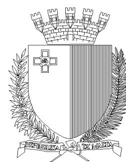

Court of Criminal Appeal

Hon. Justice Dr. Giovanni M Grixti LL.M., LL.D

Appeal nr: 138/2022

The Police

(Inspector Sarah Magri)

vs

Michele Siciliano

Today, 7th October, 2022

The Court;

Having seen the charges brought aganst Michele Siciliano holder of Maltese Identity Card number 146317 A before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having for the month of January, 2022, when ordered so by a court or so bound by contract failed to give to Daphne Anne Vella and/or to his children the sum fixed by that contract or laid down in the contract as maintenance for her and/or his children, within fifteen days from the day on which according to such order or contract, such sum should be paid;

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature of the16th March 2022, by means of which Michele Siciliano was found guilty of the charge proferred against him and condemned to a period of detention for one month (1);

Having seen the appeal application of Michele Siciliano presented in the Registry of this Court on the 28th March 2022 through which he requested the revocation or annullment of that part of the judgment whereby the Court found him guilty of the charge brought against him, and instead declare him not guilty of said charge and acquit him of any liability and punishment and alternatively to vary or reverse the punishment of imprisonment and apply instead a punishment that is more just and equitable, considering all the circumstances of the case;

Having seen the records of the case;

Having seen the updated criminal record of the appellant presented by the Prosecution as ordered by this Court;

Having heard oral submissions by the parties:

Having Considered:

1. That the facts of this case are with regard to a report made to the Executive Police by complainant alleged non payment of maintenance allowance by the accused as ordered by the Civil

Court (Family Section). The alleged non compliance extended over sevear months and a report was lodged for each month of default but the cases were heard together on the same day and accused claimed that he was not in a positon to honour his obligations as he was not gainfully employed so much so that he had asked for a reduction of the amount of maintenane payable due to the onset of the Covid pandemic which request had been acceded to provided that the amount due will be reinstated once the situation caused by Covid returns to normal;

2. That appellant felt aggreived by the judgement of the first Court both with respect to the finding of guilt and in respect of the punisment imposted. The first four greviences refer to the punishment imposed by the first Court and will therefore be considered at a later stage should this Court not uphold appellants first request;

3. That appellant's first grevience with regard to the finding of guilt numbered (v) is that the action of complainant show that her intention was never one of obtaining financial support for raising their children but to make sure that she humiliates him by securing a judgement of imprisonment. The records of the proceedings demonstrate that comlainant exercised her rights at law in filing a complaint with the Exeutive Police when the accused failed to pay the amount of maintenance allowance established by the Civil Court (Family Section) for which he admits not settling albeit for reasons of being out of gainful employment. Accused is charged with not paying the amount of €700 every month since July 2021 and until oral submissions before this Court on the 6 October, 2022 accused had only paid

€400 of the accumulated amount to date. That therefore, accused's grievance numbered (v), which *stricto jure* has no basis at law, is unfounded and frivilous and is being dismissed;

4. That in the subsequent grevience numbered (vi) accused alleges that payments were made to complainant both before and after the judgement merits of the appeal and that these are proof of his good intentions to abide by the orders of the Court. Recourse to the records of the proceedings again demonstrate that this grevience is also frivilous since it transpires that the only payments made by the accused were two settlemetns of two hundred euros each and one of one hundred and twenty euros which in total do not satisfy the debt for the month of July 2021 let alone the subsequent months for which he is also charge and for which he was found guilty, which appeals are being decided concurrently with this judgement;

5. Appellant also alleges that it was impossible for him to abide by the orders of the Court due to him being unemployed at the time. In this grevience numbered (vii), appellant alleges that it was hardly possible for him to meet his basic expenses. Having examined the transcripts of depositions of the witnesses, including that of the accused, there is not evidence that he was in such an impossibility. Appellant was gainfully employed up to a time when, during the Covid pandemic, he decided to venture onto establishing his own business as a real estate agent. This led to serious consequences including the repossession of his leased vehicle but during this period he admits to not having registered for employment with the jobs agency Jobs Plus. It has to be noted that the havoc created by the Covid Pandemic and the measures

taken by governments worldwide have been phased out and that even up to the day of final submissions before this Court, that is three months after judgement delivered by the first Court and till today, the day of judgement, appellant has not done anything to reverse this situation. It has to be noted that following the hearing of the 9 of June 2022, this appeal was put off for judgement for today the 6 of October for appellant to have sufficient time to rectify the situation but no payments were forthcoming;

6. That appellant's failure to secure gainful employment when there is nothing to prohibit him from doing so can not be considered as an impossibility to fulfill his obligation. The Court makes reference to the considerations made by it in the case **Il-Pulizija vs Karl Bonello** (Crt of Crim App 21.11.2005) where it was stated that:

> **"Illi umbaghad apparti li din il-Qorti ma rrizultaliex li l-appellant kien fl-impossibilita' fizika li jwettaq l-obbligi tieghu skond id-Digriet tas-Sekond'Awla fil-perjodu in kwistjoni, kif isosti** ANTOLISEI **fil-"*Manuale di diritto* Penali" {Parte Generale, Giuffre' (Milano) 1989, p.376.}, l-opinjoni prevalenti bejn l-awturi Taljani li l-eccezzjoni jew difiza tal-impossibilita' ma tistax tigi ammessa bhala kawza generali li telimina l-kolpevolezza. (App. Krim.** Pul. Vs. Kang Se ll **[28.7.94] per V. De Gaetano J)"**

7. The above cited consideration also finds acceptance by this Court and for these reasons, this grievience is therefore being dismissed;

8. That in the grevious numbered (viii), appellant alleges that the Family Court failed to investigate his request to vary the maintenance allowance imposed on him and further denied him permission to appeal for that decision. This Court, however, is not the competent forum to deal with appellant's particular complaint and therefore has no option but to dismiss this grevious without taking further cogniscance thereof;

9. That the greviences marked (ix) and (x) are again concerned with the punishment meted out by the first Court and will therefore be considered in the following paragraphs should this Court dismiss the greviences on the merits;

10. That in the final grevience on the merits, marked (xi), appellant alleges that the case proferred against him is "*a flagrant breach of* [his] ... *fundamental human rights in a way which render our State, which purports to be a democratic State, into a totalitarian one where an individual is made subject to an indiscriminate investigation based only on money not deposited* [sic.] *in spite of the fact that this was for a very limited and particular period and a very specific valid reason*". With due regard, and for the same reason as outlined in paragraph 8 of this judgement, this Court is not competent to deal with matters which fall outside its jurisdiction. This Court is not competent to take cogniscance of matters relating to alleged breach of fundamental human rights and appellant has made no request for this Court to refer the matter to the Civil Court First Instance in its Constitutional Competence. This grevience is also therefore herewith dismissed;

11. That whereas all greviences on the merits being dismissed, this Court shall now therefore consider those relating to the punishment meted out by the firt Court with the first complaint relating to the fact that the charges proferred against him through the related and connected cases should have been treated as a single and continuous offence in terms of article 18 of the Criminal Code. Accused was charged before the Courts of Magistrates for non payment of maintenance allowance on six occasions, that is one charge for each of six months from July, 2021. Upon examination of the records of this case and the other connected appeals, a charge was issued on the same date with regard to the month of July 2021 and August 2021 both citations being issued on the 1 November 2021. As for the default in payment from the 27 August to the 11 September 2001, 27 September to 11 October, 2021 and for the month of December 2021 the Executive Police issued three separate charges as follows: two charges dated 28 December, 2021 and one charge dated 31 December, 2021;

12. That as has been stated in another judgement of this Court this particular fact is the subject of two differing considerations. On the one part, it is within the sole discretion of the Executive Police to charge a person with a continuous offence or otherwise issue a charge for every single offence. The latter considered as a legal fiction may lead to an injustice as the accused is subject to the loss of the benefit derived from article 18 of the Criminal Code whereby one punishment is meted out for the various offences albeit subject to an increase by one or two degrees. On the other hand, it is not within the remit of the Executive Police to wait for month after month to be informed whether such person

has again failed to pay the relative maintenance allowance with the possibility of the offence being declared time barred and therby attracting possible disciplinary action against the respnsible officer. At the same time, issuing separate charges on the same day for previously known offences, may be condusive of an abusive situation depriving the accused of one punishment for the same offence;

13. That after having examined the records and as stated *supra*, the latter situation occurred on two occassions namely with regard to appeal 142/2022 and 143 / 2022 signed on the 1 November, 2021 and 1391/2022 and 140/2022 signed on the 28 December. Although the merits of appeal 141/2022 are with regard to a default regarding maintenance due for the month of December, 2021, the police report shows that the complaint complaint was lodged at the Qawra Police station on the 14 of December, 2021 yet the charged was issued on the 31 December, 2021, two days after the charges issued on the 28th December 2021 when the three complaints merits of the appeals 1391/2022, 140/ 2022 and 141, 2022 were all known to the police prior to the dates of issue of the charges and could have been issued under one charge as a continuous offence. The case under examination, however, was institued after a report by complainant with regard to a default in January 2022 and it would surely be unreasonable for appellant to expect that the Police wait and see whether he would comply in paying maintenance month after month;

14. That with regards to this issue the Court refers to its judgement of the28 September 2020 in the appeal **Il-Pulizija vs**

Ahmad Yasine the relevant part of which is being reproduced hereunder:

1. Issa, l-appellant hu tal-fehma li la darba "*tressaq biex iwiegeb ghal dan ir-reat kommess f'hames perjodi differenti f'kawzi separati, l-esponenti ma setax jibbenefika minn dak li jipprovdi l-artikolu 18 tal-Kodici Kriminali*". Huwa jiccita in sostenn tal-argument tieghu is-sentenza ta' din il-Qorti tat-3 ta' Novembru, 1995 fl-ismijiet Il-Pulizija vs Joseph Galea u dik tal-31 ta' Lulju 2009 fl-ismijiet Il-Pulizija vs Carmelo Innorcia. L-artikolu 18 tal-Kodici Kriminali jiddisponi s-segwenti:

> **18. Meta d-diversi atti maghmulin mill-hati, ukoll jekk fi zminijiet differenti, ikunu jiksru l-istess disposizzjoni tal-ligi, u jkunu gew maghmula b'rizoluzzjoni wahda, dawn l-atti jitqiesu reat wiehed, imsejjah reat kontinwat, izda l-piena tista' tizdied minn grad sa zewg gradi**.

2. Tajjeb li jkun osservat, f'dan l-istadju, illi hawn si tratta ta' ksur ta' Ordni ta' Protezzjoni skond id-dispost tal-artikolu 412C tal-Kodici Kriminali intiz sabiex jipprotegi lill-persuna, hafna drabi fil-vesti tal-vittma ta' reat, milli tkun molestata mill-hati. Issa, appena l-Pulizija irceviet ilment mill-kwerelanta odjerna, ghamlet dak li kienet fid-dover li taghmel u inizzjat proceduri kriminali kontra l-appellant f'kull okkazzjoni. U hekk baqghet taghmel kull darba li sarilha rapport mill-kwerelanta u ma qaditx tistenna biex tara jekk kienx ser ikun hemm aktar interventi da parti tal-imputat bis-sogru kollu li dan jista' jgorr jekk l-allegat agressur jibqa' mhux censurat bi proceduri kriminali;

3. Kwantu l-effetti tal-artikolu 18 din il-Qorti taghmel referenza ghal dak osservat fis-sentenza taghha tal-29 ta' Ottubru, 2018 fl-ismijiet Il-Pulizija vs *Ommisis* (Appell Numru 360/2015) fejn intqal hekk:

4. The Continuous Crime under Article 18 of the Criminal Code is said to have been drafted for the benefit of the accused in that a person will answer to one crime rather than a multiplicity of crimes where they are made with the same purpose and are in breach of the same provision of law. Answering for all crimes as

one crime means that the accused is given the punishment for one of the crimes and not for each individual crimes but increased by one or two degrees according to the Court's discretion. Reference is made to Lectures in Criminal Law by Prof. Anthony J Mamo – Old University at pp 179 *et seq.* accurately tracing the origins of this article and citing eminent authors such as Carrara, Maino, Impallomeni, Crivellari and others. Indeed, Francesco Antolisei in his works Manuale di Diritto Penali (Parte Generale -1994 a pg 478 *et seq*. states:

La figura del reato continuate sorse per opera dei pratici italiani del Medioevo, i quali la escogitarono per mitigare il severissimo trattamento stabilito dalle legislazione comunali per I delitti dello stess tipo, ripetuti piu' volte. Concordementi ammessa dalla dottrin precedenti alla legislazione attuale e riconosciuta in modo espresso dal codice Zandarelli, tale figura era stata abbandonata nel Progetto preliminare del condice Rocco, ma venne ripristinata nel Progetto definitive in segutio all insistenti e vive preoccupazioni che se erano manifestate per l-eccessivo rigore a cui la soppressione avrebbe dato luogo.

5. Notwithstanding that the concept of continuous offence in Article 18 was created for the benefit of the accused, it also comes at a heavy price for the same accused. Through this legal fiction, an accused can be charged for a string of offences in breach of the same provision of law which took place over a period of time, indeed years and this on the basis of the date of the last known crime allegedly committed. If, for the sake of argument, a person has been committing the same crime against the same person or property punishable with imprisonment of two years for the past ten years but is only apprehended a few weeks before the prescriptive period of the last committed crime, that accused may be asked to answer for all the crimes committed during the last ten years. Article 18, therefore, which is a privilege granted only to the prosecution and cannot be requested by the accused in search for a lesser punishment, can disadvantage the accused by bringing together all past acts or omissions which would have otherwise been time-barred;

6. Added to this prejudice, the accused is now subject to an indertiminate increase in punishment by two degrees, which as explained above in this case can be increased from six years for the original crime up to twelve years. The latter increase also has the effect of committing an accused to trial for a crime which, on its

own, would have been time-barred. The accused is furthermore prejudiced by the fact that prescription is based on an uncertain punishment which may or may not be applied by the Court in its discretion. This brings to mind the caution raised by Sr. Anthony Mamo in the work cited above at page 178:
Finally, the doctrine of continuous offence, was, as we have already seen, devised by the practical jurists in order to mitigate the punishment which would otherwise be due to the offender in respect of his sever violations. Viewed against this historical background this doctrine is thus a benefit granted to the offender, <u>and must not therefore, in any circumstances, according to many authorities be turned to his disadvantage</u>. [emphasis of this Court]

7. Indeed, the continuous offence can also be detrimental to the accused in that it is no longer possible to produce witnesses or evidence in defense thereof for those crimes which would otherwise have been time-barred. In the case under review, appellant alleges that complainant decided to file her complaint against him at the age of 25 and after her parents decided to keep the matter within the family when she was 10 or 11 years old, only because she did not manage to extort a sizeable amount of money from him. Accused contends that were it not for the legal fiction under Article 18, the crime would have been time barred and he would not have been subjected to these proceedings which, according to him, were huridly presented days before the setting in of the prescriptive period increased by the said article;

8. In Trattato Di Diritto Penale Italiano – Vol III, p 487, para 651, Manzini concludes as follows:
Poiche' la continuazione delittuosa non e' una circostanza aggravante, bensi' un ipotesi di concorso meramente ideale di reati, cose' l'aumento del triplo per la continuazione stessa non deve considerarsi ai fini della prescrizione (cassazione 27/01/1993, Giust. Pen, 1993, II, p. 313; 18/03/1932, Annali di dir. e proc. pen., 1932, p.696), ma il-termine prescrittive deve esser stabilito con riferimento a ciascun reato concorrente nella detta continuazione, avvertendo che, per l'estinzione del reato continuato, e necessario che il-termine prescrittivo sia decorso in relazione a tutti I reati nella continuazione".

9. Maghmula dawn l-osservazzjonijiet a propositu tal-artikolu in disamina, tajjeb li jinghad ukoll illi sakemm il-

prosekuzzjoni ma tindikax l-artikolu 18 fil-fatti imputati, dawk il-fatti ma jistghux jitqiesu bhala reat kontinwat fit-termini tal-istess artikolu. Il-Qrati taghna, izda, u kif tajjeb osserva l-appellant bis-sentenzi minnu citati, fl-ispirtu tal-istess artikolu gieli laqghu ghall-effett kuntrarju billi applikaw piena aktar miti f'kazijiet fejn il-kwisjtoni kienet tirrientra fid-dominju ta' reat kontinwat izda ma jistax jitqies li kien hekk la darba mhux indikat mill-prosekuzzjoni. Dak li osserva l-appellant, izda, ma huwiex applikabbli ghal-kwistjoni odjerna u dan hu dovut ghar-ragunament zbaljat tieghu naxxenti minn nuqqas ta' riproduzzjoni fidila tas-sentenzi minnu citati;

10. Mis-sentenza Il-Pulizija vs Joseph Galea, l-appellant iccita s-segwenti bran:

> "... jekk il-Prosekuzzjoni ma tkunx ikkontemplat id-diversi infrazzjonijiet bhala reat kontinwat u gabithom kollha fl-istess kawza bhala reat kontinwat, il-Qorti necessarjament trid taghti sentenza separata f'kull kaz ossia ghal kull infrazzjoni jew ghall-infrazzjonijiet migjuba f'dik il-kawza. Jista' jaghti l-kaz li l-prosekuzzjoni jkollha d-dubbji taghha jekk hemmx ir-"risoluzzjoni wahda" kkontemplata fl-artikolu 18. Jista' jaghti l-kaz ukoll li l-prosekuzzjoni f'dan il-kaz, il-Pulizija Ezekuttiva, tkun agixxiet tempestivament u ma' l-ewwel infrazzjoni ressqet lil dak li jkun; f'dan il-kaz wiehed ma jistax jippretendi li l-Pulizija ghandha toqghod tistenna biex tara jekk il-persuna li tkun tikkommettix reat iehor in forza tar-risoluzzjoni wahda li tkun precedentement iffurmat biex b'hekk fl-ahhar tressqu akkuzat fl-infrazzjonijiet kollha bhala reat kontinwat. **Mill-banda l-ohra l-Pulizija m'ghandhiex tispezzetta d-diversi atti f'diversi kawzi**" (sottolinear tal-esponent).

11. Issa, ghalkemm fis-sistema gudizzjarja taghna, mhix applikabbli d-dottrina tal-precedent u li s-sentenzi tal-Qrati, ossia il-gurisprudenza hija utli ghas-sostenn tal-argument avvanzat, l-iccitar tas-sentenzi ghandu jkun wiehed fidil u mhux spezzettat u mehud barra mill-kuntest tieghu. Dan qed jinghad ghaliex mis-sentenza citata, l-appellant naqas li jirriproduci dik il-parti krucjali taghha meta osservat li t-tlett citazzjonijiet f'dak il-kaz kienu hargu **fl-istess data**. Qabel ma tkun citata il-parti relevanti, tajjeb li jkun osservat ukoll illi fil-parti li l-appellant ghazel illi jinfasizza b'tipi oskuri, naqas milli jiccita b'mod preciz dak li verament qalet il-Qorti tal-Appell li huwa s-segwenti: "Mill-banda l-ohra il-Pulizija m'ghandiex

tabbuza u meta jkun hemm indikazzjoni cara ta' reat kontinwat m'ghandhiex tispezzetta d-diversi atti f'diversi kawzi". Dan qed ikun osservat ghaliex f'dik il-kawza kien evidenti li l-kaz kien ta' reat kontinwat meta fil-kaz hawn skrutinat ma huwiex il-kaz kif jghid l-appellant;

12. Ventilat dan, u din il-Qorti ma tarax ghaliex ghandha kontinwament toqghod tivverifika jekk l-iccitar u riproduzzjoni tas-sentenzi huwiex wiehed fidil jew le sal punt li jkun ibiddel it-tifsira tal-istess sentenza, jokkorri issa li tkun citata dik il-parti evitata mill-appellant u l-Qorti jisobiha jkollha tuza il-kelma "konvenjentement":

Fil-kaz presenti, hu evidenti li l-Pulizija ipprospettat reat kontinwat ghax-xahar ta' Marzu 1994 (peress li ma' kull skadenza ta' manteniment mhux imhallas, maghduda il-hmistax-il jum, kien hemm prima facie infrazzjoni). ***<u>Pero' galadarba t-tlett citazzjonijiet, jigifieri kemm dik fil-kawza odjerna kif ukoll dawk fil-kawzi li huma meritu tal-appelli 2/95 u 3/95, hargu fl- istess data -- 24 ta' Gunju, 1994 -- din il-Qorti ma tistax tifhem x'seta' wassal lill-Pulizija li johorgu tlett citazzjonijiet separati minflok citazzjoni wahda b'imputazzjoni ta' reat kontinwat li jkopri l-infrazzjonijiet ghax-xhur (propjament ghall-gimghat fix-xhur) ta' Marzu, April u Mejju, 1994</u>****. Mill- banda l-ohra din il-Qorti ma tistax tordna li t-tlett processi jew it-tlett sentenzi diga' moghtija jigu inkorporati fi process wiehed jew f'sentenza wahda -- ebda disposizzjoni tal-ligi ma tawtorizza li jsir dan.* ***<u>L-uniku rimedju li tipprospetta l-ligi hu li jekk il-Qorti (li tista' tkun anke l-qorti ta' prim istanza) tara li d-diversi infrazzjonijiet f'kawzi separati kellhom jigu trattati bhala reat kontinwat f'kawza wahda, il-Qorti ghandha timmodera u tadegwa l-piena ghac-cirkostanzi.</u>***

13. Fis-sentenza Joseph Galea citata mill-appellant, allura, il-kwisjtoni kienet taggira fuq il-fatt illi t-tlett citazzjonijiet kienu hargu fl-istess gurnata u l-Qorti ma qaghditx lura milli tindika li dak seta' jkollu mill-elementi ta' abbuz. Fil-kaz odjern, il-hames citazzjonijiet kienu inhargu fi granet u gimghat differenti u dan jirrendi l-fatti intrinsikament differenti anke li kieku din il-Qorti kellha ssegwi din il-konkluzzjonijiet ta' dik is-sentenza mill-ottika gurisprudenzjali.

> 14. Minn qari tas-sentenza ta' Carmelo Innorcia, jemergi illi l-Qorti ghamlet referenza ghas-sentenza Joseph Galea u applikat l-istess ragunament. Jirrizulta, izda, illi l-Qorti ghamlet hekk ghaliex f'dak l-appell, l-appellant *qua* imputat kien responsabbli ghal sensiela ta' serqiet fix-xahar ta' Settembru u Ottubru 2007. Gara izda illi ghas-serqiet ta' Ottubru l-Pulizija ressqet lill-imputat il-Qorti fl-istess xahar filwaqt illi ghas-serqiet tax-xahar ta' Settembru 2007 resqitu f'Jannar tal-2009 u dan ghal raguni inspjegabbli bil-konsegwenza li tilef mill-beneficcju tal-artikolu 18. Kien ghalhekk li l-Qorti ghazlet li tirriforma s-sentnza appellata b'temperament fil-piena b'kundanna ta' tlett snin u tlett xhur prigunerija minflok erba' snin.
>
> 15. Illi ghalhekk ma hu xejn minnu kif jargumenta l-appellant illi fil-kaz Innorcia "Il-Qorti kienet rinfaccjata b'sitwazzjoni simili u wara li rat li kien iktar xieraq illi kieku l-appellant tressaq f'kawza wahda fuq reati li huwa kkommetta fuq medda ta' xahrejn ddecidiet illi....." Fir-reati kommessi mill-appellant odjern, il-Pulizija kellha, kif korrettament ghamlet, tagixxi immedjatament minhabba s-sigurta' tal-persuna protetta b'ordni tal-Qorti u mhux toqghod tistenna biex tara jekk l-imputat hux ser jikkommetti reati ohra fil-futur. Ikun differenti l-kaz fejn persuna tirraporta ksur ghal aktar minn darba fl-istess jum jew forsi l-ghada, izda hawn si tratta ta' persuna li mhix qed tikkontesta l-fatt li kisret l-ordni tal-Qorti 'f'kaz ta' diffikultajiet matrimonjali, li kienet inibietha milli timmolesta lill-parti l-ohra;

15. That therefore whereas there is sufficient reason to inquire why the Executive Police decided to issue separate charges for the appeals numbered 142/2022 and 143/2022 and those numbered 1391/2022, 140/2022 and 141/2022 rather than two charges incorporating the events as two separate continuous offences, surely there is no such reason with regard to the appeal under examination and this grevience is therefore being dismissed;

16. That a further grevience proposed by appellant numbered (ii) states that the punishement inflicted by the first Corut is clearly excessive and does not do jsutice to the circumstance of the case. The penalty meted out by the first Court, however, is perfectly within the limits prescribed by law and as a matter of principle this Court will not, under normal circumstances, substitute the discretion entrusted to and exercised by the first Court in matters concern punishment;

17. Appellant is also criticial of the punishment imposed by the first court when, in the grevience nubered (iii) he alleges that it gailed to give due consideration to the fact that a custodial sentence would likely result in his loss of income and inflict hardship on his children. That, unfortunately, a custodial sentence would have the adverse affects mentioned by appellant and this Court has absolutely no doubt that the first Court is aware of the obvious consequences of the punishment meted out but every case presents its particular facts and for the same reasons stated in paragraph 15, the first Court no doubt contemplated the all the consequences of its decision prior to handing down a custodial judgement and there is no ground to reverse same except as was stated with regard to the issueof the continuous offence;

18. That the same consideration applies to the subsequent grevience numbered (iv) when appellant alleges that the aim of the legislator in promulgating article 338(z) of the Criminal Code was to exercies pressure on the party to abide by the order of the Court to pay maintenance. In this case, such pressure was to no effect

and the court had no other option but to apply that punishement which it deemed necessary and appropriate;

19. That the Court fails to understand why appellant made reference to the judgement of this Court of the 2nd December 2005 Il-Pulizija vs Andrew Calleja in the grevience numbered (ix) when the reasons for reversing a custodial punishment in that case were completly different from the case at hand and that most of the greviences submitted by appellant in the present case should have been avoided simply by reference to that judgement. Appellant is also critical of the fact that the first Court failed to give consideration to the fact that this was the first occasion where he failed to abide by the order of the Court to supply maintenance. This, again, is does not provide sufficient reason for this Court to reverse that part of the jugement of the first Court in which it opted for a custodial sentence and these two greviences are therefore being dismissed;

20. That having examined all the greviences and for the reasons given above, this Court dismisses the appeal.