaration of guilt. Indeed most recent case law indicates that in case of finding of guilt of such offences, a punishment of imprisonment is indeed more indicated. So this Court cannot in any way consider that the punishment delivered by the Court of Magistrates (Malta) was excessive or manifestly excessive. Consequently, this Court does not see reason of varying the punishment as imposed by the Court of Magistrates.

Decide

Consequently, the Court is hereby rejecting the appeal and confirming the judgment given by the Court of Magistrates (Malta).

Aaron M. Bugeja,

Judge

[18] See for instance **Il-Pulizija vs. Ivan (John) Felice** decided by the Court of Appeal on the 4th June 2002.