



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

**Magistrate Dr. Ian Farrugia LL.D**

**Today 21<sup>st</sup> March 2022**

**The Police**  
**(Inspector Joseph Busuttil)**  
**(Inspector Sylvana Briffa)**

**Vs**

**Bin Han**  
**Jia Liu**

Compilation number 1128/2014

**The Court;**

Having seen that the accused **Bin Han** holder of identity card number: 524413L and 20799A and holder of Chinese passport number G49624122, in his own name and in the name and as a representative of **Leisure Clothing Limited**, bearing registration number C8265 and address “B31”, Industrial Estate, Bulebel, Zejtun and **Jia Liu** holder of Maltese identity card bearing number 64215A, in his own name and in the name and as a representative of **Leisure Clothing Limited**, bearing registration number C8265 and address “B31”, Industrial Estate, Bulebel, Zejtun, have been charged with having on the 29<sup>th</sup> October 2014 and in the preceding years, on the Maltese Islands, by several acts committed by them, even if at

different times, which constitute violations of the same provision of the law, committed in pursuance of the same design:

- 1) By means of violence or threats, including abduction, deceit or fraud, misuse of authority, influence or pressure or by giving or receiving payments or benefits to achieve the consent of persons having control over, trafficked persons of age namely Van Ngu Tran: Vietnamese I.D number B8289450P; Thi Thu Tran: Vietnamese I.D number B8249346P; Thi Cam Van Hoang: B8247413P; Nguyen Van Giang: Vietnamese I.D number B8244745; Phuong Thi Vuong: Vietnamese I.D number B8305220; Thi Hoa Vu Vietnamese I.D number B85336280; Lien Thi Duong: B4768442; Hien Thi Nguyen Vietnamese I.D number B507646P, Thi Kim Loan Nguyen: Vietnamese I.D number B825902P and Liao Pingshan; Chinese Passport G48164137 and any other persons for the purpose of exploiting those persons in the production of goods or provision of services or any other unlawful activities not specifically provided for elsewhere under this sub-title.
- 2) And in the same circumstances misappropriated, by converting to their own benefit or to the benefit of any other person, the sum of more than €5000 which has been entrusted or delivered to them under a title which implies an obligation to return such thing or to make use thereof for a specific purpose and this to the detriment of Van Ngu Tran: Vietnamese I.D number B8289450P; Thi Thu Tran: Vietnamese I.D number B8249346P; Thi Cam Van Hoang: B8247413P; Nguyen Van Giang: Vietnamese I.D number B8244745; Phuong Thi Vuong: Vietnamese I.D number B8305220; Thi Hoa Vu Vietnamese I.D number B85336280; Lien Thi Duong: B4768442; Hien Thi Nguyen Vietnamese I.D number B507646P, Thi Kim Loan Nguyen: Vietnamese I.D number B825902P and Liao Pingshan; Chinese Passport G48164137 and/or any other persons;
- 3) And in the same circumstances under the title of directors, managers, secretaries or other principal officers of a body corporate or being persons having the power of representation of a body or having an authority to take decisions on behalf of such body or having authority to exercise control within that body, which committed for the benefit, in part or in whole, of that body corporate, these

persons shall under this title be deemed to be vested with the legal representation of the same body corporate;

- 4) And in the same circumstances as employers contravened or failed to comply with any recognised conditions of employment prescribed by a national standard order or by a sectoral regulation order or collective agreement, or with any provisions of this Act 452 or any regulations made thereunder.
- 5) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership **'LEISURE CLOTHING LIMITED' (C 8265)**, having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 21<sup>st</sup> November, 2013 and ending on the 25<sup>th</sup> of July, 2014, amounting to €5,973.33, you have failed to pay the **Weekly Allowance** due for the period commencing on the 21<sup>st</sup> November, 2013 and ending on the 25<sup>th</sup> July, 2014, amounting to €164.97, you have failed to pay the **Statutory Bonus** due for the period commencing on the 21<sup>st</sup> November, 2013 and ending on the 25<sup>th</sup> July, 2014, amounting to €183.94, you have failed to pay the **Overtime on Public Holidays** due for the period commencing on the 13<sup>th</sup> December 2013, and ending on the 25<sup>th</sup> July, 2014, amounting to €667.10, you have failed to pay the **Overtime** due for the period commencing on the 21<sup>st</sup> November, 2013 and ending on the 25<sup>th</sup> July, 2014, amounting to €4465.32, you have failed to pay the **Vacation Leave** due for the period commencing on the 1<sup>st</sup> January, 2014, and ending on the 25<sup>th</sup> of July, 2014, amounting to **€452.46**, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 21<sup>st</sup> November, 2013 and ending on the 25<sup>th</sup> July, 2014, amounting to €2,582.25, globally amounting to €14489.37 from which a payment of €600 was made leaving a remaining due balance of thirteen thousand eight hundred eighty-nine EUROS and thirty-seven cents (**€13,889.37**), inclusive of national insurance and tax, owed to **Van Ngu Tran (Vietnamese ID Number B828945OP)**, employee of the above-cited commercial partnership.

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Van Ngu Tran (Vietnamese ID Number B828945OP)** the amount of fifteen thousand five hundred and fifty-four Euros and seventy-six (**€15,554.76**) for the reasons specified above.

- 6) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership **'LEISURE CLOTHING LIMITED' (C 8265)**, having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 25<sup>th</sup> of July, 2014, amounting to €5,841.36, you have failed to pay the **Weekly Allowance** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 31<sup>st</sup> March, 2014, amounting to €83.88, you have failed to pay the **Statutory Bonus** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 30<sup>th</sup> June, 2014, amounting to €164.70, you have failed to pay the **Overtime on Saturdays** due for the period commencing on the 23<sup>rd</sup> November, 2013 and ending on the 25<sup>th</sup> July, 2014, amounting to €804.70, you have failed to pay the **Overtime on Public Holidays** due for the 13<sup>th</sup> December 2013, 25<sup>th</sup> December 2013, and the period commencing on the 1<sup>st</sup> January, 2014 and ending on the 25<sup>th</sup> July, 2014, amounting to €967.79, you have failed to pay the **Overtime** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 25<sup>th</sup> July, 2014, amounting to €5500.41, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 25<sup>th</sup> July, 2014, amounting to €2791.92, globally amounting to €16154.76 from which a payment of €600 was made leaving a remaining due balance of fifteen thousand five hundred and fifty-four Euros and seventy-six (**€15,554.76**), inclusive of national insurance and tax, owed to **Thi Thu Tran (Vietnamese ID Number B8249346P)**, employee of the above-cited commercial partnership.

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta to order the accused to pay **Thi Thu Tran (Vietnamese ID Number B8249346P)** the amount of fifteen thousand five hundred and fifty-four Euros and seventy-six (**€15,554.76**) for the reasons specified above.

- 7) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership **'LEISURE CLOTHING LIMITED' (C 8265)**, having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 25<sup>th</sup> of July, 2014, amounting to €5,841.36, you have failed to pay the **Weekly Allowance** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 31<sup>st</sup> March, 2014, amounting to €83.88, you have failed to pay the **Statutory Bonus** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 30<sup>th</sup> June, 2014, amounting to €164.70, you have failed to pay the **Overtime on Saturdays** due for the period commencing on the 23<sup>rd</sup> November, 2013 and ending on the 25<sup>th</sup> July, 2014, amounting to €804.70, you have failed to pay the **Overtime on Public Holidays** due for the 13<sup>th</sup> December 2013, 25<sup>th</sup> December 2013, and the period commencing on the 1<sup>st</sup> January, 2014 and ending on the 25<sup>th</sup> July, 2014, amounting to €967.79, you have failed to pay the **Overtime** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 25<sup>th</sup> July, 2014, amounting to €5500.41, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 25<sup>th</sup> July, 2014, amounting to €2791.92, globally amounting to €16154.76 from which a payment of €600 was made leaving a remaining due balance of fifteen thousand five hundred and fifty-four Euros and seventy-six (**€15,554.76**), inclusive of national insurance and tax, owed to **Thi Cam Van Hoang (Vietnamese ID Number B8247413P)**, employee of the above-cited commercial partnership.

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta to order the accused to pay **Thi Cam Van Hoang (Vietnamese ID Number B8247413P)** the amount of fifteen thousand five hundred and fifty-four Euros and seventy-six (**€15,554.76**) for the reasons specified above.

- 8) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership **'LEISURE CLOTHING LIMITED' (C 8265)**, having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 11<sup>th</sup> of August, 2014, amounting to €5,477.76, you have failed to pay the **Weekly Allowance** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 11<sup>th</sup> August, 2014, amounting to €154.71, you have failed to pay the **Statutory Bonus** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 11<sup>th</sup> August, 2014, amounting to €195.78, you have failed to pay the **Overtime on Sundays** due for the period commencing on the 24<sup>th</sup> November, 2013 and ending on the 29<sup>th</sup> December 2013, amounting to €578.99, you have failed to pay the **Overtime on Public Holidays** due for the 13<sup>th</sup> December 2013, 25<sup>th</sup> December 2013, and the period commencing on the 10<sup>th</sup> February, 2014 and ending on the 7<sup>th</sup> June, 2014, amounting to €670.95, you have failed to pay the **Overtime** due for the period commencing on the 22<sup>nd</sup> November, 2013 and ending on the 11<sup>th</sup> August, 2014, amounting to €4346.56, and you have failed to pay the **Vacation Leave** due for the period commencing on the 1<sup>st</sup> January, 2014 and ending on the 11<sup>th</sup> August, 2014, amounting to €421.87, globally amounting to €11,846.62 from which a payment of €2,810 was made leaving a remaining due balance of nine thousand and thirty-six Euros and sixty-two cents (**€9036.62**), inclusive of national insurance and tax, owed to **Nguyen Van Giang (Passport No B8244745 )**, employee of the above-cited commercial partnership.

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Nguyen Van Giang (Passport No B8244745 )** the amount of nine thousand and thirty-six Euros and sixty-two cents (**€9036.62**) for the reasons specified above.

- 9) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership **‘LEISURE CLOTHING LIMITED’ (C 8265)**, having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 24<sup>th</sup> March, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€5166.72**, you have failed to pay the **Weekly Allowance** due for the period commencing on the 23<sup>rd</sup> March, 2014 and ending on the 30<sup>th</sup> of September, 2014, amounting to **€126.75**, you have failed to pay the **Statutory Bonus** due for the period commencing on the 23<sup>rd</sup> March, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€162.06**, you have failed to pay the **Vacation Leave** due for the period commencing on the 23<sup>rd</sup> March, 2014, and ending on the 27<sup>th</sup> of October, 2014, amounting to **€476.93**, you have failed to pay the **Overtime on Public Holidays** due for the period commencing on the 31<sup>st</sup> March, 2014 and ending on the 8<sup>th</sup> of September, 2014, amounting to **€541.51**, you have failed to pay the **Overtime** due for the period commencing on the 24<sup>th</sup> March, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€4,736.68**, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 23<sup>rd</sup> March, 2014 and ending on the 26<sup>th</sup> of October, 2014, amounting to **€2,484.17**, globally amounting to **€13694.80** from which a payment of **€450** was made leaving a remaining due balance of thirteen thousand two hundred and forty-four Euros and eighty cents (**€13244.80**), inclusive of national insurance and tax, owed to **Phuong Thi Vuong (B8305220)**, ex-employee of the above-cited commercial partnership on the 27<sup>th</sup> of October, 2014

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Phuong Thi Vuong (B8305220)** the amount of thirteen thousand two hundred and forty-four Euros and eighty cents (**€13244.80**) for the reasons specified above.

10) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership '**LEISURE CLOTHING LIMITED**' (**C 8265**), having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 23<sup>rd</sup> March, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€5232.73**, you have failed to pay the **Weekly Allowance** due for the period commencing on the 23<sup>rd</sup> March, 2014 and ending on the 30<sup>th</sup> of September, 2014, amounting to **€145.39**, you have failed to pay the **Statutory Bonus** due for the period commencing on the 23<sup>rd</sup> March, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€162.06**, you have failed to pay the **Vacation Leave** due for the period commencing on the 23<sup>rd</sup> March, 2014, and ending on the 27<sup>th</sup> of October, 2014, amounting to **€479.99**, you have failed to pay the **Overtime on Public Holidays** due for the period commencing on the 31<sup>st</sup> March, 2014 and ending on the 8<sup>th</sup> of September, 2014, amounting to **€541.51**, you have failed to pay the **Overtime** due for the period commencing on the 24<sup>th</sup> March, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€4,289.93**, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 23<sup>rd</sup> March, 2014 and ending on the 26<sup>th</sup> of October, 2014, amounting to **€2,482.10**, globally amounting to **€13333.71** from which a payment of **€450** was made leaving a remaining due balance of twelve thousand eight hundred and eighty-three Euros and seventy-one cents (**€12883.71**), inclusive of national insurance and tax, owed to **Thi Hoa Vu (B85336280)**, ex-employee of the above-cited commercial partnership on the 27<sup>th</sup> of October, 2014



The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Thi Hoa Vu (B85336280)** the amount of twelve thousand eight hundred and eighty-three Euros and seventy-one cents (**€12883.71**) for the reasons specified above.

- 11) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership **'LEISURE CLOTHING LIMITED' (C 8265)**, having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 2<sup>nd</sup> February, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€6,325.92**, you have failed to pay the **Weekly Allowance** due for the period commencing on the 2<sup>nd</sup> February, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€178.62**, you have failed to pay the **Statutory Bonus** due for the period commencing on the 2<sup>nd</sup> February, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€198.32**, you have failed to pay the **Vacation Leave** due for the period commencing on the 2<sup>nd</sup> February, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€585.92**, you have failed to pay the **Overtime on Public Holidays** due for the period commencing on the 2<sup>nd</sup> February, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€824.27**, you have failed to pay the **Overtime** due for the period commencing on the 2<sup>nd</sup> February, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to €5464.18, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 2<sup>nd</sup> February, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€2,962.58**, globally amounting to €16,539.81 from which a payment of €550 was made leaving a remaining due balance of fifteen thousand nine hundred and eighty-nine Euros and eighty-one cents (**€15,989.81**), inclusive of national insurance and tax, owed to **Lien Thi Duong (B4768442)**, ex-employee of the above-cited commercial partnership on the 27<sup>th</sup> of October, 2014

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Lien Thi Duong (B4768442)** the amount of fifteen thousand nine hundred and eighty-nine Euros and eighty-one cents (**€15,989.81**) for the reasons specified above.

- 12) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership **'LEISURE CLOTHING LIMITED' (C 8265)**, having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 31<sup>st</sup> March, 2013 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€13,536.00**, you have failed to pay the **Weekly Allowance** due for the period commencing on the 31<sup>st</sup> March, 2013 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€379.46**, you have failed to pay the **Statutory Bonus** due for the period commencing on the 31<sup>st</sup> March, 2013 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€426.24**, you have failed to pay the **Vacation Leave** due for the period commencing on the 1<sup>st</sup> January, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€644.00**, you have failed to pay the **Overtime on Public Holidays** due for the period commencing on the 31<sup>st</sup> March, 2013 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€1,565.81**, you have failed to pay the **Overtime** due for the period commencing on the 31<sup>st</sup> March, 2013 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€13,068.05**, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 31<sup>st</sup> March, 2013 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€6337.52**, globally amounting to €35,957.08 from which payments of a total of €5651 were made leaving a remaining due balance of thirty thousand three hundred and six Euros and eight cents (**€30,306.08**), inclusive of national insurance and tax, owed to **Hien Thi Nguyen (B507646P)**, ex-employee of the above-cited commercial partnership on the 27<sup>th</sup> of October, 2014

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Hien Thi Nguyen (B507646P)** the amount of thirty thousand three hundred and six Euros and eight cents (**€30,306.08**) for the reasons specified above.

- 13) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership **'LEISURE CLOTHING LIMITED' (C 8265)**, having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the person/s responsible and appointed by the said commercial partnership to pay outstanding wages, you have failed to pay the **Wages** due for the period commencing on the 30<sup>th</sup> January, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€6,466.72**, you have failed to pay the **Weekly Allowance** due for the period commencing on the 30<sup>th</sup> January, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€180.39**, you have failed to pay the **Statutory Bonus** due for the period commencing on the 30<sup>th</sup> January, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€200.54**, you have failed to pay the **Vacation Leave** due for the period commencing on the 30<sup>th</sup> January, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€591.73**, you have failed to pay the **Overtime on Public Holidays** due for the period commencing on the 10<sup>th</sup> February, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€709.68**, you have failed to pay the **Overtime** due for the period commencing on the 3<sup>rd</sup> February, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€2,853.56**, and you have failed to pay the **Overtime on Sundays** due for the period commencing on the 2<sup>nd</sup> February, 2014 and ending on the 27<sup>th</sup> of October, 2014, amounting to **€2,954.22**, globally amounting to **€13,956.84** from which a payment of **€550** was made leaving a remaining due balance of thirteen thousand four hundred and six Euros and eighty-four cents (**€13,406.84**), inclusive of national insurance and tax, owed to **Thi Kim Loan Nguyen (B825902P)**, ex-employee of the above-cited commercial partnership on the 27<sup>th</sup> of October, 2014

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, to order the accused to pay the penalties established by law, and, in accordance with Article 45(2) of Chapter 452 of the Laws of Malta and Regulation 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007 and 259 of 2012 to order the accused to pay **Thi Kim Loan Nguyen (B825902P)** the amount of thirteen thousand four hundred and six Euros and eighty-four cents (**€13,406.84**) for the reasons specified above.

- 14) And in the same circumstances, in your capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership **‘LEISURE CLOTHING LIMITED (C 8265)**, having its registered address at B31, Industrial Estate, Bulebel, Żejtun, Malta and/or being the persons responsible and appointed by the said commercial partnership on the 3<sup>rd</sup> of November, 2014, you have failed to answer or answered falsely or caused any other person not to answer or to answer falsely to any question which an inspector is authorized to ask under Chapter 452 of the Laws of Malta; or you have failed to produce any books, registers or other documents that, according to this Act, you were required by an inspector to produce.

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta, and Regulation 10 of the Legal Notice 431 of 2002, as amended by the Legal Notice 427 of 2007, to order the accused to pay the penalties established by law, for the reasons specified above, and also order the accused, in accordance with Article 43(8) of Chapter 452 of the Laws of Malta, and or Regulation 9(3) of the Legal Notice 431 of 2002, as amended by the Legal Notice 427 of 2007, not to obstruct in any manner an inspector in the performance of his duties, to allow, directly or indirectly, any employee to appear before or to be questioned by an inspector, as well as produce and make available any information requested by the Director of the Department of Employment and Industrial Relations.

The Court is being humbly requested, on reasonable grounds, to provide for the safety of any vulnerable witnesses including Van Ngu Tran: Vietnamese I.D number B8289450P; Thi Thu Tran: Vietnamese I.D number B8249346P; Thi Cam Van

Hoang: B8247413P; Nguyen Van Giang: Vietnamese I.D number B8244745; Phuong Thi Vuong: Vietnamese I.D number B8305220; Thi Hoa Vu Vietnamese I.D number B85336280; Lien Thi Duong: B4768442; Hien Thi Nguyen Vietnamese I.D number B507646P, Thi Kim Loan Nguyen: Vietnamese I.D number B825902P and Liao Pingshan; Chinese Passport G48164137 and their families and other persons, and forthwith apply the provisions of Section 412C of Chapter 9 of the Laws of Malta and thus issue a protection order against the accused with all the necessary restrictions or prohibitions;

The Court is also being humbly requested to apply mutatis mutandis the provisions of Article 5 of Chapter 373 of the Money Laundering Act of the Laws of Malta, in accordance with Article 23A(2) of Chapter 9 of the Laws of Malta, and on conviction apply the provisions of Article 23B of Chapter 9 of the Laws of Malta;

The Court is finally being humbly requested, in pronouncing judgment or in any subsequent order, sentence the person convicted to pay the costs incurred in connection with any experts or referee and this in accordance to Article 533 of Chapter 9 of the Laws of Malta.

Having seen the Attorney General's referral dated 31/05/2018 (at folio 2583), by virtue of which the accused were meant to have their case decided by this Court and duly indicated, in the said referral, the relative Articles of the Law;

Having seen both accused's declaration of the 11<sup>th</sup> June 2018 (at folio 2585) whereby they submitted to summary proceedings;

Having seen all the acts of these proceedings;

Having examined all depositions of witnesses produced;

Having examined final submissions made by the prosecution and the defence;

**Considers;**

That what follows is a summary of the evidence produced in these proceedings.

**Inspector Darren Buhagiar** gave evidence on the 2<sup>nd</sup> December, 2014 (a folio 83 *et seq*) wherein he confirmed that on the 26<sup>th</sup> July, 2014 the police who were stationed at the Seaport were informed that there were three Asians in possession of false Italian documents who tried to board the Catamaran and leave Malta to go to Sicily. It resulted that these three persons were Vietnamese and it transpired that they had a valid working visa. It also transpired that the host for the issuance of this Visa was Leisure Clothing Factory as represented by Han Bin. These same individuals were brought to his office so that he could carry out an interrogation in relation to the false documents. However, during the interrogation one of the Vietnamese particularly Ti Cam Van Huang seemed anxious and after having asked for a piece of paper and a pen started writing that she needed assistance and informed them that she did not wish that they make contact with her place of work. Her notes were exhibited and found at folio 102.

It resulted that the three Vietnamese had arrived in Malta after having applied for a working Visa on an invite sent to them by Han Bin as their host qua employer. The witness stated further that the Vietnamese were leaving Malta on board a Catamaran by using false documents. They explained that their Vietnamese passports were kept in the factory under lock and key. This was confirmed by him when he made contact with Han Bin who was abroad at the time and said that the only key to the safe was in his possession. In fact, a few days later when he returned to Malta he opened the safe and gave him the three Vietnamese passports belonging to the three individuals he was investigating together with their contract of work. From then on, he focused his investigation with regard to the false documents and referred the case to the Department of Industrial Employment Relations and to the Vice Squad. The witness insisted that the three Vietnamese individuals did not want their employer to know that they wanted to leave Malta and it was for that reason that they did not ask their employer for their original documents.

The management of the factory kept all the original documents of their employees in the safe and the employees had no access to them as they were kept locked up and if they needed them, they would have to ask Han Bin to be given access. He

confirmed that the Vietnamese were not returning to their country Vietnam but were going to Catania and had not yet decided as to where they were going to end up.

**Romina Veneziani** took the stand on the 2<sup>nd</sup> December, 2014 (a folio 103A *et seq*) and gave evidence on behalf of the Department of Industrial and Employment Relations. The witness confirmed that she had been contacted by Inspector Lawrence Cutajar who explained to her that there were three Vietnamese at the seaport who were in possession of false passports and were making a complaint that they were owed their salary from their employer. She spoke with the police so that they would inform her of what they believe was due to them from their employer. She spoke with the three Vietnamese with the assistance of an interpreter on the 30<sup>th</sup> July 2014 and they claimed that they were not being given their salary and that their money was being kept in a safe deposit box under the custody of their employer. She said that they claimed that they were being given the sum of between 150 and 200 euros a month. It did not result to her whether such money was being kept by agreement or arbitrarily. She said that there was some correspondence in the archives of the department dated 2007 between the department and Leisure Clothing wherein the department had given specific instructions to the factory so that bank accounts are opened in the names of the foreign employees though she herself was not involved in such correspondence and thus was not in a position to say what had been decided upon. After the report dated 30<sup>th</sup> July 2014, a letter was sent dated 5<sup>th</sup> September, 2014 from the legal department to the Commissioner of Police which is inserted in the acts of the proceedings at folio 117. She stated that the Vietnamese confirmed that their passports were kept by the employer and that they were not being given their whole salary. In cross examination she confirmed that the report of the police to investigate this complaint was done after the three Vietnamese had already been arraigned in court charged with being in possession of false passports. She also confirmed that she did not make any contact with the representatives of the factory and never spoke with any one of its management all throughout the investigation.

**Dr. Elizabeth Borg** gave evidence on the 2<sup>nd</sup> December 2014 (a folio 121 *et seq*) in her capacity as lawyer to the Department of Industrial and Employment Relations and explained that she had been consulted on the case that involved three

Vietnamese namely Tan Gut Ran, Ti Cam and Van Kuang in July 2014. The case concerned allegations regarding the keeping of passports and the retaining of salaries due to employees which were being kept in a safe deposit so that the employees would not escape from Malta.

She confirmed that after July 2014 an employee had gone to the department to register a claim against Leisure Clothing in connection with the payment of salaries that were due, bonuses, overtime and weekly allowance. The claim was made by Ngujen Van Junk. In November 214 another five ex employees also turned to the department and asked to be given assistance. These were Lin Ti Duang, Funk Ti Vong, Hien Tin Gujen and Ti Huo Vu, although she did not know the exact date and neither did she know all the information that was given. However, from the information that she was given from the case officer, when the inspection took place, the Directors of Leisure Clothing claimed that the employees could take their money whenever they wanted after making a written request. A request for all the forms and pay slips was demanded so that certifications could take place however according to the witness such information never reached the department.

During cross examination the witness confirmed that she had never spoke with the Vietnamese prior to the institution of the cases and never spoke with the two accused Directors but explained that the department had made contact with the accused and the Vietnamese through Anton Grech who was assisted by an interpreter. She also said that this was not a case of human trafficking although in the letter sent to the Commissioner of Police she had drew his attention to the possibility of there being a case to answer of human trafficking and thus asked so that the police investigate further. She also confirmed that the department represented by her had taken action against the accused Directors in relation to the non payment of salaries, and bonuses though informed the police with regard to the issue relating to the keeping of passports in the safe deposit so that this matter could be further investigated.

The witness confirms that the charges that the department issued were dated 21<sup>st</sup> August, 2014 and the letter that was sent to the Commissioner of Police was dated 5<sup>th</sup> September, 2014.



On the 3rd April 2017, the witness gave new evidence and exhibited an email sent by Inspector Anthony Buttigieg from the Department of Industrial and Employment Relations dated 24<sup>th</sup> September, 2007 to the accused Han Bin asking him to issue the salaries every four weeks to all foreign employees who at that time were all Chinese. She also exhibited a number of documents which indicated withdrawals from the bank accounts of Leisure Clothing and deposits in the accounts of the employees marked as document EB1.

**Antoine Grech** gave evidence on the 2<sup>nd</sup> December, 2014 (a folio 136 *et seq*) and explained on behalf of the DIER that he had gone to the police headquarters after having been informed by the department that there were a number of Vietnamese who had their conditions of work not according to the law. Once there, he spoke with Tim Cum Van Huang, Van Ju Tran and Ti Tu Tran with the assistance of an interpreter. They claimed that between the months of November and July they were only paid the sum of 600 euros, they were not given a copy of their contract of work and that according to their employer they would take their salaries upon the termination of the contract. After having heard this he asked for them to be accompanied to the department under police escort at the end of July 2014 where he worked out their claims which in his opinion amounted to about fifteen thousand euros (€15,000). After this he had made contact with the employers so that this amount of money is paid. In fact, he claims that he spoke with Mr Grech Cumbo who occupied the HR post in the company. A meeting was held on the 4<sup>th</sup> August 2014 in the premises of the factory along with his colleague Ramon Francalanza, Han Bin and Mr. Grech Cumbo. Han Bin and Grech Cumbo stated that the salaries of the employees used to be kept in a safe deposit box however if any of the employees requested some of the money he would be given such money once he filled in an application for it and subsequently signed for it. He stated that in this meeting the Directors confirmed that the salaries of the employees together with their passport was kept for safe keeping because they feared that the employees would just pack and leave and thus not honour their contractual obligations. During this meeting he has asked for a copy of the application that would be presented by an employee to make a request for his money together with a copy of the time sheets of the employees since there were allegations that they were working excessive hours in

over time. However, these documents were never given to him and never reached the department either. He said that the amount due was under contestation though there was an admission that the employees were in fact owed money that was kept in the safe deposit box.

He further explained that Han Bin had informed him that they, in their capacity as employers, also pay their lodging and food and the value of this is to be decreased from the money kept in the safe deposit box. He also confirmed that he was never informed that there was some form of restriction on the freedom of movement of the employees. He did not carry out any inspection as to where the employees were residing. He only inspected the factory and confirms that he had only spoken with the three Vietnamese whom he had met in the department out of all the foreign employees. He did not ask any questions as to how they arrived in Malta and how they used to live but limited his investigation with regard to their conditions of work.

**Liau Ping Shan** testified on the 3<sup>rd</sup> December, 2014 (a folio 175 *et seq*) and confirmed that he had been employed with Leisure Clothing since 5<sup>th</sup> August 2013. He stated that he had spoken with a friend of his when he was still in China who told him that there was the possibility of work here in Malta. He confirms that he was not given or shown the contract of work until fifteen minutes before he left Tuntin Train station on the 22<sup>nd</sup> July, 2013. He said that his friend had told him that he would get paid a minimum of 500 euros and this amount could increase depending on his efficiency. He said that prior to him signing the contract there was no agreement as to how he was going to get paid his salary or for his overtime. Neither was there any agreement as to when he was going to receive his payments. He did not know how many hours per week he had to work and confirmed that his trip to Malta was paid by the company. He explained that he had paid the agent a deposit in the sum of 13,000 Chinese Yen equivalent to €1,600. The agent happened to be the same person who informed him about this opportunity of work. He said that when he was given the contract he was not allowed to read it because he told him that he had to leave by train and thus he signed due to his fear that if he did not sign it he would lose the money he had already forked out. The agent informed him that if he refuses to sign, he would not be reimbursed for the expenses he had made. He said that when he arrived in Malta there was a representative of the company by the name Di

Un Chi who received his documents and he had told him that he need his passport to be able to apply for some certificates and from then on he never saw his passport again.

The witness confirmed that the obligation regarding his salary and working conditions were not honoured. He says that he had asked the Directors to give him his money or if they could send them to China, though his request was not entertained. He said that he never returned to China after arriving in Malta. He said that he used to live in Hal Far. He confirmed that his food was always paid by the company and when he was not at work he was free to do what he liked. He explained that as a procedure the company would keep his money, though he never contested this. He says that he knew nothing in regard to his work permit.

He added that his colleagues who had left Malta where all given their salary in full. He said that in the two months prior to his testimony, the company had given him a document to sign indicating that he had given his passport to the Directors of the company voluntarily.

The Expatriate Labour agreement of Hoang Thi Cam Van was presented a fol. 194 et seq. and this was written in the Asian language and a copy written in the English language is found at fol. 201 et seq. In the acts of the proceedings there is also a copy of the contract of employment of Tran Van Ngu dated 20<sup>th</sup> November 2013 a fol. 211.

**Han Ti Cam Van** gave evidence on the 3rd December 2014 (a folio 214 *et seq*) and stated that whilst still in Vietnam she had been informed about this opportunity of work by an Agency by the name Vi Ha Ti Co Viet Na. She states that she had spoken with a person named Lei Ti Li Hua and paid a deposit to the Agency equivalent to US\$3,500 American Dollars. She also claims to have been given a sample contract and after there being an agreement on the conditions of works, she signed it and was given a copy. She says that after about two months from the signing of the first contract just before having to catch the plane she was confronted with another contract and was asked to sign this contract in a hurry without being given a copy of this second contract. According to the Agent she had to sign the

second contract since there was a problem in the first contract, however she was not informed of what the problem was. She said that the second contract was different to the first since there was no mention of the hours of work. However since she had paid a deposit she did not want to loose it and thus signed the second contract.

The witness explained further that four days after having arrived in Malta, she spoke with Han Bin who told her that the applicable contract was the one written in Chinese irrespective of what was stated to her by the Agent in Vietnam. She further stated that Han Bin told her that according to the laws of Malta he was entitled to retain her passport since she was his employee and during this meeting there was an employee who would assist as an interpreter from the Chinese language to the Vietnamese language also present. She also said that according to her contract of work the company would keep her wage and reduce the value of €150 per month from her salary. This meant that the company would be accumulating the wage until the employee had more than €2,000. Until this time, there was no possibility to ask for the money or part thereof from the Directors of the company.

The witness continued testifying on the 11th December 2014 (a folio 318 *et seq*) where she added that she was presented with a third contract one written in the Chinese language, one written in the Vietnamese language and one was written in both languages. She confirmed that prior to the signing of the contract she had paid a sum of money so that her application for the visa would be processed. She also states that she signed the contract voluntarily. She says that she arrived in Malta on the 21st November, 2013 together with three other Vietnamese who used to work in the same factory. She insisted that as from the day she arrived, her personal documents, in particular her passport and residence permit, were taken from her by the representatives of the company and these were kept by them till the day she decided to leave. She confirms that she was given the value of €150 every two months and the remaining salary used to be kept by the company and she would be given a paper indicating the total amount of the pay. She however said that the remaining money as indicated in the paper were never given to her and this because she was told that before she could be given her money the management would retain the sum of €2,000. She also states that she was given accommodation and water by the company. She felt that she could no longer work there under those

conditions imposed by the company and she thus tried to run away to find better working conditions and thus explained that she had acquired false documents to leave. She said that she does not speak the Chinese language.

The proces verbal number 883/14 was exhibited in the acts of the proceedings (a folio 240).

**PI Quentin Tanti** gave evidence on the 11th December 2014 (a folio 337 *et seq*) on behalf of the MFSA. The witness exhibited a number of documents (*vide folio 340 et seq*) and confirmed that the directors of the company Leisure Clothing are Han Bin holder of passport number 1261879, Zang Hong Quan holder of passport number 510212500925152 and Jia Liu passport number G41516925. He also explained that Han Bin had been a director since 12th January 1998, Zang Hong Quan had been a director since 1st January 2001 whereas Jia Liu had been a director since 16th August 2012.

**Marisa Ciappara** gave evidence on the 11th December 2014 (a folio 380 *et seq*) and confirmed that she was appointed as a court expert to state whether the procedure with regard to the issuance of the pay roll was being implemented according to law. She thus asked to be handed over a number of documents by the Inspector and the management of the company amongst which were employment contracts, time sheets, punch clock rotors and pay slips. She explained that she encountered a number of difficulties to be able to acquire these documents and confirmed that the company was disorganised, with no system of filing or archives. She was told that the accounting books in relation to the Maltese employees were in the hands of a Maltese accountant by the name of Darmanin, whereas she was not told who was responsible for the accounting books relating to foreign employees. She said that when she asked for the CVs of the foreign employees she was told that the documentation was identical to all the Chinese and Vietnamese employees except for their personal data. The witness explained further that this meant that the foreign employees were all given the same reference by a foreign company named Nungen Gusan Economic Information Consultancy Co Ltd and were all signed by the director Shao Hai Bo.

The witness also asked Anthony Darmanin and enquired on the basic pay as resultant in the FS3s, FS7s and the ancillary documentation. Anthony Darmanin, accounts manager of Leisure Clothing said that there were 140 foreign employees working full time, and the majority of workers were registered as having a salary of €8,723 despite the fact that according to the witness the minimum wage for the year 2013 ( the year under examination) the minimum wage was set at €8,946 and thus it resulted that they were being paid less than minimum wage and in addition no NI contributions was being paid.

The witness also confirmed that there was a BOV account in the name Chinese Salaries Due till the end of December 2013. In this account there was the sum of €712,666.52. She further explained that from the information she had acquired it resulted from the accounts that there are credited salaries due to the foreign employees. Thus when one makes reference to the bank deposits those amounts are not shown. In this account more than a hundred thousand euro was being deposited per month.

Marisa Ciappara returned to the witness stand on the 18th October 2016 (a folio 1829 *et seq*) and once again confirmed that she was appointed by the inquiring Magistrate to analyse the documentation and calculate what was due to each employee. From a research carried out by herself, it transpired that there was an account named '*amount due to employees*' and it appeared that there was an amount still due to the employees. It resulted that the available information in relation to this balance was always a global figure and there was no mention of money due to individual employees. There were many difficulties also due to the fact that the documents were written in the Chinese language and thus she could not calculate the value due to each and every individual employee.

The witness pointed out that the management of the company is carried out by a foreign company. According to her report she explained that 'from the trial balance given to me by Mr Darmanin, was nominal leisure account 2016 named Chinese salaries due. As at the end of December 2013 this account had a credit balance of €712,666.52 whilst at 29th October 2014 its credit balance stood at €534,55.68. This amount represents the balance due as salaries to be paid to foreign employees. She

said that a transaction history of the account was given to her for the period 2009 to 2014. From what she could get hold of, it seemed that a monthly amount of €107,500 in 2013 was credited to this account. Then regular bank transfers were transferred from this account to Shonk Cin International Economy.

**John Calleja** gave evidence on the 30<sup>th</sup> December 2014 (a folio 445 *et seq*) in his capacity as inspector of ETC and was asked to exhibit the documents in relation to workers<sup>1</sup>. He exhibited their history sheet with the exception of one employee namely Van Ti Houan Huwa. He exhibited the history sheets of nine (9) Vietnamese employees which was marked as document JV8. The list consists of eight Vietnamese and Chinese names.

**Joseph Caruana** gave evidence on the 30<sup>th</sup> December 2014 (a folio 484a *et seq*) on behalf of BOV. He was asked to exhibit the bank accounts of Bin Han, Jia Liu and Leisure Clothing. He said that he was given two identity card numbers of Bin Han but under the identity card number 20799A there is no bank account registered. Under the identity card number 5244131L there seems to be three bank accounts and he exhibited the relevant statements of these accounts. These statements were marked as documents JB9, JB10 and JB11 respectively. Dok JB 11 refers to a credit card which was cancelled in the names Jia Liu. He said that there was only one registered bank account with them, and he exhibited the relevant documentation which was marked as document JB12. In relation to Leisure Clothing, this company had four bank accounts and he exhibited the relevant documentation, which was marked as document JB13, JB14, JB15 and JB16. In fact, he says that he had another request though he did not know whether it was necessary or not. This related to documentation relating to bank accounts that were opened on behalf of clients. These were marked as documents JB17.

**Nguyen Thi Hien** gave evidence on the 30<sup>th</sup> December 2014 (a folio 575 *et seq*) and explained that she had arrived in Malta on the 29<sup>th</sup> March 2013 and said that she had a friend who wanted to introduce her to the company Vihatiko. They told her that

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<sup>1</sup> These were exhibited in the acts of the proceedings at fol. 449 onwards

they were recruiting people to work with a high salary. She spent the sum of €4,500 as a fee to come to Malta. She was told that she could work on a contract for 30 months. Included in this contract was accommodation and food according to the laws of Malta. At first the Agency gave her a contract sample to read in the Vietnamese language and this was exhibited and marked as document JB18. She was told that if she liked the contract, she would come to Malta to try the work and if it pleases her, they would give her the definite contract. She met up with two other employees via the internet and they spoke to her with regard to the type of work she would be doing and the conditions of work and about the country. They gave her work and tested her to see if she was good at the job.

They first gave her a paper to sew and then a sewing machine to work on the real product to make a bag. This test took place in the capital city of Vietnam two kilometers away from the factory. After having undergone this test they informed her via the computer that she had passed. She said that everything took place via the Agency. They first started showing her pictures of Malta, then photos of the factory and then photos of where she would be living. They showed her how other employees would get paid between 500 and 600 US\$. They told her that this could have been a sample and told her that her salary could have been higher to about 700 euros. After having passed the test she went back to the company and they gave her 500 US\$. They told her that after three months she would go to Malta and they would give her the balance in money, the balance being 400 US\$. She was given this money from them. In the first three months she received nothing and after another two months she called up the agent and asked them to refund her the money including the deposit she had paid and told them that she was keen on going to work elsewhere.

She then took the €500 deposit because she wanted a different type of employment and went to the French Embassy in Hanoi in the capital of Vietnam. They told her that they do not accept people coming from Malta to work but only as tourists and thus decided to go to China though she did not know the Chinese language and thus started to learn the Chinese language together with 25 other persons. She then left on the 27<sup>th</sup> March 2013 and on that very same day gave them the remaining 3000US\$ and then was given the contract to sign. The first was written in the



Vietnamese language and the other was in Vietnamese and in Chinese although both contracts were different. In the first contract the conditions of employment together with the accommodation offered and the food given were good. In that it was the employer who was responsible for them according to the laws of Malta. In the first contract she would be earning €680 every month, whereas in the second contract she would get paid the sum of monthly. She thus had a basic pay of €140 plus that which she could do in addition. Asked if she has a copy of the second contract, she says that she had and exhibited it in court, and this was marked as document JB19. She signed both first and second contract with the same agent. She confirmed that the contract was signed by Bin Han as employer. In the sample contract there appeared as employer Vihatiko. Asked if she knew whether both contracts were different, she said she knew but the employer told her not to give much importance because once she arrives in Malta things would be different. She explained that the second contract was signed by her and Bin Han. She confirmed that both contracts were signed on the same day. She first signed the contract signed in Vietnamese and after she was asked to pass over the sum of €3,000 and she obliged. The she signed the second contract. At that time she wanted to get out of the contract but she was told that if she were to do that she would have to refund the cost of the air ticket, the amount she paid for the VISA and the expenses she had with the Agency in Vietnam and thus that would mean that she would lose everything.

Asked what she was told with regards to the difference in earnings between one contract and another, particularly on how she was going to be given a raise when she signed that she would be receiving the sum of €140 per month, she was told that if there was no work she had her mind at rest that she would be receiving 140 euro for sure. Whereas if she worked she would receive more money in addition to the €140 and thus perhaps she could receive the sum of €350 or €500. Asked by the court whether the sample contract had a date, she replies in the negative and neither is her name shown on it. They only gave her a copy of the written contract. She did not have a copy of the contract that was written in the Vietnamese language but was given a copy of the contract that was written both in Chinese and Vietnamese. Between one contract and another half an hour passed. She confirmed that she had paid the sum of US\$ 3,500 on the signing of the contracts as Agent fees which was a

Vietnamese company. This should have covered the flight tickets and fees due to the Vietnamese Agent and the expenses involved in learning the Chinese language. She said that even when she was going to live in Taiwan, this was the only method. She had collected the sum of US\$3,500 from her family. In Vietnam she worked and used to earn 3.000.000 Vietnam Don per month which is equivalent to €110.

She says that she remembers signing the contract on the 27<sup>th</sup> March 2013 and was given a copy of it. She said that she sent the contract she signed in the Vietnamese language to her family who lost it. But she had a copy of the contract she signed in the Chinese and Vietnamese language and in fact keeps it on her person. The day after she signed the contract she went to the airport and she flew from Vietnam to Macau and after from Macau went to Dubai and subsequently arrived in Malta.

When she arrived in Malta she was met by a couple who went to pick her up and the first thing they did was take control of her passport. She took her by car and accompanied them to where she was going to stay in Hal Far. She went together with another Vietnamese person and they placed them in a room with a television, two beds and a window. There was also a bathroom without a toilet. They had to share the toilet with other residents of another room. There was also a wardrobe in each room. There were no bed sheets although there was a sort of summer blanket. There was a kitchen though food would be taken over to her room. She was given a bowl, plate, a pair of chopsticks, a face cloth, soap, toothbrush, and a basin to wash her face and two packets of water, toilet paper and a basket of oranges. Asked what she would do in her free time if she could go out, she says yes that she was free to go out; though, since she had to work all the time, she had no time to go out. She had a free Sunday every two weeks when she would go and buy from the market. Asked if there was a games room she replies in the negative. She would wash her clothes by hand and hang them to dry in her room. There was a place to hang the clothes outside, but it would be full of clothes belonging to other persons and thus there would be no free space for her to hang her clothes. After her shower she would immediately hang her clothes in the shower.

She said that she used to work in the factory as a seamstress using a sewing machine. Every Monday, Wednesday and Thursday she would work from 7.00a.m to

7.45p.m. Every Tuesday and Saturday she works from 7.00a.m to 5.45p.m Every Sunday she works from 8.00a.m to 6.00pm. This was the working pattern for the first two weeks. After that she worked from 7.00a.m to 9.30p.m overtime. In her contract she had to start at 8.00a.m but in reality she started at 7.00a.m. When she worked overtime she would work until 9.30p.m. When she had no overtime on Tuesdays and Saturdays she would finish at 5.45p.m and when she had no overtime on Wednesdays and Thursdays she would finish at 7.45p.m. Everyday she would work from 7.00a.m to 7.45 p.m. In the morning she would have a fifteen (15) minute break. At noon she would have half an hour break to eat and at about 4.00p.m she would have 20 minutes break. Asked if she could choose not to do over time she said no she could not. They used to tell her that there was a lot of work to be done and thus she had to work. She used to be paid €1.70 per hour for overtime when she worked from 5.45p.m to 9.30p.m. Asked if she had pay slips she replies in the affirmative.

She said she arrived in Malta on the 30<sup>th</sup> March 2013 and stopped working in the factory on the 27<sup>th</sup> October 2014. She confirmed that at first she was given no money from her employers of the factory because she was told that she first had to earn the sum of €2,000 which they would keep in the eventuality that she would stop working and leave the country suddenly. Asked how much money she had received for all the time she worked there in other words for the year and eight month period, she says she was given €5,565 and that is the amount of money she had sent to her family in her country. She said that she could not touch the €2,000 and she said she had €1,000 which was at them and she still had to collect. She was told that in order to send money to her country it costs money and thus they would collect the money and send them at one go. She said that she did not receive money every month but every two months and she would receive €150. She said she did not receive payment according to what she was entitled, but much less. Asked if she presented any complaints in connection to her pay slips she says yes and adds that there was a Vietnamese lady who knew the Chinese language who used to translate whatever she used to say in particular that they used to pay her little. She explained that according to the contract they had to retain €150 every month till they collect the sum of €2,000 but in reality, they only gave her €150 a month and that is why she used to complain.

Returning to give evidence (a folio 2097 *et seq*), she explained the documents she exhibited in an envelope marked as dok JB 41. These were her personal calculations as to how much she worked every month where there is mention of the hours she worked and the things she manufactured. She confirmed that she worked overtime nearly every day and worked from 7.00a.m till 9.30p.m. Whereas on Sundays she worked from 8.00a.m to 6.30 p.m. Without overtime she says that she should have worked till 7.45pm. She said that for the month of April 2014 she should earn €468. She said that before taking sick leave she had to confirm the company two days before and thus she never took this leave. She confirmed that she worked in the factory between April 2013 and 27<sup>th</sup> October 2014. She confirmed that during that period of time she sent home the sum of €5,561 and these were directed to pay her debts which she had incurred before coming to Malta. The balance of money which she claims she has, amounted to €3,305. Whenever she need money she would go to the accountant and after a tedious procedure they would send the money. In her eyes she was convinced that her boss was always Han Bin and that is why she was always afraid to leave work and never made formal complaints prior the three Vietnamese that ran away.

She explained that after the 3 Vietnamese ran away, the situation changed a lot. The Administration started looking after the workers better and offered them more benefits. Amongst which a wi-fi system was installed, an investigation was carried out with regards to the money that was being paid to the Agent in Vietnam so that it could be reclaimed. After the onset of the investigation they were asked to sign a document stating the conditions of work were good and that they were satisfied with work. She felt she had to sign because if she did not, her alternative was that she would be sent back to Vietnam.

The witness added that after some time they were also told that their passports were going to be given to a Vietnamese for safe keeping. The workers did not accept this because they wanted to keep them in their own possession, and thus they were given this choice to keep their own passport provided they signed for them. She exhibited dok JB40 which indicated her request and signature for the safe keeping of her own passport though she claimed that her passport was not given to her and the moment she was told about this decision that she would not be given her passport

she took the decision to leave together with other colleagues and in fact that is what she did.

Under cross examination on the 21<sup>st</sup> November 2018 (at folio 3549) she explained further that she had got to know about the opportunity to work in Malta through an agent in Vietnam. She said that when she accepted to sign the contract and signed up for it, she had to pay a deposit of US\$500 and when she decided to come to Malta, she had paid an additional sum of US\$3,000. She confirmed that she arrived in Malta on the 30<sup>th</sup> April 2013 and left on the 27<sup>th</sup> October, 2014 and thus worked for the period of eighteen (18) months. She said that during this period of time she managed to send the sum of €4,000 back to her family and confirmed that she had received the sum of €150 every two months to cover her general expenses.

**Zhenhua Kong** testified on the 8<sup>th</sup> January 2015 (at folio 826 *et seq*) and explained that he occupied the post of Human resources Manager in the company Najging Tutan Economic Division and Information Consultancy Company limited and was in charge of bringing workers from China and other countries to work in the company Leisure Clothing Malta. The company he represented collaborated with other companies in Vietnam to find people who are interested to come to work in Malta. He worked namely with the company Vihatiko. He would send a request to Vihatiko to send trained people to work for Leisure Clothing. He would then ask for their CVs and photos. With regards to the skills that such persons would have, they would be examined by the foreign company Vihatiko but then they would go over and explain the conditions of work and the nature of the contract they would sign up to. He exhibited a number of photos marked as Dok JB 43 consisting of eleven (11) photos of persons he interviewed. He wrote down in the Chinese language on the back of the photos with the exception of one photo. This took place on the 11<sup>th</sup> November 2013 and the day after, 12<sup>th</sup> November 2013, he carried out the interviews. He chose nine (9) persons from the eleven (11) persons he had interviewed.

He says that he had explained to them article by article the contract they were going to sign and described the conditions of work. Asked if these conditions of work were identical to the conditions of work of the contract he had exhibited and marked as Dok. JB 44 he replies in the affirmative. He said that after explaining the contents of

the contract no one put forward any questions. He said that after this, there was a cooling off period, to see what they really wanted to do and then the contract was signed in Vietnam and this was sent to the Vietnamese company and to his company but not directly to him since there is another person in charge of contracts. The contract was signed by a representative of Leisure Clothing and the person who was going to take employment. They receive a scanned copy of the contract and then they communicate with the Vietnamese company to arrange for the purchase of the air tickets and for the collection of all the relevant documents that are necessary for the workers to be able to leave Vietnam and come to work in Malta. They have an agent in Beijing who took care of the applications for the visas, while the applications for work permits were the responsibility of Leisure Clothing. It was Leisure Clothing that paid for the air ticket of the workers. They would be informed of the number of workers and then relay the information to the Vietnamese company.

Asked if he was paid for this service he replied in the affirmative and said they were paid the sum of USD600 from Vihatiko. They would get workers from Vietnam and from China. He said that they had been helping Leisure Clothing for a long time and in fact had brought over more than a hundred workers. They never had complaints so much so that there were workers who had their contract expire and returned to China and then wished to come back again.

Asked why he had come to Malta he replies that it was customary that once a year he would visit the place of work so that he would get feedback from the workers he would have sent directly and thus make plans for the future. Asked if he saw the conditions of living of the workers he said that yes he saw them and also took note of their working hours. Asked what were his reactions to having seen the conditions of work of the workers, he said that in comparison to the conditions of work in China they are much better. Asked if when he was in court he had seen any of the workers from the 11 people he had sent to Malta, he confirms he did see some of them. Some of them have the name written at the back of the photo.

Asked to explain the process that is adopted to choose the workers he says that first they receive a request from the Leisure Clothing and then they pass on the information to their agent in Vietnam in this case. Then the agent in Vietnam

advertises the request, the interested applicants approach the agent with their CVs and photos and applicants undergo an examination in regard to their skills. They receive a video of this examination and send it to the company Leisure Clothing. They await the reply from Leisure Clothing and then send it to the agent for the process to carry on. They then go to explain the conditions of work and give a description of where they are going to live. Then finally they communicate the decision of Leisure Clothing to the agent to finalize the matter. They also assist the agent in regard to Visa applications of the chosen workers.

Asked as to when he receives the payment of such service, he says that he does not know though he says that they use the money they receive for the processing of the Visa applications and other ancillary expenses. Asked if the company receives the USD600 prior to him going over to Vietnam to meet the workers he says that he is not able to answer. His mission is to go to Vietnam meet up with the people and explain the conditions of work. The person who chooses the workers in Vietnam is named Lixx Ni Hua and he is the manager of Vihatiko. The person who carries out the recruiting is named Xu Hue Bua. Asked if he knows the person by the name Ping Xen, he says that he is not familiar with the name. He explains that this was his first time that he came to Malta although the company has sent other representatives in the past to check on the workers that it had sent to Malta.

He explains that he is living in a flat which was rented for him by Leisure Clothing. Ever since he arrived in Malta he carried out an inspection in the office, in the workshop, in the dormitories and in the canteen. He saw two bedrooms where he noticed that there was a heater, television and air conditioner. Asked to describe the staircase, he says that the stairs lead to a room. It is in steel on the outside and marble inside. Leisure Clothing sent him a driver to be able to carry out the inspection. He met up with Bin Han on three or four occasions. He confirmed that the Vietnamese employees are paid USD600. Shown the document marked JB5 he confirms that this is the contract of works written in the Vietnamese language and confirms that he had never seen the contract written only in the Vietnamese language. Theirs would be written in Chinese and Vietnamese. The true conditions of work that the employee would be entitled to in Malta are indicated in it and confirmed that this same contract would be submitted with the applications of the

visa. Asked if he knew anyone by the name Liu Wang Pin he says that he knows him by name though he never met him personally. He is the Director of Vihatiko and is of Vietnamese nationality. Asked to explain the contents of Dok JB3 he says that it is the Chinese and Vietnamese contract. Asked if he knew anything about it, the witness confirms that the Vietnamese company had sent them the contract written in two languages and wanted to keep a copy of it. They then sent a sample of this contract to Leisure Clothing but Leisure Clothing did not accept this and they informed the Vietnamese company of such refusal. Thus, as far as he is informed, no such contract was ever signed between the parties.

During the interviews he held there was a representative of the Vietnamese company Vihatiko and an interpreter from the Vietnamese language who was always present in the room. He states that the moment the worker signs the contract, then all depends on how long Leisure Clothing takes to book their tickets and prepare the documentation. He never followed the length of the process though he made sure that prior to the workers coming to Malta they would sign the contract of work.

He says that the mother company of Leisure Clothing is the Chinese state owned company named Cong Cing International. He confirmed that he lived permanently in China. Asked if he had heard of any complaints from the workers he insisted that all the workers he spoke of all confirmed that the conditions of work here are far better than those in China.

Shown Doc JB4, he confirms that he came across it when he had gone to the mother company so he does not know who drew it up. Shown Dok JB3, the witness repeats that he was given this copy by the Vietnamese company and had passed it on to Leisure Clothing who refused to sign it since it was different than the contract that used to be given to the workers to sign. He never communicated with Bin Han directly but his boss communicates with him.

Asked once again with regards to the meetings he had in Vietnam he confirms that he had group meetings with the workers and also met with them individually to see if any of them were interested in coming to Malta for work. He confirmed that Dok JB4 was downloaded from the archives of his computer. The contract has no date and so



he cannot say when it was signed. Annexed to the contract is the insurance policy. This is requested for anyone who is going to apply for a visa. It has nothing to do with the process for the application of a work permit of the workers. He insists that he explained the conditions of work and did so in the Chinese language and the interpreter interpreted what he was saying into the Vietnamese language.

**Inspector Sylvana Briffa** gave evidence on the 14<sup>th</sup> January 2015 (at folio 855 et seq) and this due to the fact that her previous testimony, due to a malfunction in the system, was not recorded. The witness explained that on the 20<sup>th</sup> August 2014 Dr Kathleen Camilleri on behalf of JRS had sent an email to the Assistant Commissioner of Police Andrew Seychell informing him of a report regarding alleged trafficking of human beings, of Vietnamese nationality. She said that they had already had their case decided by the courts and were found guilty of trying to run away from Malta with false documents and were thus condemned to twelve (12) months imprisonment suspended for two years. The police spoke to Ti Cam Van Huang, Thi Thu Tran and Van Thu Tran and in their statements they alleged that they used to have to work very long hours for the company Leisure Clothing, in particular between ten (10) and twelve (12) hours a day, six (6) or seven (7) days a week and would be paid €150 every two months. They also claimed that prior to them coming to Malta they were promised different working conditions. She also confirmed that she had already spoken with Dr Camilleri before she sent this email and had consulted the office of the Attorney General and carried on with the investigation of potential human trafficking. The police had already passed on this case to the Department of Labour and had in fact received an acknowledgement too.

On the 21<sup>st</sup> September 2014 she spoke with the mentioned persons in the email and took their version of events with the help of an interpreter Nguyen Van Huang. They said that they had found their employment with Leisure Clothing via an Agency in Vietnam known as Vihatiko and while they were still in Vietnam had signed a contract of works wherein they were meant to be paid the sum of €685 per month and from this amount they had to deduct the sum of €300 representing their food and accommodation and also the sum of €150 had to be reduced every month until the company would have the sum of €2000 in their possession to act as a guarantee should they stop their employment suddenly and leave the country. In their contract

of works there was stated that they had to work 8 hours a day six days a week with the possibility of working overtime and be paid according to the laws of Malta.

They explained that they had taken part in a number of interviews via Skype and paid a substantial amount of money as a deposit prior to signing the contract. In fact, Klan Van Gu presented to the police a copy of the contract of works that he was given in Vietnam where these conditions of work were mentioned. They explained that the moment they arrived in Malta they found two Chinese nationals waiting for them at the airport and immediately took their passports and accompanied them to their place of residence. They insisted that whilst in Malta they did not sign any contract but their conditions of work were completely different to those that they signed up to in their contract of work in Vietnam. They said that they were paid €150 every two weeks in cash and the conditions of where they were living were very bad. The food they were given was very bad and they did not know where their documents were.

From investigations carried out by the police it transpired that every morning there would be three coaches which would pick up workers from Hal Far at about 6.45am and all the workers would board the coaches at the same time to work in a factory in Bulebel. Then they would be picked up again at about 9.30pm. It resulted that the company Leisure Clothing had two Directors namely Bin Han and Jia Liu. Though the victims implied Bin Han as their boss. She confirmed that she had investigated nine (9) Vietnamese nationals and one (1) Chinese person who all gave the same version of events as to what had happened. These persons are mentioned in the charge sheet. She also said that when she spoke with those who had tried to leave Malta illegally, they had claimed that Bin Han had asked them to sign a declaration that they were happy with the conditions of where they were living and that their conditions of work were good. They were told that if they signed such declarations they would be given the amount of money shown on their pay slips. They said that they were afraid that if they did not sign they would be sent back to their country so they signed the declaration.

From further investigations it resulted that Bin Han had a flight booked for the 19<sup>th</sup> October 2014 at 8.00am with Air Malta to Rome and thus a warrant of arrest was

issued so that he does not leave the country and they could carry on with their investigation. Bin Han was arrested on the 8<sup>th</sup> October 2014 in his residence in San Gwann. A search was carried out and afterwards a search was carried out in the dormitories of Hal Far; since a good amount of the documentation that was seized, was written in the Chinese language, they asked the Magistrate to open an inquiry.

She confirmed that Bin Han released a statement after consulting Dr Pawlu Lia. He confirmed that he occupies the post of Managing Director of the company Leisure Clothing and he recruits workers for this company through their mother company and agents away from Malta. He confirmed that they send him CV's of people and once he ascertains that they are capable of working, he applies for their visa. He confirmed that the workers sign a contract online. Maltese workers get paid €500 or €600 every two weeks, whereas the Chinese nationals get paid similarly but he retains €300 a month representing accommodation, transport and food. Asked what salaries he gives to Vietnamese workers he says that he had an agreement with the General Workers Union that he could pay them differently though he still paid them a bit more than minimum wage. These workers used to work from 7.30am until 5.30pm and at times even until 7.45pm. The maximum hours they would work is 60 hours per week and at times were off on Saturdays. He admitted that he did not pay them overtime due to the recession but would give them time in lieu.

He confirms that the moment they arrived in Malta he would retain their passport. He would put them in safes in the dormitory for safe keeping. He said that four persons were chosen as leaders who used to look after the safe keeping of the passports, but this allegation was rejected by every other person she had investigated. When confronted with the fact that eight (8) passports were found in his office belonging to Vietnamese persons, he changed his version of events and said that it was the Vietnamese people themselves who asked him to retain their passport because they were afraid that they could be stolen. He confirmed that he would pay the workers the sum of €150 in cash in their hands and another €75 per month. He said this amount would not be registered though none of the workers confirmed this. On the 30<sup>th</sup> October 2014 he was spoken to again and confirmed that in the overdraft he did not have enough to pay the monthly operational costs and not even enough to pay the monthly salaries. He explained that due to the heavy competition that there is in

Europe in regard to Asian workers, he was very flexible with them and used to give them time in lieu instead of paying them over time and said that the workers did not say anything about this.

Jia Liu was also spoken to and interrogated by the police. He confirmed that he had been in Malta for the last four years occupying the position of Managing Director of Leisure Clothing and confirmed that he would get paid the sum of €1,500 per month. He said that at first, he would get paid the sum of €300 per month, then €500 per month and the balance would be kept by the company though he did not know anything about this account. He knew nothing about the operations of the company, and he is not the person responsible for the running of the company. He knew nothing about the engagement of workers and knew nothing about their conditions of work.

Asked in cross examination if she is aware that Jia Liu had spoken with other workers who had finished their employment with Leisure Clothing to see if they had received their salaries, the witness states that he had said that he did not, since a lot of them would have left the country and it would be difficult to trace them. Witness said she tried to speak with Maltese employees though they seemed uncomfortable to speak to her about these matters. Asked if she had informed the inquiring magistrate about this she said no. Asked if the workers were happy that Leisure Clothing was retaining their money she said she was not aware of this and said that the workers were complaining because they were not receiving their salaries and did not know where their money was.

She said that she had discussed this matter with her superiors many times prior to the accused being arraigned in court. She said that the workers had signed their contract of work after having paid a lot of money and even got into debts to have their papers processed.

**PS 153 Lydon Zammit** testified on the 14<sup>th</sup> January 2015 (a folio 878 et seq) and confirmed that he had taken part in a number of inspections, both in the accommodation places of Hal Far as well as in the factory of Leisure Clothing in Bulebel. He carried out the first inspection on the 2<sup>nd</sup> September 2014 in the

morning. He arrived on site at 5.45am and noticed that about 6.00am a number of Asian persons were going down iron stairs carrying a bowl in their hands. They would then enter a building in the same compound and then return and go back up the stairs. On both occasions that he visited this place, he noticed three coaches full of Asians that drove to a factory. He followed the buses. He took a film which he exhibited as Dok JB45. He also carried out another observation on the 5<sup>th</sup> September 2014 in the evening in the factory Leisure Clothing which is situated in the Industrial estate of Bulebel and at about 21:30pm he noticed a bus where a number of Asians alighted and these had all gone out of the factory Leisure Clothing. They got into the bus and it drove towards the compound of Hal Far.

On the 29<sup>th</sup> October 2014 he was given instructions to report for work at 6.00am; the moment he arrived at the vice squad department, he was asked by Inspector Busuttil to go to the Airport because he had received information that accused Bin Han was there and had bought tickets to go abroad; he had gone to pick them up from the airport. Afterwards, he went to the factory and came across a queue of Asians with a document used for the punch clock. The punch cards were seized. He was then asked to carry out a search in the accounts room which is in the upper most floor. There were two persons who informed him that they worked in the account's office. A search was carried out in the presence of court appointed expert Marisa Ciappara where several documents were seized in the presence of Bin Han. He exhibited these documents in two boxes marked as Dok JB46 and on it there is a receipt signed by Bin Han. In the back of this room there was a safe where a number of cash boxes were found and in them there were a number of things, like a plastic folder with the pay rolls of the months of July, August and September, salaries which were not dated and an exchange rate sheet. These were marked as Dok JB47. The witness exhibited eight (8) passports of Vietnamese nationals *animo ritirandi*, BOV cheque book marked as Dok JB 49 and used cheque books of BOV marked as Dok JB50, expired driving license of Dong Huei and Chang Hin marked as Dok JB52, receipt book of Leisure Clothing and sales in particular the VAT dues on such sales together with another cheque book of BOV, half full, marked as Dok JB54. He exhibited 10 contracts signed in Vietnamese marked as Dok JB55, other contracts written in Chinese marked as Dok JB56, bank statements of a BOV account found in a locker marked as Dok JB57, a number of pay slips of the year 2012 marked as

Dok JB58 and a number of punch cards marked as Dok JB 59. These were taken from the locker of Steven Lo an accountant who works in the company. The keys of the safes were presented and marked as Dok JB70.

**Joseph Saliba** on behalf of Jobsplus, testified on the 14<sup>th</sup> January 2015 (a fol. 887 et seq) and exhibited a list of employees marked as Dok JB72 and this indicated the work permit or better still the history of employment of Thi Hoa Vu.

**Naguyen Thi Hien** gave evidence on the 14<sup>th</sup> January 2015 (at folio 891 et seq) and explained that every month she would be given a paper similar to the one in the envelope marked as dok JB41 where there used to be written down her monthly working hours and how many objects she manufactured. She explained for instance in the month of April 2014 she worked from 7.00am until 9.30pm and in that month she had only one day off and insisting that there was no overtime. She confirmed that she worked every day from 6.00am to 9.30pm except on Sunday because she used to work from 8.00am until 6.30pm. Usually her working hours were from 7.00am to 9.30pm and when she had no overtime her working day would be from 7.45am until 7.00pm. For the month of April, she worked all those hours and she earned €468 in total. Whenever she needed sick leave, she would have to inform them two days before and this was not possible and thus she used to work even when sick. She said that she used to have a day off usually on a Saturday.

Asked how much money she received as salary form April 2013 until 27<sup>th</sup> October, she confirms that she sent the sum of €5,561 to her family and the remaining €3,305 are still not in her hands but in the possession of her boss. Asked why she carried on in her employment she says that she did not know the English language when she arrived in Malta, secondly she had no money and thirdly she had no passport in her possession and did not know where to go and whom she could speak to. She confirmed that she received the sum of €150 every two months.

Asked why she finally managed to run away from the factory she says that there were 3 Vietnamese who ran away and who she saw fight for their rights in Malta. Her boss told her that these three Vietnamese were going to sue him because they were paid less than the Maltese workers and he told them that if that were the case, he

would only employ Maltese workers. Asked who was the boss she explains that it was Han Bin and she recognized him present in court as the accused. However, she said that whenever there were meetings, there would also be Sautiho and Lei Lei present.

She explained that the moment they were arrested and brought to court there were a number of changes in the company. They conducted some refurbishments and Bin Han told them that he was going to install wifi and that he was going to increase their salary, remove their overtime provided they declared that they were happy at work and that everything ran smoothly. She said that they had reached a situation that they returned their passports and the individuals assumed responsibility for them.

**Dr Martin Bajjada** gave evidence on the 21<sup>st</sup> January 2015 (at folio 919 et seq) and exhibited his report together with an arch file and a number of documents marked as Dok JB73 and DB 74. He explained that he was nominated during the inquiry to seize digital media from the factory named Leisure Clothing and he was given numerous documents seized by the police. He thus carried out an inventory of all documents and confirmed that he was given also several objects including the mobile phones, cameras, hard drives and pen drives. These were all marked together as Dok JB73. He explained that in his report there are a number of photos apart from documents he had got from the computer such as contracts, and documentation of relevance. He confirmed that he does not understand the Chinese language and neither the Vietnamese language. The witness exhibited his reports found at folios 922, 1307 and 1254 respectively.

On the 9<sup>th</sup> February 2015 (at folio 997 et seq) he explained that he was asked to make clone copies of the Hard Disk as well as examine the contracts that were in the computer that were found in the factory. From a research carried out by himself it transpired that there were two contracts authored by Bin Han, but both were modified, one by a company bearing a Chinese name and the other was modified by TNT services.

The witness Dr Martin Bajjada was cross examined on the 8<sup>th</sup> May 2019 (at folio 3600 et seq) where he confirmed that his role was that of examining the electronic

equipment, which was found in Bin Han's office, more specifically desktops, hard drives and mobile phones. The witness confirmed that he had traced certain documentation in the form of contracts however from his findings it transpired that the documents originated from a third country (Vietnam) and was sent to Malta not vice versa. The witness confirmed that he could not trace the original document however the copy he found was in fact the Vietnamese contract which the Vietnamese employees were making reference to and it transpired that the version of this contract found in the possession of Leisure Clothing was in fact not signed.

**PS 644 Evan Camilleri** gave evidence on the 21<sup>st</sup> January 2015 (at folio 930) and exhibited his report marked as Dok JB75 consisting of two folders, one with photos taken in Hal Far and the other with photos taken in Bulebel.

**PS 1362 Jonas Schembri** gave evidence on the 21<sup>st</sup> January 2015 (at folio 932 et seq) and confirms that he was nominated in the inquiry regarding alleged trafficking of human beings, and instructed to go to the location indicated to him and take a film. These films were presented in a CD numbered 14CNQDVDO1 and 16 photos were taken inside Leisure Clothing and 8 photos inside the housing facility China House. These are all to be found in his report.

**WPS 33 Bernardette Vella** gave evidence on the 21<sup>st</sup> January 2015 (at folio 936 et seq) and explained that on the 1<sup>st</sup> September 2014 she was informed about a case of trafficking of human beings in a factory by the name Leisure Clothing in Bulebel. Thus, she started gathering information about Bin Han holder of identity card number 20799A and 524413L. He was the Managing Director of this company. She asked several persons and entities for information relative to the company and to him personally. She asked information from MFSA, TLU, ETC, MTA, Government property department, banks amongst which were HSBC, BOV, Banif and Mediterranean Bank. On the 2<sup>nd</sup> September 2014 she confirmed that together with PS 53 Lydon Zammit, she carried out an inspection in tenement number 79064 as described in the government property department and the Lands Directorate, a premises in Hal Far where a large number of workers of Leisure Clothing lived.



She said that at about 6.15am she saw workers coming down from the said tenement with a bowl in their hands and proceeded towards a room that was outside the dormitories of this same building. After a few minutes these same workers returned to the building and went up the stairs and then again come down with a small bag of garbage which they would throw in a skip. She observed that there were coaches which would collect the workers and take them to the factory Leisure Clothing in Bulebel. She followed the coaches. They filmed all this procedure and this film was exhibited by her colleague PS 153 and she presented the stills of the film marked as Dok JB 78.

On the 27<sup>th</sup> October 2014, inquiries by the vice squad were carried out by the generic email address with all airlines to see if there were any flights booked by the name of Bin Han. They received a reply from Airmalta that Bin Han had booked some flights for the 29<sup>th</sup> October 2014. On the 28<sup>th</sup> October 2014, she was given instructions from her superior to execute a warrant of arrest on Bin Han and this whilst she was in the company of WPC 261 and WPC 308. They went to his residence 'Favorita', Triq Anglu Cilia, San Gwann at 8.00p.m. The house was in darkness. They called Bin Han on his mobile phone and was told to go home. At 8.20pm he arrived home with his car make Audi 6 number of registration CHN 888. He was informed that he was under arrest and was given a caution immediately. He was given a copy of the warrant and explained that she was going to carry out a search in his home. There they found a lady by the name of Fai Zao and Bin Han informed her that she did not know how to speak in English and that she was the cleaner. WPC 308 remained in the living room with Ms Zao. From there the police seized evidence and Bin Han was given a copy of all that was seized. Dok R1 exhibited by her contained all the evidence that she seized from his house. These consisted of various documents written in the Chinese language, seized from the main bedroom, walk in wardrobe, in a Pavi bag. The witness confirmed that Bin Han was present all the time.

She also presented a series of documents which were found in the residence marked as Dok R2, R3, R4, R5 and R6. There was also an agreement signed between Vihatiko and Bin Han and another signed between Bin Han and Josephine Scerri, the Shop steward of the GWU as to how time in lieu had to be worked out,

dated 8<sup>th</sup> January 2009 - these were marked as Dok R7. There were also documents written in the Chinese language relating to Vietnamese workers. Apart from these, she exhibited other documents and she confirmed that Inspector Sylvana Briffa had duly cautioned Bin Han prior to taking his statement. She confirms that when she asked Bin Han why he gives the sum of €150 every two months to the employees when according to the contract, they had to receive €685 every month, he replied that the contracts were there in case a representative of ETC goes to check on the workers. She did not write everything in the statement but informed her superiors about it.

**Jamin Li** gave evidence on the 21<sup>st</sup> January 2015 (at folio 947 et seq); the witness exhibited two documents marked as Dok JB87 and JB88, which are two contracts translated from Chinese to English, and confirmed the contents of said contracts personally.

**Inspector Joseph Busuttil** gave evidence on the 21<sup>st</sup> January 2015 (at folio 960 et seq) and exhibited two contracts which were written in the Chinese and Vietnamese language and were translated into English. He presented a document issued by ETC regarding Liao Ping Xen of Chinese nationality; this document was given to Leisure Clothing to enable them to apply for his work permit, which was marked as Dok. JB 89. He spoke with nine (9) Vietnamese nationals in all, together with Inspector Sylvana Briffa, in connection with an investigation regarding alleged human trafficking. It resulted that they had come to Malta to work as machine operators. He confirms that they should have received minimum wage in Malta plus overtime but were taken for a ride and given €150 every two months. It resulted as well that the day before they ran away, Bin Han had sent for them and promised them better conditions at work and an increase in their salary. They did not want to go back to Vietnam and so signed the agreement and were meant to receive the back dated payments due to them on the signing of this agreement.

After investigations carried out by the police, it resulted that Bin Han had already bought a ticket to leave Malta on the 29<sup>th</sup> October 2014 and thus they went to execute the warrant of arrest upon an order issued by the Magistrate on duty. He took part in the search that took place in his house in San Gwann and in Leisure

Clothing factory in Bulebel and in the dormitories in Hal Far where the workers used to live. Subsequently, an inquiry was initiated and a number of court experts were appointed to help out in the investigation. Jia Liu is the accounts clerk, Lei Liao is the accountant and Diao Wen Cin were all arrested for further investigations. It resulted that all the workers were victims and were transported to the dormitories immediately after their days work. According to what was said by the workers they never saw their visas and work permits.

The workers confirmed that they had signed two contracts one in Vietnamese in Vietnam and the other in Chinese prior to leaving for Malta. Whereas they had the time to read the first contract written in Vietnamese they would have no time to read the second contract written in Chinese since it would be given to them at the last moment before leaving the country to come to Malta. In fact, Liao Ping Xen had told him that the second contract was given to him when he was in the railway station just before boarding the train to the airport. It resulted that the workers were not aware that they were going to work according to the conditions mentioned in the second contract. He said that the pay slips and conditions of work reflected that which was written in the second contract, the difference between the first contract and the second contract was in the sense that there were variations with regards the number of working hours, the amount of pay they would be receiving, bonuses, over time. In the first contract there is mention of minimum wage whereas in the second contract there is no such reference to minimum wage; there is only a ground wage of €150 which is the amount they were receiving every two weeks. They never received the bonuses they were entitled to and there is no mention of them in the second contract.

It also resulted that according to what was said to him by the victims the money they had paid to come to Malta cannot be refunded to them and some of them had in fact borrowed this same sum and must pay it back. In the factory there are about 300 workers and they all take their orders from Bin Han. He also explained the matter relating to the 2,000 Euro deposit which was taken from their pay checks in a staggered way. He also spoke with Bin Han where Bin Han admitted with him that there were a number of shortcomings and he was ready to address them. He said that the passports of the Chinese nationals are kept in safes and only the

supervisors have access to them. He confirmed that the workers are picked up from the airport and taken to their dormitories immediately after being shown the factory.

When Bin Han was asked a question regarding his salary, he said that he has a performance bonus apart from his salary paid to him directly from China from the mother company and the salary was paid by Leisure clothing. He was also entitled to a performance bonus every year. He confirmed that he had been in employment with Leisure Clothing for the last seventeen (17) years. He said that he knew that he was not meant to keep possession of the passports, but he did so because he was afraid that they would just leave.

The second contract indicated that there was contact between the Vietnamese company Vihatiko or its agent and Leisure Clothing. He said that Bin Han was responsible for the choosing and employing of workers. Bin Han told them that every year he received a performance bonus of circa 30,000 euro; at times more and at times less. He said that he was told that there were 40 Maltese employees working full time and 50 part time.

He was told that the passports of Chinese nationals were kept in the safe whereas those belonging to Vietnamese workers were given to the police by the management after these workers had left. Asked if there still are Vietnamese workers working in the factory, he says there are about eight (8). The witness confirms that he spoke with Bin Han and he confirmed that the workers work a maximum time frame of 60 hours a week and on Saturdays they do not work. He was also told that they do not get paid for sick leave or bonuses and according to the contract they have to live in the dormitories. Bin Han confirmed that the passports are kept with the management until he confirms the true intention of the workers and confirmed that he is the decision taker and maker of the company.

The witness confirmed that when he asked Bin Han why the employees should pay a deposit of €2,000, he explained that Bin Han told him that part of the wage is taken monthly from their salary until they end up collecting the sum of €2,000. Bin Han also told him that the salaries of the employees are deposited in an account of the company and thus there is no independent account to cover only salaries. When he

confronted Bin Han that the salaries of the employees were being re-invested in the company without their permission, he confirmed that it was the case and added that even his own salary is deposited in the company account.

The witness explained further that Leisure Clothing make a draft of the contract and send it to Vietnam where a translation is made from English to Chinese and Vietnamese and this is signed by Leisure Clothing. Though according to the Bin Han, the contract is not in accordance with Maltese Law that regulates employment conditions. He also said that he pays the agent for the engagement of the workers and not the company that is going to employ them so much so that no one has the details of the agent in Vietnam.

Bin Han confirmed with the witness that if a worker wants to leave, he can do so but he has to go back to his country and cannot go to any other country in the Shengen. The foreign workers are declared with ETC and Labour office as receiving minimum wage. An invite is sent to the Maltese embassy in Beijing China. Some of which were seized from the offices of the company. The amount which is promised to the workers as declared to the Maltese Embassy in China is €680 as minimum wage as shown in the first contract. Though in reality the workers are paid according to the second contract.

It was also established that during the statement released by Jia Liu, he was the marketing director whilst Bin Han was responsible for the employment and choosing of workers. When he spoke with Bin Han, he denied having knowledge of the first contract and disassociated himself directly from the agent in Vietnam who used to recruit the workers from Vietnam. He insisted that the contract that was made in Chinese and Vietnamese is the contract that Bin Han recognized as the official one.

The passports of all Chinese nationals were found during a search carried out in Hal Far. Whereas the passports of the Vietnamese nationals were taken to the police station of Birzebbugia by an unidentified person where it was alleged that these same nationals had ran away and left the passports behind them in their rooms in the dormitories. According to Bin Han, the salary was declared as being €140 per month and this document was exhibited.

**Nguyen Van Giang** testified on the 9<sup>th</sup> February, 2015 (at folio 1010 et seq) and confirmed that he arrived in Malta on the 21<sup>st</sup> November 2013 and he was meant to start working with Leisure Clothing with a good pay. He said that he got to know about this job through a friend whilst still in Vietnam. He was given a leaflet and contacted an agent in his country. He paid the sum of twenty million Vietnamese Dom (equivalent to €800) as Agency fees. He was told that he could earn much more than was written in the contract. A draft contract was then handed over to him. He used it to be able to borrow the amount he had to pay to the Agency. He was told by the Agency in Vietnam that the pay was going to be €685 per month together with accommodation and food paid by the employer. The Agent in Vietnam informed him that the pay could increase with overtime and would be paid monthly by Leisure Clothing. He explained that they had called him to carry out a test in relation to work and paid the Agency fees before being given the contract to sign. He explained that in all he paid the amount of fifty million Vietnamese Dom to the Vietnamese Agency.

He was then given two contracts, one was written in Chinese and the other in Chinese and Vietnamese and had different conditions from the original draft, but the representative in Vietnam insisted this had to be done to hurry up the process but the conditions of his employment in Malta would be according to the first draft. The Agency assured him that he would get paid the sum of €685 per month. He reconsidered his position though was tempted to sign up due to the fact that he had already paid the Agency fees which he did not want to lose.

After this meeting, he met up with Chinese agents and was told that he would be leaving five days after together with other employees. On that occasion the Vietnamese agent had asked him for another 20 million Vietnamese Dom as a guarantee that they would not run away from their place of work in Malta. The document stated that if they abided by the conditions of work, the deposit would be returned to them. He said that he worked for twenty days with the company and had not received any salaries or pay slip. He was told, when he arrived in Malta, that they would keep his passport to be able to make a residence permit and an identity card, though he was never given these documents. He said that he was taken to a

department to make an identity card but never picked it up and was told that he was following Maltese laws.

He said that after 17 days working in the factory he spoke with Bin Han and told him that he had problems at work and told him that the conditions were not like those he had been promised. Bin Han told him that he could either go back to Vietnam or start working in a restaurant. He thus worked in a restaurant. And was being paid by another person on instructions given by Bin Han. He received about €350 or €370 for the two months he worked there and had accommodation in a flat in Santa Venera with food included. He said that he worked in the restaurant between 12<sup>th</sup> August until 12<sup>th</sup> December and he decided to leave because the pay was low. His personal documents namely his ID card and passport remained in the hands of Bin Han in the factory. His boss in the restaurant was Han Chun and after asking him for an increase he was told that it would be better if he goes back to Vietnam rather than increase his salary and told him that he was ready to speak to Bin Han on his behalf. He went to speak with Bin Han and saw Jia Liu whom he recognized in court. Jia Liu never assisted him in his problem.

After all this, the witness took advice from a friend who spoke with a lawyer with regard to the fact that his passport was kept in the factory and was told that this was illegal and this gave him courage so as to tell his employer that he wanted his passport or he would go and speak with a lawyer. At that moment in time his employer told him not to speak with a lawyer and that he was going to pay his trip back to Vietnam. After two days Bin Han went to his residence in Santa Venera and was told to pack because he was going back to Vietnam. He said that he wanted to get paid before going back to Vietnam. Bin Han did not want to pay him because he insisted that he had paid for his ticket to come to Malta. This happened when they were in the flat in Santa Venera in the presence of two other witnesses.

A friend of his intervened who phoned up the police and they arrived on the spot and there were many arguments between Bin Han and the witness and the people around him. He said that the police did not give him any assistance and insisted with him that he must pack his clothes and go in the car of one of the persons who were there with Bin Han and was accompanied to the airport. At the airport the police did

not help him and started to push him to move. He did not enter from the same entrance as other ordinary people but from a private entrance and was taken into a room alone together with the police. Whilst he was in the room in the airport his friend whom he lived with in Santa Venera arrived and she spoke with the police and she managed to get him out of there by providing a guarantee. He referred to a police officer in uniform.

The witness confirmed that when he was working in the restaurant, he did not sign a new contract of employment. The witness was shown Dok. JB 3 and recognized the person as the Bulgarian national who used to work with him in the restaurant. Both contracts relevant to the witness were exhibited at fol. 1052 and 1074 respectively.

**Ndounq Thi Lien** gave evidence on the 7th of May 2015 (at folio 1229) and explained that she arrived in Malta in February 2014 to work with Leisure Clothing. She said that she found this work through another woman who goes by the name Huan who works in an Agency in Vietnam. She was told that in Malta this company needed 100 workers. She said that the price she had to pay the Agency was USD €3,500 and she would work in a good environment in Malta with a high salary and she would be able to do overtime in accordance with the laws of Malta. She said that the Agent showed her a contract written in the Vietnamese language where there was shown that the minimum wage was €685 a month together with overtime and bonuses if she worked on public holidays. Around August she went to the company to enquire further about this opportunity and she did a work related test so they could see if she knew the work and after passing this test in October she paid a further 20 million Vietnamese Dom so that they could process her Visa so that she could start work. From then on they told her that when her documents would be ready she could leave, provided she paid another 55 million Vietnamese Dom. She said that she did another interview with the computer and confirmed that a Chinese man had gone from China to interview her again and took some photos and told her that she would be working as a machine operator.

According to the witness, it was after this meeting that in January, another meeting took place with the Agent and another Chinese person was also present who was explaining the process and what would happen once she arrives in Malta. After this



meeting, the witness said that the Agent got out the second contract which was also written in Vietnamese; however that this contract was different, for them to be able to enter into Malta and that the conditions of work therein mentioned where compatible with the laws of Malta.

On the 18th or 19th February, she was informed by the agent in Vietnam that she could leave for Malta on the 26th February. On the 22nd February she further paid the 50 million Vietnamese Dom she was requested to pay by means of a bank transfer of which she had a receipt together with an additional 5 million Vietnamese Dom of which she did not have a receipt. She was told that she would sign the contract on the 25th February and the flight was on the 26th February. She was told on the 25th February that she would need to sign three contracts, one in Chinese, one in Vietnamese and one in both languages. The witness said that she did not have the time to read all three contracts in detail. She also had to sign a declaration saying that she would not run away. The witness exhibited a copy of the contract which was written in the Vietnamese language but she did not have a copy of the other two contracts which were written in Chinese and in Chinese/Vietnamese language. She insisted that there was a problem to travel, related to her passport, and thus left on the 28th February.

When she arrived in Malta, there were two Chinese persons, a man and a woman who accompanied her to her residence in Hal Far. They showed her the place including the room she was going to share with four other workers and they gave her some essential things she needed. That day was a feast day, the beginning of a New Year in China and Vietnam, and thus they had a free day but the following day which was a Sunday she had to work. She said that she would work about 14 hours a day, everyday and did not receive more than 300 euro. The witness exhibited a document that indicated the hours she would work every day. She also exhibited at folio 1276, a payslip, which indicated the ammount she should have received but she insisted that she never received the money. She said that she worked for the company for 9 months but only received the sum of €150 every two months. In all, she received more than €500 but she was not sure of the exact ammount.

She said that her pay was very poor but she spoke to no one about this issue because the Chinese person from the Agency told her that she could not open up with anyone outside the company and when she spoke with a colleague, she told her that there was nothing that could be done. She also confirmed that her passport was kept by the administration of the company and she had no access to it. She also said that when she got to know that three of the Vietnamese had ran away, the company called a meeting for all the Vietnamese employees and they were told that they would never win their cause but the company offered new conditions. Amongst which, their place of accomodation was upgraded and they were told that they would no longer work on public holidays. The witness further declared that after the first sitting in court, she was told that whoever wanted to go back to Vietnam could do so and who decided to remain in Malta had to sign a declaration stating that they were happy with their working conditions. She was given another declaration to sign in relation to her passport regarding whether she wanted possession of it. She signed that she would like to have it in her possession though was never given the document. It was after this incident that she was afraid that she was going to be sent back to Vietnam and thus decided to go to the police.

The witness exhibited a copy of the contract, found at folio 1268, written in the Vietnamese language and was signed on the 25<sup>th</sup> January and was sent to members of her family. She said that she was never given a contract to sign here in Malta and all the contracts she signed were signed in Vietnam. She confirmed that when she saw the contract, she had signed to be able to come to work in Malta voluntarily, she noticed that the working conditions were not the same like those in the contract. Whilst still in Vietnam she was told that she would earn minimum wage of €685 and when she came to Malta the value indicated in the pay slip was 230 euro. She said that she noticed the discrepancy but did not know how to speak up and did not know whom to speak with, although she confirms that she recognizes the accused as Bin Han whom she used to see in the factory. She says that she was frightened to speak up since all the other employees said it would be for nothing.

**Assistant Commissioner of Police Lawrence Cutajar** gave evidence on the 11<sup>th</sup> June 2015 (at folio 1300) and said that in July 2014 three Vietnamese nationals presented themselves to leave the island with false documents. These were arrested

by the Immigration police and an investigation commenced. The three Vietnamese were brought to court on the 27<sup>th</sup> July 2014. They alleged that they used to work with Leisure Clothing and said that they did not get paid for their work. They also said that their passports were kept by the officials of the company. Thus, they decided to hand over the case to the vice squad for further investigation in connection with conditions of work. The witness was given several passports to investigate if they had work permits here in Malta. It transpired that all the Vietnamese passport holders had the correct documentation regarding work permits. He never spoke with the Vietnamese nationals himself.

**WPS 261 Donna Frendo** gave evidence on the 11<sup>th</sup> June 2015 (at folio 1327) and explained that on the 28<sup>th</sup> October 2014, together with WPS 33 and WPC 308, she went to the residence of Bin Han namely to 'Favorita', Triq Anglu Cilia, San Gwann at about 8.20pm. She states that Bin Han was there, and they informed him that they had a warrant issued by the Magistrate for his arrest. They informed him that he was under arrest and gave him his rights. In the house there was also a woman who did not speak English and according to Bin Han she was the cleaner. A search was carried out on the premises. The accused Bin Han and the cleaner were taken to the lock up. Following this, she was then told to remain outside the factory Leisure Clothing together with WPC 308 Kim Camilleri.

She also said that at about 5.30am, together with WPC 308, they noticed a white van bearing registration number 000 178 going inside the factory from the front and they stopped this van and the driver was a certain Jimmy Spiteri who said he was a handy man and thus had the key. This person opened the factory and they entered with him. Eventually the workers started to arrive and the persons who work in the offices were informed that they could not go into them. She took the details of all the employees and spoke with them too so that she could know their position. Eventually, a number of police personnel and court appointed experts also arrived on the scene. She was given further instructions from Inspector Dennis Theuma that she should arrest Dai Wen Quin known as Vera and she was arrested. Vera used to work in the accounts department, and she was accompanied to the lock up. She said that she did not speak with Bin Han though during the search that was carried out in

his house he co-operated with them. From his house, a number of relevant documents were seized.

**WPC308 Kimberly Camilleri** gave evidence on the 11<sup>th</sup> June 2015 (at folio 1334 et seq) and she confirmed that together with WPS 33 and WPC 261 they had gone to 'Favorita', Triq Anglu Cilia, San Gwann. In her evidence, the witness corroborates what WPS 261 stated, in that they were together when the warrant of arrest was executed and then they went to carry out some investigations in the factory Leisure Clothing. They eventually got into the factory, took the details of the employees and eventually they were asked to arrest Dai Wen Quin and accompanied her to the lock up.

**Joanna Bartolo** on behalf of Bank of Valletta gave evidence on the 19<sup>th</sup> February 2016 (at folio 1525 et seq) with regards to the personal bank accounts of the two accused. She said that there were three bank accounts in the name of Bin Han and another in the name of Liu Jia. She presented statements of such accounts which were marked as Dok JB, JB1, JB2 and JB3.

She gave further evidence on the 8<sup>th</sup> January 2018 (at folio 2214) and presented opening forms of the accounts with regard to a list of employees as identified by the police. These documents were exhibited and marked as Dok AC. It appears that the bank accounts were all empty except for two of them. One of which had four cents and the other had €240.11. It appears that these accounts were opened in July and August 2010.

**Tran Thi Thu** gave evidence on the 19<sup>th</sup> February 2016 (at folio 1543 et seq). The witness stated that she had come to Malta about two and a half years before to work with Leisure Clothing. She had found the work through an Agency in Vietnam. She was explained what her work would consist of and what were her conditions of work and was told that her salary would be €685 a month. She also explained that her family had to borrow money to be able to lend it to her to pay the Agency fee which was 90 million Vietnamese Dom equivalent to circa 4,000 euro. She said that she paid the money when in Vietnam. When she was informed that she was accepted she was given two contracts one was written in the Vietnamese language and the

other in the Vietnamese and Chinese language. The witness observed some discrepancy but was told that this document was necessary for the purpose of the department of labour. She said she had an interview by Skype where she had to show her trade. After passing this interview she was told that she could travel and just about half an hour before boarding the plane she was given a third contract and was told that there were some mistakes in the original contract and so she had to sign an amended version. She had to sign the amended version so as not to lose the money she had given to the Agency. She said that the Agency had to pay her flight and pay all administrative costs she would face to arrive in Malta.

She said she arrived in Malta on the 21<sup>st</sup> November and whilst still at the airport she was picked up by three Chinese representatives who also took her passport. She then met Bin Han and asked him several questions related to her working conditions in particular the working hours, her passport and the manner she would get paid. She said that Bin Han told her that he was not interested in what they had signed in Vietnam and that he had every right under the law of Malta to keep her passport. She was warned not to speak to anyone except with the company because she would be sent back to Vietnam. She exhibited the document she was given after working the first month and this was marked as Dok TT. She confirmed that she did not receive any payment. Dok TT indicated the hours she had worked for that month, the money they kept from her and also, that they removed the pay for one day sick leave. She said that she only received the sum of 250 euro for two months irrespective of what was written in the pay slips. She was informed that after they collect the sum of €2,000 from her salary, she would be receiving the whole salary. This amount of €2,000 would be paid to her when she leaves the country and goes back home. She said she used to live in a room with six other persons. She said that she was also given some things for the kitchen, packet of water and toilet paper. She says that food was provided by the company. The witness identified the person Quyet Thi Le who was acting as an interpreter in the meetings she had with Bin Han.

On the 28<sup>th</sup> March 2016 (at folio 1576 et seq) the witness explained further the calculations written on Dok. TT found at folio 1556. She said that in total she received the sum of €800 and these were given to her in four payments each of 150 euro every two months. Along with a final payment which was of €200 since the

company had told her that she had reached the 2,000 euro deposit she was obliged to pay and thus was given more. She explains that from November to March she worked every day and had two Saturdays off. From April onwards she was on leave for every Saturday. She had three days off as holidays at Christmas time and one day at the beginning of the Chinese New Year.

She confirmed that she left the company in July after working for 14 hour a day and still did not have enough money to pay the debts her family had incurred to pay her expenses in Vietnam for her to be able to come over to Malta. She then decided to go and work elsewhere so that she could send money to her family. When she was going to leave she approached the police and they asked her for documents which she did not have in her possession and she told them that they were at the company and from then on the investigation had stated and was approached by the Department of labour.

When she was asked why she had to leave, she said that after having the meeting she had, she felt she could speak with no one especially Maltese people because otherwise she would be sent back to Vietnam. She said she did not have any documentation, could not speak in English, was faced with the problem of debts and thus felt that she had no option but to leave and stop working for the company. She said that she had worked enough with them. She confirmed that the agent in Vietnam was called Vihatiko in Hanoi. She had no receipt of the payments she had made in Vietnam.

On the 15<sup>th</sup> June 2016 a fol. 1691 she carried on giving evidence and confirmed that she was one of the three Vietnamese who had originally ran away from the company and despite still having irregular contact with some of her ex colleagues she does not speak about the case. She says that she also had some Maltese friends but was afraid of them due to the situation because of what Bin Han had told her. She says that she was stopped as she was in the Port and trying to buy a ticket to run away. She had nowhere in particular to go but to run away and find a new employment that allows her to send money to her family. She says that by the time she decided to leave she had already paid back the 20 million Vietnamese Dom to her family and thus felt that she had nothing to lose.

She confirms that she made no report against the Agency in Vietnam and not even started any court procedures against it. However, she says that had she not been stopped leaving Malta she would not have gone to the police to make a report of Human trafficking and only made such report when she was arrested upon leaving the island.

**Vuong Thi Phuong** testified on the 2<sup>nd</sup> June 2016 (at folio 1630 et seq) and confirmed that she had arrived in Malta for work on the 21<sup>st</sup> March 2014. She had been given this opportunity via an Agency in Vietnam and was told that there were good working conditions and a good salary. She explained that the Agency in Vietnam gave her a contract to work with a Maltese company where it was indicated that she had to work 8 hours a day six days a week with a salary of €685 a month. This was written in the Vietnamese language and was marked as Dok. VT. When she saw this contract, she agreed to carry on with the process to apply for the job. She thus paid the first deposit to the Agency in the sum of 20 thousand Vietnamese Dom. She said that this payment was made by her sister in her name. She exhibited a receipt marked as dok VT1. She then had to give an interview via internet to show her experience in sewing. After some months, the Agency contacted her again and informed her that there was a flight to Malta and was asked to pay the remaining balance which she in fact did. Her sister once again paid 19 million Vietnamese Dom on her behalf as evidenced by dok VT2. The balance was paid by a family friend who also works in the Agency. She was then given three contracts to sign, one was written in Vietnamese, the other in Chinese and the third in Vietnamese and Chinese. She could see that there was a difference in the money she was entitled to and when she asked for an explanation about the difference she was told that that was only a question of documentation so that she could be given a Visa. In fact, they (the agency) took care of the visa and the flight ticket.

The witness explained that when she eventually arrived in Malta there were a Chinese man and woman waiting for her who accompanied her to her place of accommodation in Hal Far and immediately she noticed the difference in that which she was told in Vietnam and that what she evidenced in reality. She had to share the room with five other workers and after three days she was asked to hand over her

passport on the premise that they needed it for some documentation though this was never returned to her.

She explained that she used to work six days a week and she had one free day on Saturdays. She works about 14 hours a day and received only €150 every two months. She would be given a pay slip indicating what she did. When she asked why she was not given her full salary they told her that they first had to collect the sum of €2,000 from her. She confirmed that in the 7 months she worked there she should have earned €2,400 but she did not ask for the amount since the amount was low and she wanted to wait to have a substantial amount.

After October, three Vietnamese had escaped, and the company then offered to pay them their salary on condition that they sign a declaration saying that their conditions of work are good. She was also asked to sign a declaration stating that she wanted to have her passport back in her control which she did. However, she was not given back her passport and thus that same night she decided to escape. She said she had difficulty in expressing herself with the administration of the company because of the difference in language and because she was frightened that she would be sent back to Vietnam. She exhibited a document with the number of hours she had worked marked as Dok VT3 a fol. 1643.

On the 21<sup>st</sup> November 2018 a fol. 3533 she gave evidence in cross examination and she stated that she had started her employment with Leisure Clothing after having been recommended by a friend who used to work with the Agency in Vietnam. She was informed that her pay in Malta would be €685 a month and that her conditions of work were very good. She said that she was given several contracts, one in Vietnamese, one in Chinese and one in both languages. She said she had paid the sum of 69 million Vietnamese Dom and that was the most important thing for her. She exhibited a receipt of the first 20 million Vietnamese Dom she had paid as a deposit. The other 49 million Vietnamese Don were paid prior to her taking the flight and she had no receipt for them. She signed all her contracts in Vietnam. She said that ever since she had stopped working with the company until the day she gave evidence in court she had got paid the sum of €8,900.



**Tran Van Ngu** gave evidence on the 8<sup>th</sup> June 2016 (at folio 1647 et seq) and confirmed that he arrived in Malta on the 21<sup>st</sup> November 2013 to work with Leisure Clothing. He found this job through an Agent in Vietnam by the name Vihatiko. He had gone to this Agency with his friend and met the Director Leiti Li Hua and he was there asked to make a deposit in the sum of 20 million Vietnamese Dom so that they could start processing his application. The Agency gave him a copy of the contract to be able to see the conditions of work including the working hours and salary he would be receiving. His job consisted ironing clothes and it required eight (8) hours a day of work, six days a week and he would receive the sum of €685 per month and this could be doubled if he did overtime. The witness explained further that he was asked to go for an interview in the form of a test so that they could analyse his working capabilities. They asked him to get with him the sum of 50 million Vietnamese Dom to pay the Agency. He had to borrow such amount from family members and friends. After paying, he was given two contracts one was written in Vietnamese and the other in Chinese and when he asked why he was given two contracts which had discrepancies between them, he was told that this documentation was only necessary to be able to pass on to the department of labour so that he would be given a visa to enter Malta. He asked for a copy of the contracts, but he was told that copies would be sent to his home.

The witness explained further that after this, he had another meeting in Vietnam and present for this meeting was also a representative of Leisure Clothing. In this meeting they took some photos of him and he was shown the machinery he would be using and the conditions of his work in Malta were explained. He once again asked about the discrepancy of the two contracts he signed, and the reply was that this was done to facilitate the processing of the Visa application. In this meeting there were several other Vietnamese present. He said he saw the same representative of the company here in Malta during the orientation visit, but he never saw him again here in Malta. After a few days he had received a phone call from the company who told him that they had arranged for his trip to Malta but before that he had to give another 20 million Vietnamese Dom to the Agency. Once again, he borrowed this amount of money and on the 20<sup>th</sup> November, he went back to the Agency with the money. He was then given another contract and this was written in Vietnamese. He exhibited the last contract he was given prior to him boarding the

plane and this was marked as Dok TV. He said that he did not have the chance to read it before signing. In fact, he left Vietnam for Malta on the 21<sup>st</sup> November 2013.

The witness explained that when he arrived in Malta there were three other Vietnamese and they were met at the airport by a Chinese woman who asked them for their passports. On the 23<sup>rd</sup> November, they started to work from 8.00am to 5.45pm every day, for three consecutive days. With regards to the conditions of work, the witness explained that on Mondays, Wednesdays and Friday they would work from 7.00am to 7.45pm. On Tuesdays and Thursdays, they would work from 7.00am to 5.45pm and on Sundays they would work from 7.00am to 6.30pm. The witness confirmed that they only had two days off per month until April. After April the situation changed, and the working schedule was from 7.00am to 9.30pm until July with one day off per week. He earned €150 every two months. In all he got paid the sum of six hundred euros (€600) in cash. He left the company on the 25<sup>th</sup> July 2014 and he had remained for so long because he had paid a lot of money to acquire this job. In reality, the situation was different to what he had been promised whilst still in Vietnam.

When the witness decided to leave the company, he spoke with one of the Chinese employees on Google and he informed him that he could help him get a false passport as he in fact did. The witness was stopped by the police and said that he could not ask for assistance since he did not speak the English language. His passport was kept by the company and was told that if he did not obey the rules of the company he would be sent back to Vietnam.

On the 15<sup>th</sup> June 2016 a fol. 1709 the witness was cross examined and confirmed that when he was stopped at the Port, he was in the company of two other Vietnamese. He had not yet decided where they were going but had only decided to run away. At work he had met some people to play football with and it was with them that he discussed his problems at work. He was very cautious due to the fact that the company representatives had told him that if he discussed the company with any outsiders he would be sent back to Vietnam. He said that he managed to obtain a false passport from his friend with whom he used to play football. He was not aware how he got hold of his passport and that of the other Vietnamese. It was only a

coincidence that they ran away together because he was making plans alone and only got to know about the plans of the others at a later stage.

He spoke with the police about his problems at work after he got arrested for being in possession of false documents. It was at that moment in time that the investigation on the company took off. He made no report against the Agency in Vietnam. He confirms that he received the sum of €150 every two months and that his passport was kept by the company. He also confirms that he did not speak up earlier due to his fear that he would be asked to return to Vietnam. The Agency in Vietnam informed him that if he were to be sent back, he would have to pay high fines and even face imprisonment. When he was not working, in his free time, he would play football, clean and rest.

**Thi Vu Hoa** testified on the 8<sup>th</sup> June 2016 (at folio 1659 et seq) and confirmed that she arrived in Malta on the 21<sup>st</sup> March 2014 to work with Leisure Clothing company. She had gone to the Agency in Vietnam to check about job opportunities. She saw that the job required 9 hours of work per day, six days a week with a pay of €685 per month. She was interested and started the process to apply for a passport. She went to the company and paid the sum of 25 million Vietnamese Dom. The witness explained that around the 10<sup>th</sup> March she was contacted by the Agency in Vietnam to prepare 50 million Vietnamese Dom so that she would be able to fly out on the 19<sup>th</sup> March. The witness confirmed that amongst the documents there was a contract written in Vietnamese and another written in Vietnamese and Chinese. She confirmed that she had signed them both though she said that she did not have the time to read them. She exhibited the copy written in Vietnamese marked as Dok TVH. She arrived in Malta on Friday the 21<sup>st</sup> March 2014 and started working two days after on Sunday.

She confirmed that she would work from 7.00am to 9.30pm from Monday to Friday and between 8.30am and 6.30pm on Sundays. She was free on Saturdays. She had no leave or sick leave. With regards to accommodation, she said she lived in a room together with five other persons. She did not know how much she was earning since the pay slips that were issued were in Chinese though she confirms that in hand she received the sum of €150 every two months and she received this payment on three

occasions. Throughout her time of employment with the company she knew no one who did not work with the company and thus she could not ask for help.

She stopped working with the company on the 27<sup>th</sup> October 2014 after having spoken with legal aid. She confirms that her passport was retained a week after she arrived in Malta until the day when the first three Vietnamese ran away. Then she was asked to sign a declaration stating that she wanted her passport which she did though her passport was still not given back to her. It was on that day that she decided to quit work.

**Nguyen Thi Kim Loan** testified on the 8<sup>th</sup> June 2016 (at folio 1673 et seq) and confirmed that she had arrived in Malta on the 29<sup>th</sup> January 2013 after having found work with Leisure Clothing. She had found work through an Agency in Vietnam by the name Vihatiko. She claimed that the Director of Vihatiko was Leiti Lee Hua who was her neighbour and who had offered her work. The payment for the processing of her application costed her 70 million Vietnamese Dom. She had to pay an initial deposit of 20 million and an additional payment of 50 million Dom. The witness said that after paying the deposit, she was asked to pay the balance within a month and so she asked her mother to sell their house to collect funds. She was also asked to sign a declaration saying that if she tried to run away from the company, she had to pay the sum of 100 million Vietnamese Dom.

She confirms that she had signed two contracts, one in Vietnamese and the other in Chinese and Vietnamese. She left Vietnam on the 28<sup>th</sup> January 2014. She exhibited the receipts of the payments she made in Vietnam of 20 million Vietnamese Dom and 50 million Vietnamese Dom which were marked as Dok BT and NT1. She said that she signed the contracts on separate dates in Hanoi in Vietnam. She exhibited the copy of the front page of one of the contracts which indicated the conditions of employment. This was marked as Dok NT3.

She confirms that the moment she arrived in Malta she met up with representatives of the company at the airport and they immediately asked her for her passport. She was taken to her residence in Hal Far so that she could eat and then they took her to the company to show her where she would be working. Her work consisted in the

cleaning of the company. She worked every day except on Saturdays and she was the only person in charge of the cleaning. She confirms that she got paid the sum of €150 every two months. She did not have any leave or sick leave. She also explained that before reaching the sum of €2,000 as a deposit with the company she was not entitled to her full salary. She reached this amount in August 2014 and she then asked for her money to be sent to her family in Vietnam though this never took place. She left the company on the 27<sup>th</sup> October 2014 after having had legal assistance. Her passport was kept from the moment she arrived in Malta until the day that the first three Vietnamese ran away. She was then asked to sign a declaration stating that she wanted to have her passport and although she signed such document, her passport was not given back to her. The declaration she signed is marked as Dok NT5. It was on that day that she decided to leave her job as she in fact did. After the first three Vietnamese ran away, there were a number of meetings held with the company representatives including Bin Han.

During cross examination on the 21<sup>st</sup> November 2018 a fol. 3556, she confirmed that the contracts she signed were written in Vietnamese and she had paid the sum of 75 million Vietnamese Dom to the Agent in Vietnam to be able to come to Malta. She also says that she was given 75% of the money she was entitled to from the company and today she is working with another company in Malta.

**Dr Anthony Bonnici** gave evidence on the 5<sup>th</sup> October, 2016 (at folio 1810) in his capacity as representative of GO plc. He insisted that there was no registered internet on the address China House, Hal Far Road, B'Bugia. He carried out a research on both the address as well as on the personal IDs of the accused and these all gave a negative result. He only found a fixed line number service on the registered address of Bin Han in San Gwann. When he carried on researching on the name of Leisure Clothing, two principal services were found. One related to an installation that took place in Qasam Industrijali Zejtun, and the other related to China House, Qasam Industrijali, B'Bugia. On the 4<sup>th</sup> April 2018, he exhibited a number of documents in relation to Bin Han on his name and on Leisure Clothing Limited. This service started in 2009 and remained active until the year 2015. The witness exhibited such information a fol. 2568.

The witness was further cross examined on the 15<sup>th</sup> April 2019 a fol. 3593 wherein he confirmed that on the 20<sup>th</sup> September 2011, a request for internet and telephone services was made on the address China House, Qasam Industrijali, Hal-Far, Birzebbugia. The witness confirmed that this service was terminated in October 2016 and there are no pending bills.

**Mary Josette Farrugia** gave evidence on the 10<sup>th</sup> May 2017 a fol. 2047 on behalf of the Department of Employment and Industrial Relations and also presented the calculations that were made in an independent manner by the department in each and every case that was filed with the department relating to this case. The documents were marked as dok MJ a fol. 2049.

**Ramon Francalanza** gave evidence on the 14<sup>th</sup> February 2018 on behalf of the DIER a fol. 2518. He explained that he was employed by the department and confirmed that he had carried out an inspection in the premises of the company Leisure Clothing and confirmed the strong complaint that there was in relation to the conditions of work of the employees, the payment of salaries and thus, infringements to the law relating to conditions of work.

**Jimmy Spiteri** gave evidence on the 23rd February 2018 a fol. 2538 and confirmed that he works as a handyman with Leisure Clothing. The witness confirmed that the foreign workers do not live in the premises of the factory but used to go in and out at liberty.

**Daniela Scerri** gave evidence on the 23rd February, 2018 a fol. 2541 and confirmed that she used to work with Leisure Clothing for more than 8 years. She started off as a receptionist and ended up as company administrator. Her work included processing applications for work permits of the employees coming from non-EU countries. She would prepare all the documentation according to the needs of the department. She occupied this role between 2011 and 2015 and stopped in July 2015.

She confirmed that she was present during the search that the police carried out and had also printed some pay slips and some documentation when asked in relation to

the issuance of work permits. She confirms that when she used to work in the company, foreign workers used to arrive at work at about 7.30am or 8.00am, and used to be still at work when she leaves; thus, they used to work beyond 4.30pm. When she worked as a receptionist, she used to work out the salaries of the Maltese workers only and never worked on the salaries of the foreign workers.

She also stated that she was not the person in charge to extend residence permits. She would speak to the representative of the company, a Chinese man, and he would process them. When she no longer needed the passport of the workers, she would return them to the Chinese representative. The witness explained that the foreign workers knew the person in charge of the permits and said that none of the employees ever spoke to her about their passports or in connection with a problem relating to their passport. She never had any complaint with the administration of the company and was happy to be working there. The atmosphere in the company was rather good with employees of each nationality talking, joking and even enjoying themselves in staff parties. She was surprised to hear about the allegations that were coming out in the media. She said that the procedure regarding Vietnamese employees was identical to that of the Chinese workers.

**Dr John Seychell Navarro** on behalf of the registrar of courts gave evidence on the 11<sup>th</sup> June 2018 (at folio 2586 et seq) and presented a compendium regarding the assets of the two co-accused which was marked as Dok JS and JS1.

**Robert Borg** testified in cross examination on the 12<sup>th</sup> March 2019 (at folio 3563 et seq) and confirmed that he is an auditor and manages the company Reanda Malta Lintied. He had presented a report earlier on in these proceedings with regard to the administration of Leisure Clothing from a financial aspect. He confirmed that the system for foreign workers to be paid, was a bit complex since they had difficulties to open a bank account. Due to this difficulty, the company was administering this fund for them. It opened a control account for the salaries of the employees and basically administered this account. There was one particular bank account where the salaries of the employees used to be deposited to assure that there was enough money for thee amounts to be paid. If an employee wanted to send his money to his family this was possible and would take place with the authorisation of the same employee. He

confirmed that the employees did not receive their complete salary because part of their salary would be deposited in this account. He used to authorise such transactions.

The witness confirmed that he would administer the account of the employees and see whether any employee wanted to send money to his family or whether he wanted money in hand, though he was not in contact with the employee individually. The witness explained that all the debt that the company had in relation to the employees was covered by the monies that the company had in its accounts. The witness presented a list of payments which Leisure Clothing Ltd had done to their employees marked Dok. RBX a fol. 2578. The witness explained that 353 euro monthly used to be deducted from the pay to cover daily expenses such as food. He explained that when an employee's employment would terminate, all payments would be effected within 15 days.

**The accused Han Bin** testified on the 18<sup>th</sup> June 2019 (at folio 3609 et seq) wherein he explained that he was the managing director of Leisure Cloting Limited for around 18 years since 1996. Leisure Clothing was a state owned company owned by a company called Chong Ching China International Coperation for technical and economic operation. The accused confirmed that the company had been in operation since 1986 and the majority of the policy was already created before he joined and became managing director. He explained further that to change any policy significantly he would need approval from the board of directors in China. Han Bin explained that the wage system was not based on an hourly rate however the employees had a base wage and would receive higher sums based on their potential performance bonuses.

Han Bin explained that the company today no longer operates and that during the course of the current proceedings the Vietnamese workers who made the complaint have been paid. The accused explained further that the agents which brought foreign workers to Malta were recommended and recognised by the mother company. The contractual agreement was between the Vietnamese company and the Chinese company with the Maltese company simply following and taking in the employees provided. The contract would have been signed in advance and then Leisure



Clothing would start processing the working permits. Han Bin explained that in relation to Agency fees such payments were fixed by the Vietnamese Agent personally and Leisure Clothing had nothing to do with these fees, save for requesting that the Agent keep such fees as modest as possible.

Han Bin confirmed that the flights including return flight of the foreign employees was paid for by Leisure Clothing subject to fulfilment of the full contract period. He explained further that he made the request to the agents in China to find employees and there was a singular contract signed by him and the employee. The witness explained that he only knew of a singular contract being signed which was that in both the Chinese and Vietnamese language, for everyone to understand. He explained that the contract would be signed by the employee whilst still abroad following coordination with the Chinese Agent and was to be handed over to the company on arrival to Malta. The witness explained that he was confronted by Inspector Briffa with allegations of human trafficking upon being interrogated and he explained how the employees at the dormitory were contesting the allegations of human trafficking. The witness explained that it was not possible that the employees were forced to sign the contracts and forced to come to Malta as they had transits in Hong Kong and Dubai prior to coming to Malta so they could have chosen not to come. The witness realised that there could be issues relating to labour laws however not human trafficking, in fact he admitted to trying to regulate his position in terms of labour law. The witness explained that initially, whilst investigations were underway, he was questioned and released on police bail on a number of occasions. The witness explained that when he was called in for questioning along with the co-accused Jia Liu, he was confronted by a document which Martin Bajjada eventually exhibited in court, however such document was not signed from his end and he explained that despite receiving this document from the Chinese Agent he did not sign purposely as he was not willing to risk signing two different versions of the contract. The witness explained that it finally resulted when Martin Bajjada gave evidence that this document did in fact originate in Vietnam. The witness explains that following this intense questioning he was charged and brought before the court.

The witness explained that the dormitory was a government building which was leased in 2001 and previously refurbished by the government. He explained that the

property had televisions in every room, and all the basic necessities. The witness confirmed that over a hundred employees live in the dormitory, seventeen of which were Vietnamese workers. Han Bin explained that most Vietnamese were unable to speak Chinese or English so it was difficult for him to communicate with them directly.

The witness explained how he did not personally keep possession of the passports. There was a general policy in Chinese state owned companies to have the foreign employees' passport being kept safely. He explained further that they kept the passport to apply and obtain the residence card and renew the work permits and such a factor was specifically mentioned in the contract. He explained that when requested he would return the passport, for example, if the employee wanted to use it or to leave.

Han Bin confirmed that there existed a company system where a separate bank account was held for all the foreign workers' wages in that account and it was very difficult for individual foreigners to open bank accounts and such a matter was specifically mentioned in the contract beforehand. The company used to keep a threshold of two thousand euro prior to allowing employees to make use of the majority of the pay; upon reaching such figure, they could take anything in excess or choose to send such amounts to their families. They would however receive a minor payment of around one hundred and fifty euro in cash to sustain anything they may need. Han Bin explained that this system of payment existed within the company prior to him joining. Furthermore he explained that thereafter he would also send monies to the families of the employees or give them cash as may be necessary upon being requested. He explained that he would organise outings on public holidays too. It is important to mention that the factory has ceased operations since the time when proceedings were instituted. After getting in line with the labour laws and pending payments within two years, they realised that productivity had decreased and this resulted in the termination of operation of the factory. Han Bin explained that in 2010, the labour office inspector had reported a number of deficiencies and they were told to regulate their position; however no allegations of human trafficking or misappropriation were mentioned. Han Bin explained that they realised their wrong doings in relation to the labour law faults and the company

regularised the situation in relation to all matters to get in line with the local labour laws. Han bin mentions that he also spent 18 years living in the dormitory during his time with the company.

Upon cross examination Han Bin explained that the funds were always available to cover any request by employees for their wages. In fact throughout the operation of the company, there was never an occasion where an employee didnt get their money. Primarily, he pointed out that there was never an instance where all the employees requested their money simultaneously, up until the factory seized operations in 2016. Upon closure, Han Bin confirmed that everyone was paid and no outstanding wage issues remained. The witness explained that the company had enough money to operate, however on occasions there would be outstanding payment by clients (due to payment terms) to the mother company China Chong Chin and once this amount was paid, he would then ensure that money is transferred to the accounts of leisure clothing.

Han Bin explained further that the ground wages of both Chinese and Vietnamese employees was the same and the difference between the two would result from performance bonuses and seniority bonuses as generally the Chinese came before and were more experienced. Han Bin contests ever threatening the Vietnamese employees and explains how due to the language barrier, the conversations were always through an interpreter as he could not speak Vietnamese. The witness confirmed further that employees within the factory did used to work long hours.

**The accused Jia Liu** testified on the 19<sup>th</sup> June 2019 (at folio 3647 et seq) wherein he explained that he came to Malta on the 28<sup>th</sup> November 2010 and was assigned to come here by China Chun Chin the parent company of Leisure Clothing. Jia Liu explains that he was the Managing Director of Leisure Clothing dealing with the sales department, overseas clients, planning service and pricing. The witness explains that he had nothing to do with human resources, employment, engagement, accomodation or payment of wages.

**Member of Parliament Dr. Etienne Grech** testified on the 12<sup>th</sup> July 2019 (at folio 3651 et seq) wherein he explained that he was the GP providing medical services to

Leisure Clothing company's employees. He provided such services from 1999 up until the closure of the factory. The witness explained that he provided this service when necessary, at the factory, at peoples' homes, as well as at the dormitory in Hal Far. The witness explained that the dormitory was in a good state in general. The witness explained that occasionally he was called in to deal with medical issues whilst in general he would also attend at the Hal Far factory on average every 2 weeks to monitor the health of the foreign workers. The witness explains that the building in Hal Far was an old building however was generally kept in a clean state.

This is basically the summary of the evidence produced in this case.

### **Considers;**

That upon an examination of the evidence produced in these proceedings and as summarily outlined above, with respect to accused **Jia Liu**, the Court can confidently conclude that, notwithstanding the fact that Jia Liu was accused in his own name or as a representative of the company, no tangible evidence was produced, to legally substantiate any of the charges brought, against the said accused Jia Liu. He was not implicated in any manner. In his testimony, Jia Liu explains that he was the Managing Director of Leisure Clothing dealing with the sales department, overseas clients, planning service and pricing. He declared further that he had nothing to do with human resources, employment, engagement, accomodation or payment of wages. In actual fact, the evidence produced in these proceedings give comfort to his testimony. In his regard, not only is the factual element insufficient, but more so, no evidence can be identified with regards to the moral element.

With respect to the co-accused Bin Han, the analysis will be divided into two :

- A. Charge number (1);
- B. Charges number (2) to (14);

### **Considers therefore;**

That with respect to charges number (2) up to (14), the prosecution brought sufficient evidence to prove said charges. There is no doubt whatsoever that accused Bin Han is legally/criminally responsible, both personally and as a representative of the company, for all those material acts, duly accompanied by the formal element/s, that constitute the crimes indicated in charges (2) up to (14), both charges included. In the capacity abovementioned, the accused continuously (Article 18 of Chap 9) misappropriated (vide charges number 2 and 3) funds, to the detriment of a number of employees. During the same period of time, and in the same capacity, he acted in a way that was evidently in breach of labour, industrial and employment laws and regulations (vide charges 4 up to 14). This is exactly what the evidence presents.

### **Considers however;**

That, with respect to charge number (1) – regarding alleged human trafficking – the case, or better, the evidence available and produced, presents a slightly more complex situation.

With respect to the elements constituting the mentioned crime, reference can be made to the case in the names - **“Il-Pulizija (Spettur Joseph Busuttil) (Spettur John Spiteri) vs Winston-Joseph Gera u Zhang Tianxia”** decided by the **Court of Magistrates (Malta) as a Court of Criminal Judicature ( Mag. Dr. Donatella M. Frendo Dimech LL.D., 16.12.2020)** – wherein the said Court detailed, amongst others, the following :

#### **1. L-ewwel imputazzjoni: Traffikar ta’ Persuni**

L-artikolu 248A u 248B meta promulgati bl-*Att III tal-2002* ittrasponew fid-dritt Malti id-**Decizjoni 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 gew emendati sabiex jittrasponu fid-dritt guridiku Malti d-**Direttiva 2011/36/EU**.<sup>2</sup>

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<sup>2</sup> Disposizzjonijiet ohra ta’ din id-Direttiva ddahhlu permezz tal-Victims of Crime Bill No.66 li sussegwentement gie promulgat bhala l-Victims of Crime Act, Kapitolu 539 tal-Ligijiet ta’ Malta.

*II-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-disposizzjonijiet tar-regim legislattiv 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.....

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. .... [enfazi u sottolinejar tal-Qorti]

(i) **L-Ewwel Rekwezit, l-Sfruttament jew “Exploitation”**

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

.....

**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-kundizzjonijiet tax-xogħol, pagi u s-saħħa u s-sigurtà.

.....

### **It-Tieni rekwiżit: 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-dhul**, transitu, residenza fi jew ħruġ mit-territorju ta' xi pajjiż għal xi wiehed mill-għanijiet imsemmija fl-artikoli preċedenti ta' dan is-sub-titolu, skont kif jista' jkun il-każ.

.....

### **(iii). It-Tielet Rekweżit: ‘il-Mezz’**

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

- (a) vjolenza jew **theddid**, inkluż is-serq ta' persuna;
- (b) **qerq jew ingann**;
- (c) użu ħażin tal-awtorità, **influenza jew pressjoni**;



- (d) li wiehed jagħti jew jirċievi hlasijiet 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 hlief li tissottometti ruħha għall-abbuż involut.

Article 82 tal-Explanatory Memorandum dwar il-*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.

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.....

.....

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.....<sup>3</sup>

Fl-Explanatory Memorandum msemmi, nsibu:

92. With regard to the concept of "forced services", the Court likewise found, in Van der Müsselle 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 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

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<sup>3</sup> 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

one's condition (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.....

Issir riferenza ghas-sentenza tal-Qorti tal-Appell Kriminali **Il-Pulizija vs Raymond Mifsud** li trattat *funditus* ir-reati ta' taffikar ta' persuni:<sup>4</sup>

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 mahsub kontra n-networks kriminali u biex ihares lil persuni mill-iskjavitù, mill-isfruttament sesswali u mill-impjiegi illegali) u l-Protokoll ghall-Prevenzjoni, Soppressjoni u Kastig tat-Traffikar tal-Persuni, Speċjalment ta' Nisa u Tfal<sup>5</sup>, li jissupplementa din il-Konvenzjoni.

Fl-artikolu 3 tal-protokoll it-traffikar huwa hekk definit:

*"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*

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<sup>4</sup> Per Onor. Imhallef Dr. Edwina Grima; Dec. 23 ta' Frar, 2017; Appell Nru: 128/2012

<sup>5</sup> Iffirmat minn Malta fl-14 ta' Dicembru 2002 u sussegwentement ratifikat fl-24 ta' Settembru 2003.

*other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organ.*<sup>6</sup>”

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 iħda permezz ta’ approħħ komprensiv fejn id-definizzjoni ta’ l-elementi kostitwenti tal-liħi kriminali komuni għall-Istati Membri kollha, inkluħi sanzjonijiet effettivi, proporzjonati u dissuasi, jiffurmaw parti integrali.”*

Fl-artikolu 1 tad-Decizjoni Kwadru jinghad:

*“Kull Stat Membru għandu jieħu l-miħuri neħessarji sabiex jiħgura li l-atti li ħejjin ikunu kastigabbli: ir-reklutaħħ, trasport, trasferiment, kenn, lqugħ sussegwenti ta’ persuna, inkluħ l-iskambju jew trasferiment tal-kontroll fuq dik il-persuna, fejn:*

*(a) isir uħu minn sfurzar, forza jew theddid, inkluħ il-ħtif, jew*

*(b) isir uħu minn qerq jew frodi, jew*

*(ħ) ikun hemm abbuħ ta’ aħtorità jew poħizzjoni ta’ vulnerabbiltà, li tkun tali li persuna ma’ jkolliex alternattiva reali u aħħettabbli iħda li tissottometti għall-abbuħ involut, jew*

*(d) ħlasijiet jew benefiħħji jingħataw jew jiħu rħevuti sabiex jinkiseb il-kunsens ta’ persuna li jkollha kontroll fuq persuna oħra għall-għan ta’ l-isfruttament tax-*

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<sup>6</sup> 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

*xogħol jew servizzi ta' dik il-persuna, inkluż mill-anqas xogħol jew servizzi sfurzati jew obligatorji, 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' vittima tat-traffikar tal-persuni għall-isfruttament, mixtieq jew reali, għandu jkun irrelevanti fejn xi wieċed mill-mezzi msemmija fil-paragrafu 1 ikunu oħra u oħri.*

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

*“Kull min, b'xi wieċed 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 jeġel, meta jinsab oħri, il-piena li hemm fl-artikolu 248A(1).”*

Fejn imbagħad 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 hażin tal-awtorità, influenza jew pressjoni
- (d) li wiehed jagħti jew jirċievi hłasijiet 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 għad-decizjoni kwadru surrefirta:- “It-traffikar tal-bnedmin jinvolvi vjolazzjonijiet serji tad-drittijiet fundamentali tal-bniedem u d-dinjità umana u jinvolvi prattiċi bla hñiena bhall 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-habi ta' dik il-persuna, ... li wara tigi ricevuta u jkun hemm il-bdil ta' kontroll fuq dik il-persuna, .... u tinkludi kull ghemil li jiffacilita id-dhul, transitu, residenza fi jew hrug mit-territorju ta' xi pajjiz ghal xi wiehed mill-ghanijiet imsemmija fl-artikoli precedenti ta' dan is-sub-titolu, skont kif jista' jkun il-kaz."

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 laqgghom 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 ghall-isfruttament, mixtieq jew reali, ghandu jkun irrelevanti fejn xi wiehed mill-mezzi msemmija fil-paragrafu 1 ikunu gew uzati.**

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.

L-artikolu 248A tal-Kap. 9 jitratta 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 għall-prostituzzjoni. Għalhekk l-artikolu 248A tal-Kap. 9 mhuwiex applikabbli u, mill-provi, ma jirrizulta bl-ebda mod. Kwindi l-ewwel aggravju huwa milqugh. Kwantu għat-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 għandu 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 tal-Kap. 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 għal xi wiehed millgħanijiet imsemmija fl-artikoli precedenti ta' dan is-sub-titolu, skond kif jista' jkun il-kaz."

Sabiex jissussisti l-element ta' "traffikar" huwa għalhekk sufficjenti mqar att wiehed minn dawk elenkati fis-subartikolu appena citata. U hawn irid jigi osservat, kuntrarjament għal 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

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<sup>7</sup> Per Onor. Imhallef Dr. David Scicluna; Dec. 19 ta' Settembru, 2006; Appell Kriminali Numru. 346/2005

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 għall-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 xogħol**, ghalkemm ma qaltilhiex x’tip ta’ xogħol. 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-oħra, jagħmlu xogħol ta’ prostituzzjoni. Inoltre ttehdulhom il-biljett ta’ l-ajru u l-passaport u b’hekk sabu ruhhom f’sitwazzjoni li ma kinux liberi jagħmlu dak li jridu. Fir-rigward ta’ l-appellant għalhekk 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:<sup>8</sup>

L-artikolu 248B jagħmel hati ta’ reat kull min, “b’xi wiehed mill-mezzi msemija fl-artikolu 248A(2) jittraffika persuna ta’ l-eta` bil-ghan li dik il-persuna tigi sfruttata għall-prostituzzjoni ...”. .....

Yevgeniya Khonakhbeyeva xehdet illi Elena Ellul kienet ghenitha bid-dokumentazzjoni biex tidhol Malta u li kienet qaltilha li se tghinha ssib xogħol, ghalkemm ma qaltilhiex x’tip ta’ xogħol. Meta waslet Malta flimkien ma’ habiba tagħha, Elena Ellul marret għalihom l-ajruport u hadithom id-dar tagħha fejn bdew xogħol ta’ prostituzzjoni f’it sigħat biss wara l-wasla tagħhom. 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 għal appartament fl-Msida fejn kien joqghod magħhom 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 jagħmel xogħol ta’ prostituzzjoni. Fir-rigward ta’ l-appellant għalhekk zgur jirrizultaw il-mezzi kontemplati fil-paragrafu (c) tas-subartikolu (2) ta’ l-artikolu 248A tal-Kap. 9.

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<sup>8</sup> Dec.19 ta' Settembru, 2006; Appell Kriminali Numru. 345/2005



**Now therefore, in the context of the above, this Court argues and concludes:**

- A. That, whereas one can confidently conclude that the recruitment, transportation and transfer issues are all actions that are attributable to persons outside the maltese jurisdiction (Cina and/or Vietnam), and while one can confidently conclude that the harbouring/receipt of persons can be attributable to the person of Bin Han; and
- B. That, while there is enough evidence of practices indicating exploitation, which can be confidently attributable to the person of Bin Han; and
- C. That there is plausible evidence, with respect to the element of the “means”, that outside the maltese jurisdiction, the alleged victims were subjected to fraud, and/or deception, and/or the abuse of power or of a position of vulnerability;
- D. That there is however, lack of sufficient evidence to connect, in terms of law (either as a co-principal, or as an accomplice, or as a principal for that matter), the accused Bin Han, personally or as a representative of the company/organisation, to the required element of the “means” used to lure the alleged victims towards Malta. This ring in the chain, intended to lead to Bin Han’s guilt, is insufficient and not strong enough to hold the chain – that must consist of evidence of “the action”, “the means”, and “for the purpose of exploitation” - together.

In view of the above, this court deems it unsafe and unsatisfactory to declare the accused Bin Han guilty, in terms of law, of the charge as brought in paragraph (1).

**Considers, in the context of the appropriate sanction to be contemplated;**

That reference should appropriately and again be made to the case in the names - **“Il-Pulizija (Spettur Joseph Busuttil) (Spettur John Spiteri) vs Winston-Joseph Gera u Zhang Tianxia”** decided by the Court of Magistrates (Malta) as a Court of Criminal Judicature ( Mag. Dr. Donatella M. Frendo Dimech LL.D., 16.12.2020) – wherein the said Court detailed, amongst others, the following :

Issir riferenza ghall-konsiderazzjonijiet tal-Qorti tal-Appell Kriminali fis-sentenza tagħha **Il-Pulizija vs Anthony Cassar et:**<sup>9</sup>

Illi l-piena erogata trid tkun tali illi tagħmel 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 għandhom jigu segwiti fl-imposizzjoni tal-piena bħala:

- (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 għandux ihares biss l-interessi tal-persuna kkundannata izda għandu jara illi jhares l-interessi tal-vittma jew vittmi tar-reat u s-socjeta in generali billi jagħti dik il-piena li għandha isservi bħala kastig għal min jikkometti r-reat, li tara li twassal għat-tnaqqis tal-kummissjoni ta' reati ohra, li tista' twassal għar-rijabilitazzjoni u r-riforma tal-hati, li jagħti il-harsien mehtiega lil pubbliku u li l-hati jagħmel reparazzjoni għal hazin li jkun għamel.

Hu veru ukoll dak li qal l-insinji Leo Page fil-ktieb tiegħu, *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 ingħad għap-propositu tal-kwistjoni tal-piena fil-Criminal Law Review, July 1961, p.482 –**

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<sup>9</sup> Per Onor. Imhalled Dr. Edwina Grima LL.D.; Dec.3 ta' Lulju, 2020; Appell Numru: 113/2014

‘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]”.

### **Considers further;**

In the context of punishment, that at folio 2532 et seq, the accused presented a note together with an authenticated true copy of a declaration made by the injured parties namely, Nguyen Thi Kim Loan, Thi Thu Tran, Thi Cam Van Hoang, Van Ngu Tran, Ohuong Thi Vuong, Vu Thi Hoa, Duong Thi Lien, Nguyen Thi Hien, Nguyen Van Giang (all Vietnamese nationals) and Liao Pingshan (Chinese National), wherein they declared that they had received, individually (by means of ten bank drafts), in full and final settlement, all monies due to them (totalling €103,212.43), which claims form part of the current criminal proceedings.

### **Conclusion;**

**THEREFORE, IN VIEW OF THE ABOVE, THE COURT, having seen Articles 17, 18, 31, 121D, 293, 294, 310(1)(a) and 533 of Chapter 9 of the Laws of Malta, Article 13 of Chapter 249, Article 2 of part two of title one and Articles 45(1)(2), 47 and 18 of Chapter 452, and Regulations 2, 3, 4, 5, 6, 7, 8, 12 and 22 of L.N.247/2003(S.L.452.87) as amended by L.N.427/2007 and L.N.259/2012, FINDS AND DECLARES :**

**A. JIA LIU not guilty of all charges proffered against him and is therefore being acquitted in terms of Law;**

**B. BIN HAN -**

- (i) not guilty of charge number (1) from which charge he is being acquitted; but**
- (ii) guilty of all the remaining charges (2 to 14) and condemns him to a term of imprisonment of two (2) years suspended for a term of four (4) years in terms of Article 28A of Chapter 9 of the Laws of Malta; the Court explained to the accused his responsibilities under Articles 28A and 28B of Chapter 9 of the Laws of Malta.**
- (iii) and condemns the body corporate LEISURE CLOTHING LIMITED (C8265) to the payment of a fine multa in the amount of two hundred thousand euros (€200,000).**
- (iv) And condemns accused Bin Han further to the payment of all the costs incurred in these proceedings, and this in terms of Article 533 of Chapter 9 of the Laws of Malta.**

Dr Ian Farrugia LLD

Magistrate

Marica Mifsud  
Deputy Registrar