



## **Criminal Court of Appeal**

Hon. Judge Edwina Grima, LL.D

Appeal No: 1128/2014

Appeal No: 1128/2014/2

**The Police**

**vs**

**Bin Han**

**Jia Liu**

Today, the 6th day of January 2023

The Court,

Having seen the charges brought against appellant/appellee 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 appellee Jia Liu, holder of Maltese identity card number 64215A, in his own name and as a representative of Leisure Clothing Limited bearing registration number C8265, wherein they were accused before the Court of Magistrates (Malta) of having on the 29th October 2014 and in the preceding years, on the Maltese Islands, by several acts committed by them,

even if at two 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 3 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 21st November, 2013 and ending on the 25th of July, 2014, amounting to €5,973.33, you have failed to pay the Weekly Allowance due for the period commencing on the 21st November, 2013 and ending on the 25th July, 2014, amounting to €164.97, you have failed to pay the Statutory Bonus due for the period commencing on the 21st November, 2013 and ending on the 25th July, 2014, amounting to €183.94, you have failed to pay the Overtime on Public Holidays due for the period commencing on the 13th December 2013, and ending on the 25th July, 2014, amounting to €667.10, you have failed to pay the Overtime due for the period commencing on the 21st November, 2013 and ending on the 25th July, 2014, amounting to €4465.32, you have failed to pay the Vacation Leave due for the period commencing on the 1 st January, 2014, and ending on the 25th of July, 2014, amounting to €452.46, and you have failed to pay the Overtime on Sundays due for the period commencing on the 21st November, 2013 and ending on the 25th 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 22nd November, 2013 and ending on the 25th of July, 2014, amounting to €5,841.36, you have failed to pay the Weekly Allowance due for the period commencing on the 22nd November, 2013 and ending on the 31st March, 2014, amounting to €83.88, you have failed to pay the Statutory Bonus due for the period commencing on the 22nd November, 2013 and ending on the 30th June, 2014, amounting to €164.70, you have failed to pay the Overtime on Saturdays due for the period commencing on the 23rd November, 2013 and ending on the 25th July, 2014, amounting to €804.70, you have failed to pay the Overtime on Public Holidays due for the 13th December 2013, 25th December 2013, and the period commencing on the 1st January, 2014 and ending on the 25th July, 2014, amounting to €967.79, you have failed to pay the Overtime due

for the period commencing on the 22nd November, 2013 and ending on the 25th July, 2014, amounting to €5500.41, and you have failed to pay the Overtime on Sundays due for the period commencing on the 22nd November, 2013 and ending on the 25th 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 22nd November, 2013 and ending on the 25th of July, 2014, amounting to €5,841.36, you have failed to pay the Weekly Allowance due for the period commencing on the 22nd November, 2013 and ending on the 31st March, 2014, amounting to €83.88, you have failed to pay the Statutory Bonus due for the period commencing on the 22nd November, 2013 and ending on the 30th June, 2014, amounting to €164.70, you have failed to pay the Overtime on Saturdays due for the period commencing on the 23rd November, 2013 and ending on the 25th July, 2014, amounting to €804.70, you have failed to pay the Overtime on Public Holidays due for the 13th December 2013, 25th December 2013, and the period commencing on the 1st January, 2014 and ending on the 25th July, 2014, amounting to €967.79, you have failed to pay the Overtime due for the period commencing on the 22nd November, 2013 and ending on the 25th July, 2014, amounting to €5500.41, and you have failed to pay the Overtime on Sundays due for the period commencing on the 22nd November, 2013 and ending on the 25th 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 22nd November, 2013 and ending on the 11th of August, 2014, amounting to €5,477.76, you have failed to pay the Weekly Allowance due for the period commencing on the 22nd November, 2013 and ending on the 11th August, 2014, amounting to €154.71, you have failed to pay the Statutory Bonus due for the period commencing on the 22nd November, 2013 and ending on the 11th August, 2014, amounting to €195.78, you have failed to pay the Overtime on Sundays due for the period commencing on the 24th November, 2013 and ending on the 29th December 2013, amounting to €578.99, you have failed to pay the Overtime on Public Holidays due for the 13th December 2013, 25th December 2013, and the period commencing on the 10th February, 2014 and ending on the 7th June, 2014, amounting to €670.95, you have failed to pay the Overtime due for the period commencing on the 22nd November, 2013 and ending on the 11th August, 2014, amounting to €4346.56, and you have failed to pay the Vacation Leave due for the period commencing on the 1st January, 2014 and ending on the 11th 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 24th March, 2014 and ending on the 27th of October, 2014, amounting to €5166.72, you have failed to pay the Weekly Allowance due for

the period commencing on the 23rd March, 2014 and ending on the 30th of September, 2014, amounting to €126.75, you have failed to pay the Statutory Bonus due for the period commencing on the 23rd March, 2014 and ending on the 27th of October, 2014, amounting to €162.06, you have failed to pay the Vacation Leave due for the period commencing on the 23rd March, 2014, and ending on the 27th of October, 2014, amounting to €476.93, you have failed to pay the Overtime on Public Holidays due for the period commencing on the 31st March, 2014 and ending on the 8th of September, 2014, amounting to €541.51, you have failed to pay the Overtime due for the period commencing on the 24th March, 2014 and ending on the 27th 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 23rd March, 2014 and ending on the 26th 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 27th 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 23rd March, 2014 and ending on the 27th of October, 2014, amounting to €5232.73, you have failed to pay the Weekly Allowance due for the period commencing on the 23rd March, 2014 and ending on the 30th of September, 2014, amounting to €145.39, you have failed to pay the Statutory Bonus due for the period commencing on the 23rd March, 2014 and ending on the 27th of October, 2014, amounting to €162.06, you have failed to pay the Vacation Leave due for the period commencing on the 23rd March, 2014, and ending on the 27th of October, 2014, amounting to €479.99, you have failed to pay the Overtime on Public Holidays due for the period commencing on the 31st March, 2014 and ending on the 8th of September, 2014, amounting to €541.51, you have failed to pay the Overtime due for the period commencing on the 24th March, 2014 and ending on the 27th 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 23rd March, 2014 and ending on the 26th 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 27th 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 2nd February, 2014 and ending on the 27th of October, 2014, amounting to €6,325.92, you have failed to pay the Weekly Allowance due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to €178.62, you have failed to pay the Statutory Bonus due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to €198.32, you have failed to pay the Vacation Leave due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to €585.92, you have failed to pay the Overtime on Public Holidays due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to €824.27, you have failed to pay the Overtime due for the period commencing on the 2nd February, 2014 and ending on the 27th of October, 2014, amounting to €5464.18, and you have failed to pay the Overtime on Sundays due for the period commencing on the 2nd February, 2014 and ending on the 27th 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 27th 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 31st March, 2013 and ending on the 27th of October, 2014, amounting to €13,536.00, you have failed to pay the Weekly Allowance due for the period commencing on the 31st March, 2013 and ending on the 27th of October, 2014, amounting to €379.46, you have failed to pay the Statutory Bonus due for the period commencing on the 31st March, 2013 and ending on the 27th of October, 2014, amounting to €426.24, you have failed to pay the Vacation Leave due for the period commencing on the 1st January, 2014 and ending on the 27th of October, 2014, amounting to €644.00, you have failed to pay the Overtime on Public Holidays due for the period commencing on the 31st March, 2013 and ending on the 27th of October, 2014, amounting to €1,565.81, you have failed to pay the Overtime due for the period commencing on the 31st March, 2013 and ending on the 27th 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 31st March, 2013 and ending on the 27th 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 27th 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 30th January, 2014 and ending on the 27th of October, 2014,



amounting to €6,466.72, you have failed to pay the Weekly Allowance due for the period commencing on the 30th January, 2014 and ending on the 27th of October, 2014, amounting to €180.39, you have failed to pay the Statutory Bonus due for the period commencing on the 30th January, 2014 and ending on the 27th of October, 2014, amounting to €200.54, you have failed to pay the Vacation Leave due for the period commencing on the 30th January, 2014 and ending on the 27th of October, 2014, amounting to €591.73, you have failed to pay the Overtime on Public Holidays due for the period commencing on the 10th February, 2014 and ending on the 27th of October, 2014, amounting to €709.68, you have failed to pay the Overtime due for the period commencing on the 3rd February, 2014 and ending on the 27th 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 2nd February, 2014 and ending on the 27th 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 27th 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 3rd 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 was also 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 13 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 was also 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 was finally also 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 judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 21st of March 2022, wherein the same Court, after 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, found and declared:

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;

(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.

Having seen the appeal application of appellant Bin Han, filed on the 6th of April 2022, wherein he is requesting this Court to reform the judgment delivered on the 21st of September 2022 in that it confirms the part where the accused was acquitted from the first accusation, and annuls and revokes the part where the accused was found guilty and acquits him or imposes a more lenient punishment.

Having seen the appeal application filed by the Attorney General on the 11th of April 2022, wherein he is requesting this Court to vary the judgment of the First Court in the following manner:

1. By revoking that part of the judgment wherein the First Court found the accused Jia Liu not guilty of all charges proffered against him and acquitted him and instead find Jia Liu guilty of all charges proffered against him and impose a penalty according to law;
2. By confirming that part of the judgment wherein the First Court found Bin Han guilty of the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth charge;
3. By revoking that part of the judgment wherein the First Court found Bin Han not guilty of the first charge from which he was acquitted and instead finds the accused Bin Han guilty of the first charge proffered against him and imposes a penalty according to law;
4. By confirming that part of the judgment wherein the accused Bin Han was condemned to pay all costs incurred in these proceedings;
5. By confirming that part of the judgment wherein the body corporate Leisure Clothing Limited (C8265) was condemned to the payment of a fine (multa) in the amount of two hundred thousand Euro (€200,000).

Having seen all the records of the case.

Having seen the updated conduct sheet of appellant/appellees, exhibited by the Prosecution as requested by this Court.

Having heard submissions by the parties.

**Considers:**

The Court has examined the voluminous acts of these proceedings and observes that although upon arraignment of accused Bin Han and Jia Liu, the Court of Magistrates had issued an decree on the 19th November 2014 ordering that the proceedings be held in the English language, for some unknown reason a substantial part of the proceedings was then conducted in the Maltese language, with the First Court switching between the two languages towards the end of the proceedings, judgment then finally being delivered in the English language. Before examining the applications filed both by the Attorney General and accused Bin Han the Court stresses that although there is this shortcoming throughout the proceedings, both the accused never objected to the language in which proceedings were being conducted, all throughout assisted by an interpreter in those sittings which were held in the Maltese language, thus safeguarding accused's rights at law in terms of articles 534AB and 534AD of the Criminal Code.

*“The ability to comprehend the proceedings in a criminal trial, guaranteed in Art. 6, para. 3(e), may be seen as another aspect of the importance for an accused to participate effectively in the proceedings. For the right to be effective, the obligation of the authorities is not limited to the provision of an interpreter but may also extend to a degree of control over the adequacy of the interpretation provided. Issues as to the standard of the interpretation could arise if it could be established as damaging to the accused's effective participation in the proceedings. Although a failure to complain at the time may be fatal to claims before the Court as generally domestic courts must be given an opportunity to remedy any inadequacy, the onus is nonetheless on the trial judge to treat an accused's interest with 'scrupulous care' and take steps to ensure his ability to participate where problems are drawn to his attention... The requirement for interpretation must, however, be genuine and necessary to the fair conduct of the proceedings. Where an applicant has sufficient understanding of the language of the proceedings, he cannot claim a cultural or political preference for another. Once it is apparent that the applicant requires interpretation assistance, it is unlikely that informal and unprofessional assistance will be sufficient. Article 6, para. 3(e) has been held to cover documentary material and pre-trial matters, but it does not extend to requiring translations of all documents in the proceedings. It is sufficient if the applicant is assisted by interpreters, translations and the help of his lawyers so that he has knowledge of the case which enables him to defend himself, in particular by being able to put forward his version of events. If this standard is reached, a failure to provide all the translations an applicant might have wanted is not a problem. An applicant would presumably have to indicate that*

*the untranslated documents were material to his ability to defend himself and that he was refused or not permitted the necessary facilities<sup>1</sup>.*

Consequently, although there results this shortcoming in the acts, however both accused were never placed in a disadvantageous position so as not to understand what was happening throughout the proceedings, having been assisted all along by their legal advisors, together with interpreters, and never requesting the translation of any testimony or document found in the acts, other than those carried out by court order, thus rendering the proceedings valid at law.

**Considers further:**

Having by-passed this procedural issue, the Court will now deal with the merits of the appeal filed by accused Bin Han and the Attorney General, both parties feeling aggrieved by the judgment of the First Court, entering an appeal from the said judgment, and this obviously on different grounds. The Court will, first and foremost, deal with the second grievance brought forward by the Attorney General in his application since it deals with the main offence brought forward against both accused Bin Han and Jia Liu, that of human trafficking, the outcome of which will necessarily have a bearing on some of the other grievances brought forward by both parties.

This second grievance raised by the Attorney General revolves around the wrong interpretation and assessment of the facts of the case carried out by the First Court with regards to the charge of human trafficking. The Attorney General deems that, contrary to what was decided by the First Court, there is ample evidence in the acts that indicates that accused Bin Han, both in his personal capacity and on behalf of the company Leisure Clothing Limited, played an important role in luring the alleged victims to Malta and exploiting the same for labour purposes and consequently the offence contemplated in Article 248A of the Criminal Code is proven in his regard.

This grievance, therefore, deals with the merits of the case and the examination carried out by the First Court of all the evidence brought before it. Consequently, this Court re-examined the voluminous acts of proceedings, including all the documents

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<sup>1</sup> Qorti Appell Kriminali II-Pulizija vs Andriy Petrovych Pashkov deciza 10/09/2009.

exhibited and all the testimonies of the witnesses who testified before the First Court, to be able to evaluate and establish whether the examination of the evidence made by the First Court was reasonably and legally valid<sup>2</sup>.

Accused Bin Han was charged, *inter alia*, with the crime of human trafficking as established in Article 248A of the Criminal Code, an offence introduced in our penal laws following Malta's commitment to the United Nations Protocol to Prevent and Combat Trafficking in Human Beings, in 2002: -

**1) Whosoever, by any means mentioned in sub-article (2), traffics a person of age for the purpose of exploiting that person in:**

**(a) the production of goods or provision of services; or**

**(b) slavery or practices similar to slavery; or**

**(c) servitude or forced labour; or**

**(d) activities associated with begging; or**

**(e) any other unlawful activities not specifically provided for elsewhere under this Sub-title,**

**shall, on conviction, be liable to the punishment of imprisonment from six to twelve years.**

**For the purposes of this sub-article exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.**

**(2) The means referred to in sub-article (1) are the following:**

**(a) violence or threats, including abduction;**

**(b) deceit or fraud;**

**(c) misuse of authority, influence or pressure;**

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<sup>2</sup> Ara, fost ohrajn, l-Appelli Kriminali Superjuri: Ir-Repubblika ta' Malta v. Rida Salem Suleiman Shoaib, 15 ta' Jannar 2009; Ir-Repubblika ta' Malta v. Paul Hili, 19 ta' Gunju 2008; Ir-Repubblika ta' Malta v. Etienne Carter, 14 ta' Dicembru 2004 Ir-Repubblika ta' Malta v. Domenic Briffa, 16 ta' Ottubru 2003; Ir-Repubblika ta' Malta v. Godfrey Lopez u r-Repubblika ta' Malta v. Eleno sive Lino Bezzina 24 ta' April 2003, Ir-Repubblika ta' Malta v. Lawrence Ascjak sive Axiak 23 ta' Jannar 2003, Ir-Repubblika ta' Malta v. Mustafa Ali Larbed, 5 ta' Lulju 2002; Ir-Repubblika ta' Malta v. Thomas sive Tommy Baldacchino, 7 ta' Marzu 2000, Ir-Repubblika ta' Malta v. Ivan Gatt, 1 ta' Dicembru 1994; u Ir-Repubblika ta' Malta v. George Azzopardi, 14 ta' Frar 1989; u lAppelli Kriminali Inferjuri: Il-Pulizija v. Andrew George Stone, 12 ta' Mejju 2004, Il-Pulizija v. Anthony Bartolo, 6 ta' Mejju 2004; Il-Pulizija v. Maurice Saliba, 30 ta' April 2004; Il-Pulizija v. Saviour Cutajar, 30 ta' Marzu 2004; Il-Pulizija v. Seifeddine Mohamed Marshan et, 21 ta' Ottubru 1996; Il-Pulizija v. Raymond Psaila et, 12 ta' Mejju 1994; Il-Pulizija v. Simon Paris, 15 ta' Lulju 1996; Il-Pulizija v. Carmel sive Chalmer Pace, 31 ta' Mejju 1991; Il-Pulizija v. Anthony Zammit, 31 ta' Mejju 1991.

(d) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person;

(e) abuse of power or of a position of vulnerability:

Provided that in this paragraph "position of vulnerability" means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

(3) The consent of a victim of trafficking to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in sub-article (2) has been used.

That, the First Court, in its judgment, acquitted Bin Han of the above-mentioned charge, on the basis of the following considerations -

- 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 (China and/or Vietnam), and while one can confidently conclude that the harboring/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. 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.

As such, Human Trafficking is a process resulting in three main stages namely an action by the trafficker, the means used to perform this action, and the purpose of exploitation. Hence, the elements on which the crime of human trafficking is based are mainly three <sup>3</sup>, which elements must all result collectively for a finding of guilt, namely -

- **The action of: "recruitment, transportation, transfer, harbouring or receipt of persons";**

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<sup>3</sup> As per the *Council of Europe Convention on Action against Human Trafficking in Human Beings*, Treaty no. 197, ratified by Malta on the 30th of January 2008.

- **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 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”.**

The offence of human trafficking with which both accused are charged is linked to the use of forced labour, the victims allegedly being induced to accept employment in defendant company by means of deception and fraud, which employment amounted to their exploitation, when they were forced to work long hours on a daily basis with little or no remuneration, their freedom to leave at will from the said employment being totally suppressed. Now, the International Labour Organisation has in its 2005 Convention defined forced labour as follows:

**“all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Article 2(1) Forced Labour Convention 1930)**

Thus, the ILO’s<sup>4</sup> definition of forced labour comprises three basic elements:

- (1) work or service performed;**
- (2) under the menace of any penalty;**
- (3) for which the person has not offered himself or herself voluntarily.**

These elements are thus explained:

**14. The penalty does not need to be in the form of penal sanctions but may also take the form of a loss of rights and privileges. Moreover, the menace of a penalty can take multiple different forms. Arguably, its most extreme form involves physical violence or restraint, or even death threats addressed to the victim or relatives. There can also be subtler forms of menace, sometimes of a psychological nature. Situations examined by the ILO have included threats to denounce victims to the police or immigration authorities when their employment status is illegal, or denunciation to village elders in the case of girls forced to prostitute themselves in distant cities. Other penalties can be of a financial nature, including economic penalties linked to debts, the non-payment of wages, or the loss of wages accompanied by threats of dismissal if workers refuse to do overtime beyond the scope of their contract**

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<sup>4</sup> Vide article 2 of the Forced Labour Convention 1930



or of national law<sup>5</sup>. Employers sometimes also require workers to hand over their identity papers, and may use the threat of confiscation of these documents in order to exact forced labour.

**15. As regards freedom of choice, the ILO supervisory bodies have touched on a range of aspects including: the form and subject matter of consent; the role of external constraints or indirect coercion; and the possibility of revoking freely given consent. Here too, there can be many subtle forms of coercion. Many victims enter forced labour situations initially of their own accord, albeit through fraud and deception, only to discover later that they are not free to withdraw their labour. They are subsequently unable to leave their work owing to legal, physical or psychological coercion. Initial consent may be considered irrelevant when deception or fraud has been used to obtain it.**<sup>6</sup>

Ultimately, human trafficking for the purposes of forced labour can only be determined on a case by case basis, its elements resulting mostly by the nature of the relationship between a person and his/her “employer”.

That, the First Court deemed that the elements of “action” and “purpose of exploitation” were sufficiently proven by the Prosecution and with this outcome, this Court agrees. However, on the other hand, this Court does not agree with the conclusion reached by the First Court that the element regarding the “means” used to reach such an end was not proven. Based on an examination of the evidence brought forward in this case, it is undoubted that deception was used in order to entice the alleged victims to leave their country, thus abusing their position of vulnerability and receiving payments from the victims in order to achieve their consent, the workers then upon arrival in Malta, being subjected to long working hours, contrary to local labour laws, and fully dependant on their employer who withheld not only their wages but also their identity documents.

Indeed, it is evident from the acts of proceedings as well as from the testimonies tendered by the various victims, that they were all presented with two separate contracts, if not three – the first with the agency which served as a go-between between the prospective employees and the company Leisure Clothing Limited and the second

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<sup>5</sup> Emphasis by the Court.

<sup>6</sup>[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081882.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf) - A Global Alliance Against Forced Labour - Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and rights at Work 2005

between themselves and Leisure Clothing Limited. It is also evident that the first contract had a purpose of listing the job specifications being offered to the victims as well as ensuring that the agency fees were paid by them in order for their employment prospects to be processed. Moreover, it is also evident that the second contract differed from the first, in that the working conditions and the salary package were different and less attractive than the first. There were some victims such as Liao Ping Shan who testified that they were given the second contract in a hurry and that they therefore had no reasonable time to assess what they were in fact signing, most of them signing under the threat that they would lose the monies they had paid under considerable sacrifice from their part and the part of their families should they opt out of signing in these final stages of the recruitment process. Furthermore, there were other victims, like Nyugen Van Giang, who had questioned the difference between the two contracts, only to be reassured that the pay would be higher than that stated in the document and that the working hours would also be more reasonable. What is uniform is that all of the victims had paid a hefty sum in the form of agency fees before they were presented with the second contract, part of which sum of money was passed onto defendant company and which sum was non-refundable were the victim not to go ahead with the signing of the said contract. This Court notes that from the testimonies of the victims, all Vietnamese, there are many common factors, the first and foremost being that they all came from a poor family background, so much so that most of them had to apply for a bank loan in order to be able to pay the procedure fees in question. Thus, it is clear that the victims were at that point in time, considered to be vulnerable, because they did not have any option but to sign the second contract since refusing to do so would have resulted in the loss of the sum of money that they had already paid, thus landing themselves in further debt with no form of incoming monies to allievate such debt.

The Treaty lays down that *“a position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved”*. Moreover, the Explanatory Report of the European Convention states that *“the vulnerability may be of any kind, whether physical, physcological, emotional, family relates, social or economic. The situation might, for example, involve*

*insecurity or illegality of the victims' immigration status, economic dependence or fragile health. In short, the situation can be of any form 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".*

Undoubtedly, the victims' economic background placed them in a situation where they could not refuse to sign the second contract, irrespective of the fact that they did not agree with the contents of the same. By demanding that the procedure fees be paid beforehand, the Agency acting in complicity with Leisure Clothing Limited was exercising a strong level of control upon their victims by exploiting their position of vulnerability.

The First Court argued, however, that there was lack of sufficient proof indicating a common design between the company Leisure Clothing Limited as represented by accused, and the recruiting agency involved VIHATICO, in the luring of the victims towards Malta, however this Court disagrees. From the testimony of the Human Resources Manager of Nanjing Juzan Economic Information Consulting Co. Ltd, Zhenhua Kong<sup>7</sup>, it results that he was appointed by defendant company Leisure Clothing Limited, for the purpose of recruitment of workers. In fact for this purpose his living and travel expenses were paid by the said Leisure Clothing Limited. In carrying out his task the said Zhenhua Kong cooperated with a Vietnamese company by the name of VIHATICO, to recruit prospective workers, and this with the consent of Leisure Clothing Limited, as evidenced by the Labour supply agreement signed between the Agency and defendant company . He states thus in his testimony which is found in the acts in the Maltese language:

*"Skond rikjesta tal-istess Leisure Clothing aħna nistaqsu lil kumpanija Vietnamiza sabiex issibilna haddiema skiled speċjalizzati li tagħhom jieħdu r-ritratti kif ukoll is-CV u jibagħtuhom lilna."*

The witness explains that on some occasions he had gone personally to vet these prospective workers. He further testifies that since he has no understanding of the

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<sup>7</sup> Vide fols 826 et seq of court records, Volume 4.

Vietnamese language, the prospective workers sign a contract in Vietnamese which is then scanned and passed on to him. This contract is signed between the employee and Leisure Clothing Limited. After this it is defendant company which provides for air tickets and the processing of the VISA applications together with the work permits. When the workers arrive in Malta they are then met up with a representative of defendant company.

He confirms that a contract would be signed between VIHATICO and the prospective employee and then another contract would be signed between the latter and Leisure Clothing Limited. He also states that once a prospective worker signed the contracts, Leisure Company Limited received the sum of 600 American Dollars from VIHATICO as payment.

That, moreover, even Bin Han himself, in his statement released to the investigating officers dated the 29th October 2014 confirmed this fact – *“We are taking workers not only through our mother company but even through agents...”*. But most of all the above is further corroborated by the documentation exhibited before the First Court, namely the *“Labor Supply Agreement between Leisure Clothing Ltd (rep. Bin Han) and Hatinh Joint Stock Wietha Company (VIHATICO)”* and the *“Contract of Sending Employee to Work in Malta”*, which was signed between VIHATICO and the employee, article 1 of the said contract clearly stipulating under the title *“General Terms”* as follows:

***“Viet Ha - Ha Tinh Joint Stock Company (VIHATICO) sends employee to work in Malta in accordance with the Contract for Supply of Labour signed in ../../..... between VIHATICO and Leisure Clothing Limited, with the following contract period and job .”***

Moreover the sample contract with favourable working conditions which was originally presented to the victims in the Vietnamese language was found in Bin Han’s possession<sup>8</sup>, thus signifying that he was well aware of the prospects which were being presented to the workers by the agency engaged by the company for recruitment purposes, even more so when a representative of the company, Mr. Zhenhua Kong was present at one point during this recruitment stage in Vietnam in order to

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<sup>8</sup> Vide report and testimony of Dr. Martin Bajada 08/05/2016 at folio 3600 of court records

personally vet the same workers. The victims in fact testified that they would never have accepted the job in Malta had the conditions of work presented to them been those found in the second contract of employment signed by them, since the remuneration would have been similar to the one, they would receive in their country, and so they would have had no reason to emigrate in search of better employment. Thus, contrary to what was decided by the First Court, there exists sufficient evidence to link Bin Han to the luring of the victims to Malta for the purpose of exploiting them for labour purposes, and the Court has no doubt that accused had purposely hired the recruitment agency to attract Vietnamese workers to come to Malta taking advantage of the dire standard of living conditions in the country of origin of these workers, thus inducing them to accept working conditions below the standard minimum employment conditions applicable under Maltese law with the sole aim of generating a greater profit for the company by paying less for labour.

So much so that, after luring its victims to accept employment with defendant company, their exploitation was perpetrated abundantly by accused once they reached Malta whereupon the company immediately seized the workers' passports. The reason given by accused Bin Han for this drastic action was that this aimed at safeguarding the same document from any loss or theft and also to ensure that the workers did not flee the country, leaving the company in the lurch. However this Court is morally certain that the workers were prohibited from having free access to their identification documents and this manouvre by Bin Han was only put into place to further restrict the freedom of movement of his workers so that they would forcibly be made to continue in their pitiful employment and be exploited by him, rendering any decision to terminate their employment practically impossible.

Moreover, the actual working conditions imposed on the workers by Leisure Clothing Limited, as clearly evidenced in the acts of proceedings, are not only contrary to labour laws in Malta but also directly in violation of the workers' fundamental human rights, morally and ethically objectionable on all fronts. The working hours that the workers had to work ranged from the early hours of the morning to late evening, with only *circa* an eighty minute break-time, during which the employees could not leave their

workplace<sup>9</sup>. It also transpired that the workers could not get sick or pregnant, amongst other ailments, and if they did so they had to pay a fine. Nguyen Thi Hien testified that she could not refuse to work overtime and was forcibly made to work the same whilst Heong Thi Cam Van testified that on one occasion she could not continue working due to sickness and her supervisor threw the medicine in her face and told her to continue working forcibly.

Additionally, these workers were exploited even with regard to their remuneration, being paid a meagre €150 every two months for their long hours of work, with the company retaining the excess amount until the sum of €2000 is reached, thus making them even more dependent on the company being unable to live freely and decently and being unable to dispose of the monies they had a right to at law. Not only but were they to leave without the company's consent all the monies deposited with the company would be forfeited. In the employment contract entered into between the workers and Leisure Clothing Limited, it is stipulated that:

**“The salary will be paid directly from the factory and the payment method is according to the factory existing regulations ... according to the need, complying with factory regulations, the Party B can withdraw from the account. In principle, the amount in the account should not be less than Euro 2000”.**

Bin Han states that this is the mechanism followed by his company regarding the payment of remuneration due and that the workers were all in agreement with this method of remittance. This notwithstanding, from various testimonies tendered by the victims, it transpires that there were some of them who had confronted Bin Han, personally protesting about their conditions of work, poor remuneration, and retention of their passports, only to be informed by him that this was in accordance with the law in Malta and that they had to follow the law. Not only is this statement made by Bin Han totally misleading, deceitful and a blatant distortion of the truth, but it also shows the low level of regard that he had *vis-a-vis* his workers. In fact it is uncontested that the workers of Maltese nationality were employed under conditions in line with Maltese labour laws and were therefore engaged under more favourable

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<sup>9</sup> Vide Document JB39 Vol.4 page 806

conditions, thus signifying accused's intention to exploit to the full the Vietnamese workers<sup>10</sup>. Additionally, although accused Bin Han states that the monies representing the workers' remuneration were kept in safekeeping for them, however, not only does it result that the said money was not found in the company's safety deposit box, but also that the company's accounts were in the red which shows that the money was not kept in deposit at all but was utilized in the running of the business.

In yet another clause found in the contract of employment it was stipulated that:-

**“Free accomodation and meals – The condition for Party A provides Party B the above mentioned provision free of charge, is Party B must be fully submissive to the factory schedules and related lodging management regulations”.**

This clause further portrays the fact that the workers were clearly stripped of every ounce of humanity, dignity and free will during their employment with the company, constrained to accept the food and lodgings provided by the company which were clearly substandard, the workers forced to live five to a room, in run down lodgings and with meagre food supplies. They were thus denied the liberty to seek alternative accommodation and thus always remained under the company's scrutiny, being driven to work early in the morning by coach, returned to their lodgings late at night and rarely having a day off from work. The facts of the case, thus, fall fairly and squarely within the parameters of the definition of forced labour *par excellence*.

This Court is thus morally convinced, contrary to the conclusion reached by the First Court, that there is ample evidence to show firstly that there was a common design between defendant company, as represented by the accused, and the recruitment agency regarding the method to be utilised to attract the victims to accept the employment offered to them, and this under deceit, forcing them to sign a contract with less favourable conditions than those originally promised, thus abusing their vulnerability and this under threat that the monies forked out by them under great

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<sup>10</sup> Court appointed expert, Marisa Ciappara, testifies that although all paperwork regarding the Maltese workers was found to be in order, the same could not be said regarding the foreign workers, the expert being unable to identify exactly what the working conditions of these workers amounted to and if the same was in line with Maltese labour laws.

sacrifice, in agency fees, would be forfeited. Secondly, it results that upon arrival the workers were forced to work in unfavourable working conditions contrary to all laws existing in Malta safeguarding a worker's rights, and were exploited to the maximum, defendant company as represented by both the accused profiting from the cheap labour it employed in the running of its day-to-day business, and rendering the freedom of movement of the said workers practically impossible making them fully dependant on the employer's will. Hence all the elements of the offence of human trafficking linked to forced labour are proven at law.

That, therefore, for the above reasons, this Court is in agreement with the second grievance brought forward by the Attorney General, and deems the first charge brought against accused Bin Han, both in his personal capacity and as representative of defendant company, to be proven beyond a reasonable doubt.

**Considers further:**

Having established guilt in accused Bin Han for the first charge brought against him, thus rendering him guilty of all the charges, the Court will delve into the first grievance brought forward in the appeal filed by the Attorney General which finds fault with that part of the appellate judgment wherein accused Jia Liu was acquitted from all the charges brought against him. It is the opinion of the Attorney General that the acquittal was based on a wrong interpretation by the First Court of Article 121D of Chapter 9 of the Laws of Malta, rendered applicable to the offence of human trafficking by means of Article 248E(3), since appellee Jia Liu should be held to be criminally responsible having assumed the role of director of Leisure Clothing Limited, irrespective of what his role in the company actually consisted of.

The concept of corporate criminal liability was introduced in our Criminal Code by means of Act III of 2002, with the introduction of article 121D, which article of the law was substituted by means of Act VIII of 2015 and today reads as follows:

**“Where an offence under this title has been committed by a person who at the time of the said offence is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on**



**behalf of that body or having authority to exercise control within that body and the said offence was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) of not less than twenty thousand euro (€20,000) and not more than two million euro (€2,000,000), which fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organisation and Civil Procedure.<sup>11</sup>”**

Now, articles 310A of the Criminal Code and article 248E(3) render article 121D applicable both to the crime of misappropriation and that of human trafficking, thus although finding guilt in the person or persons who represent the body corporate, the court may also inflict punishment on the said body corporate if the commission of the crime was carried out to its benefit, and is thus attributable to the body corporate itself.

The concept of corporate criminal liability is different from that of vicarious responsibility as laid out in article 13 of the Interpretation Act, since though in both instances the legislator sought to attribute criminal responsibility to the legal person, whilst in the first instance the punishment is inflicted on the body corporate, in the second instance it is the director or other person representing the body corporate who is personally liable and faces the sanction of the law. Also, the fine inflicted on the body corporate may be recovered as a civil debt and the sentence of the Court shall constitute an executive title. In the note of referral filed by the Attorney General in terms of Article 370(3)(a) of the Criminal Code, wherein both accused were sent to be tried by the Court of Magistrates, both articles 121D of Chapter 9 and article 13 of Chapter 249 of the Laws of Malta are therein indicated. This means that the First Court had to delve into both articles of the Law in its considerations regarding a finding of guilt or otherwise in the persons of both accused as charged.

So, under this new law, prior to a finding of guilt in a body corporate, criminal responsibility must be attributed to a physical person representing the said body corporate. Once a finding of guilt has been established then evidence must result indicating that the crime was committed for the benefit of this legal person. If this

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<sup>11</sup> The punishment applicable at the time of the commission of the offence is different.

results, then the Court may pass on to condemn the said body corporate to the payment of a fine. Now whilst in the case of vicarious liability, the director, manager, or other person representing the company is condemned in his personal capacity unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence, under Article 121D, punishment is inflicted directly on the body corporate with no right of defence existing as that found in article 13 of Chapter 249.

Therefore, for accused Jia Liu, being a director of Leisure Clothing Limited, to exempt himself from criminal responsibility in his personal capacity he necessarily had to prove that he exercised all due diligence to prevent the commission of the offences with which he is charged, and this on a balance of probabilities.

From an analysis of the Companies Act it is evident that the duties and responsibilities of a director of a body corporate are rather onerous.

**The duties of directors can be classified under two categories, namely general duties and specific (or administrative) duties. The general duties of directors are found in the provisions of Article 136A of the Companies Act which can be classified into two further sub-categories, namely (i) duties of loyalty, and (ii) duties of care and skill.**

**Administrative duties on the other hand consist of specific statutory obligations which are incumbent on directors and consist principally of acts of an administrative nature. In the case of any breaches of administrative duties, nominal financial penalties would typically be imposed by the Registrar of Companies (the "ROC"), which penalties may ultimately be enforced against the director personally. These duties would typically include, amongst others, the duty to keep an updated register of members as well as the duty to file the appropriate returns and documents with the ROC in a timely manner, including the annual accounts, notification of share transfers and changes in the company's constitutive documents, officers or ultimate beneficial owners.**

**Apart from these duties, many other duties arise from a wide array of specific legislation such as the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta), the Social Security Act (Chapter 318 of the Laws of Malta), and the Value Added Tax Act (Chapter 406 of the Laws of Malta), not to mention several other laws which lay down the regulatory framework for a number of key strategic industries (financial services, pharmaceuticals, gambling etc), a breach of which could lead to personal criminal liability.**

**Directors are also subject to certain fiduciary obligations which are covered both by Articles 1124A, 1124B and 1871 of the Maltese Civil Code (Chapter 16 of the Laws of Malta) (the “Civil Code”), as well as by Article 136A of the Companies Act, which specifically addresses the duty of loyalty.**

.....

**As a matter of general observation, it is important to state that the personal liability of directors can never be waived by the company. Indeed Article 148(1) of the Companies Act provides that any written declaration exempting the director from such personal responsibility or undertaking to indemnify the director against any legal liability is deemed to be legally void. This is a mandatory public policy rule which cannot be derogated from<sup>12</sup>.**

Hence, the law places the duty on the Directors of a company to act honestly and in good faith and in the best interests of the company. This implies that directors owe their duties to the company in every decision and action which they take. Failure to do so would amount to a breach of their duties at law. One of the basic duties of a director is precisely to exercise a degree of care, diligence and skill which would generally be exercised by the reasonably prudent man, encompassing “*the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by or entrusted to that director in relation to the company and the knowledge, skill and experience that the director has*<sup>13</sup>”. As already stated, to be exempt from criminal liability, the director must provide sufficient proof that the offence was committed without his knowing and that he had done every possible matter in his power to avert the happening of the offence, and this in terms of Article 13 of the Interpretation Act, such as to avoid the sanction of the law in his personal capacity.

Also, this inversion of the onus of proof is not contrary to the accused’s right to a fair trial as pointed out by the European Court of Human Rights in the case **Busuttil vs Malta**<sup>14</sup>:

## **2. The Court's assessment**

### **(a) General principles**

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<sup>12</sup> <https://www.legal500.com>

<sup>13</sup> Section 136A(3)(a), Chapter 386 of the Laws of Malta.

<sup>14</sup> 48431/18 – final 03/09/2021

46. The Court reiterates that viewed as a procedural guarantee in the context of a criminal trial itself, the presumption of innocence imposes requirements in respect of, *inter alia*, the burden of proof and legal presumptions of fact and law (see *Allen v. the United Kingdom* [GC], no. [25424/09](#), § 93, ECHR 2013). The right to the presumption of innocence is not absolute since presumptions of fact or law operate in every criminal-law system. The Court has previously found that the Contracting States may, in principle and under certain conditions, penalise a simple or objective fact as such, irrespective of whether it results from criminal intent or from negligence (see *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. [1828/06](#) and 2 others, § 243, 28 June 2018; *Janosevic v. Sweden*, no. [34619/97](#), § 100, ECHR 2002-VII, and *Salabiaku v. France*, 7 October 1988, Series A no. 141-A, § 27).

47. While the Convention does not regard such presumptions with indifference, they are not prohibited in principle, as long as States remain within reasonable limits, taking into account the importance of what is at stake and maintaining the rights of the defence (see *G.I.E.M. S.R.L. and Others*, cited above, § 243; *Grayson and Barnham v. the United Kingdom*, nos. [19955/05](#) and [15085/06](#), § 40, 23 September 2008 and *Salabiaku*, cited above, § 28). In other words, the means employed have to be reasonably proportionate to the legitimate aim sought to be achieved (see *Janosevic*, cited above, § 101, and *Falk v. the Netherlands* (dec.), no. [66273/01](#), 19 October 2004).

48. It is not for the Court to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair (see *Grayson and Barnham*, cited above, § 42; and *Sofia v. San Marino* (dec.), no. [38977/15](#), § 59, 2 May 2017).

#### (b) Application to the present case

49. The Court notes that it is not in dispute that under Maltese law a director is responsible for any act which by law must be performed by the company and this is the presumption of law at issue in the present case. It is also not disputed that Section 13 of the Interpretation Act provides the ways in which a director can exculpate himself, namely if he or she proves that the offence was committed without his or her knowledge and that he or she exercised all due diligence to prevent the commission of the offence (see paragraph 29 above). That provision has been found to be compatible with Article 6 § 2 by this Court as the conditions, which required the applicant to prove that he had no actual knowledge of the offence and also was not negligent in his duties as an officer of a company, were not self-contradictory, nor did they impose an irrebuttable presumption (see *A.G. v. Malta*, Commission decision, no. [16641/90](#), 10 December 1991).

In the present case, it is an undisputed fact that Jia Liu was a director of the company Leisure Clothing Limited, as results from the Memorandum and Articles of

Association of the same company exhibited in the acts. Now, upon assuming the role of director of a company, accused Jia Liu assumed also all the responsibilities involved in the same, including his responsibility for any act or omission, performed by the company. The only way a director can escape this responsibility is if he manages to prove that he was either not aware of the said act or omission or else that, even though he was aware of such default, he did everything in his power to stop the same from taking place. The Attorney General argues that this onus of proof placed squarely on accused's Jia Liu's shoulder, was not satisfied and consequently since no evidence results in the case that Jia Liu, being a director of the company, exercised the due diligence required of him in order to prevent the commission of the offences with which he is charged, he should have been found guilty by the First Court of all the charges.

Now, from all the documentation exhibited in this case, it is evident that it was accused Bin Han who was the link between the recruitment agencies overseas and the prospective employees of Leisure Clothing Limited. It was also Bin Han who signed all the employment contracts and it was also Bin Han who faced those employees who sought to complain of their working conditions, as in fact attested by the testimonies of these same employees. Accused Jia Liu, on the other hand, was the Marketing Director of Leisure Clothing Limited and dealt with clients overseas in terms of orders, planning services and pricing. The same Jia Liu declared that his role in the company never involved human resources, employment, engagement, payment and accommodation. Also, Jia Liu stated, *inter alia*, in his statement to the Police dated 29th October 2014 that he was paid for his services in the same manner as the other employees, that is he was only given a part of his pay in cash at the end of the month whilst the rest was deposited in the bank account of the company. The testimony given by accused Jia Liu is very sparse and does not shed any light as to his involvement in the running of the company other than denying that he was in any way connected with the recruitment of the employees. However, being involved in the marketing sector and handling all client's orders, accused Jia Liu was definitely aware of the conditions of work of the foreign workers in the company, although not being directly involved in the recruitment process, and cannot hide from the defence available to

him at law that these offences were committed by the company without his knowledge, even more so when he himself states that he was paid part of his salary with the rest being re-invested for the company's benefit. It is also evident that accused Jia Liu did not take any steps to remedy the situation existing within the company although assuming the role of director within the said company, a role which necessarily implied the exercise of all due diligence in the running of the company so as to ascertain that no offences are committed within the company's infrastructure.

In cases of vicarious liability, the Courts have held that such duty of care implies the appropriate supervision of the affairs of the company. Turning a "blind eye" to the affairs of the company, and subsequently plead that one was not aware of the act or omission that gave rise to the criminal offence, is not a defence at law and this since, as pointed out above, it is the duty of the director to exercise active and continuous supervision of the affairs of the company, no matter what his role in the company may be, so as to ensure that the company is compliant with the law at all times and in all different sectors involved in its commercial trading.

Consequently, accused Jia Liu should also be held liable for all acts or omissions carried out by the company and should have been found guilty by the First Court together with accused Bin Han, having failed to prove, and this on a balance of probabilities that he had no knowledge of what was going on in the company and the manner in which the company was conducting its commercial business, undoubtedly failing to exercise the necessary care and supervision in the day to day running of its affairs.

The Court therefore upholds both grievances put forward by the Attorney General in his appeal application and finds Bin Han guilty of the first charge brought against him and accused Jia Liu guilty as charged.

**Considers:**

Having dispensed with the appeal of the Attorney General, the Court will now consider the grievances brought forward by appellant Bin Han insofar as the same are

compatible with what has been decided *supra*. **Before any further considerations with regard to the said grievances, the Court cannot but observe that in his petition to this Court appellant is erroneously requesting a variation to the judgment delivered by the Court of Magistrates on the “21st September 2022”, and not that delivered by the First Court on the “21st March 2022”. Since the Court is of the firm opinion that this is a computer or typing error, after having seen article 419(1) of the Criminal Code as amended by Act I of 2018 wherein no nullity in the appeal application may arise from a wrong indication of the requisites established by law for the filing of an appeal from a judgment of the inferior courts, orders that the said date be amended to read the 21st of March 2022 instead of the 21st September 2022.**

**Considers further:**

That, the first grievance brought forward by appellant Bin Han concerns the finding of guilt by the First Court for the second charge brought against him – that dealing with the crime of misappropriation. He claims that the Prosecution did not bring forward sufficient evidence to prove the said charge beyond a reasonable doubt and that neither he nor the company, as duly represented by him, ever had the criminal intent required to misappropriate any monies from the alleged victims who were employed by the said company. He also states that the practice of the company holding the workers’ wages in custody in itself was one wholly accepted by the same workers.

The crime of misappropriation occurs in those instances where there is an unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intended. Our Criminal Code contemplates this crime in Article 293 wherein it is stated: –

**Whosoever misapplies, converting to his own benefit or to the benefit of any other person, anything which has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose, shall be liable, on conviction, to imprisonment for a term from three to eighteen months:**

**Provided that no criminal proceedings shall be instituted for such offence, except on the complaint of the injured party.**

Consequently, the main element of the crime in question “*mhuwiex l-uzu ta' l-ingann da parti ta' l-agent biex jottjeni l-oggett, izda l-inversjoni tat-titolu tal-pussess tal-haga li l-agent ikun ottjena minghand is-suggett passiv bil-libera volonta' ta' dan.*”<sup>15</sup>

As explained by the eminent jurist Francesco Antolisei –

*La vera essenza del reato [di appropriazione indebita] consiste nell'abuso del possessore, il quale dispone della cosa come se ne fosse proprietario (uti dominus). Egli assume, si arroga poteri che spettano al proprietario e, esercitandoli, ne danneggia il patrimonio (Manuale di Diritto Penale, Giuffrè (Milano), 1986, Parte Speciale, Vol. 1, p. 276)*

Likewise, in a recent judgment delivered by the Italian Court of Cassation, that Court was of the view that: –

*Il reato di appropriazione indebita si consuma nel momento dell'inversione del possesso, vale a dire quando il possessore compie un atto di dominio sulla "res", così manifestando l'intenzione di tenere questa come propria.*

*L'appropriazione indebita può consistere anche nel solo uso della cosa, il quale è un modo di esercitarne il diritto di proprietà, se l'uso stesso non sia assolutamente consentito, atteso il titolo del possesso, ovvero risulti diverso da quello che, secondo questo titolo, è legittimo, divenendo così manifestamente un mezzo per effettuare l'appropriazione, se accompagnato dalla volontà di disporre della cosa come se fosse propria (Cass. Sez. 2, Sentenza n. 2954 del 15/12/1971 Ud. (dep. 03/05/1972) Rv. 120966; nel senso che l'appropriazione indebita d'uso integra il reato di cui all'art. 646 c.p. cfr Sez. 3<sup>^</sup>, Sentenza n. 3445 del 2/2/1995, Riv. 203402).*

*Quello che conta è che l'uso indebito del bene, sia avvenuto trascendendo completamente - come nel caso di specie - i limiti del titolo in virtù del quale l'agente deteneva in custodia il bene, di modo che l'atto comporti un impossessamento, sia pure temporaneo, del bene, determinandosi così quell'inversione del possesso che costituisce l'elemento oggettivo della struttura del reato ( in tal senso N. 47665 del 2009 Rv. 245370 - 01; n. 44650 del 2015 Rv. 264899 - 0).<sup>16</sup>*

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<sup>15</sup> “*Pulizija vs Joseph Muscat*”, Imhalled Victor Caruana Colombo, Qorti tal-Appell Kriminali Inferjuri, deciza nhar it-3 ta' Marzu 1997.

<sup>16</sup> Cassazione penale, sez. II, Sentenza 10/05/2019 n° 20231.



Hence, it has well been established that the the crime of misappropriation is consummated when the recipient of the object placed in trust with him, inverts the title of possession into one of ownership, without the consent of the proper owner of the same, and proceeding to dispose of it as if it were his own. Indeed, in the judgment in the names “Il-Pulizija vs Anthony Mary Bajada”, the Court stated as follows –

*“Id-delitt ta' approprjazzjoni ndebita jigi konsumat malli dak li jkun jagħmel atti ta' dominju fuq il-haga bil-volonta' li jeżercita dominju fuqha; u dan ikun pruvat meta c-cirkustanzi u l-atti jkun verament tali li univokament juru l-intenzjoni ta' lapproprjazzjoni, billi fihom infushom m'humiex kompatibili malkawza u t-titolu tiegħu tad-detenzjoni ta' dik il-haga.<sup>17</sup>”*

Now, from a thorough examination of the voluminous acts of proceedings, it results that all the contracts of employment entered between the alleged victims and the company Leisure Clothing Ltd, of which company appellant Bin Han was the Managing Director, contained the following clause –

**... The salary will be paid directly from the factory and the payment method is according to the factory existing regulations ...**

**... according to the need, complying with factory regulations, the Party B can withdraw from the account. In principle, the amount in the account should not be less than Euro 2000.**

The alleged victims, testifying before the First Court, illustrate the same version of events that occurred to each one of them prior to their arrival in Malta. The first contract of works was presented to them in the Vietnamese language, and therefore, in a language they could understand. This laid out different working conditions as those then drafted in the second contract presented to them before leaving their country which was penned in the Chinese and Vietnamese language, with some being presented with a third contract completely written in the Chinese language, the alleged victims explaining that they did not understand Chinese. In the first contract it was stipulated that the workers were to receive a monthly salary of €685 for a 60-hour week, working from Mondays through Saturdays. The second contract presented entirely different working conditions with a much lower salary, and with

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<sup>17</sup> Imhalled A. J. Montanaro Gauci, Qorti tal-Appell Kriminali Inferjuri, deciza fl-1 ta' Marzu 1952.

the condition that a 2000-euro payment would be withheld by the company and indicating longer working hours. There is no doubt, as already pointed out, that the alleged victims agreed unwittingly to the said condition regarding the payment of their salaries, the said contract being forced upon them at the very last minute before departing to Malta and after having paid the recruitment Agency that contracted them a sum in the region of €4000. What transpired later when they started their employment in Malta was that they received the miserable sum of €150 every two months with the remaining amounts of their salaries withheld by the company and the said employees finding it extremely difficult to gain access to their monies, since they were repeatedly met with many obstacles at the hands of their employer when some of them tried to fight for what rightfully belonged to them.

Having said so, however, it is the opinion of this Court, that the crux of the matter in relation to the charge of misappropriation does not lie with this contractual clause, but rather in what Leisure Clothing Ltd and appellant Bin Han did with these monies which clearly belonged to the workers as remuneration for their employment. It is sufficiently proven by the Prosecution, that these monies were not found in the company's safety deposit boxes. Also, through the various bank statements exhibited in the proceedings, it is evident that the company's bank account, which supposedly held the wages due to the workers, was in the red, indicating that the monies were being deposited in the company's bank accounts and utilized for its own benefit in the running of the same, and not held in deposit as affirmed by accused Bin Han. Indeed, it was also sufficiently proven that the monies belonging to the workers as remuneration for their services to the company were being utilised for some other purpose, as was confirmed, and clarified by appellant Bin Han himself, in his statement to the Police, dated the 29th of October 2014 -

*We also occassionally use the money of the employees for the running of the company upon agreement as the return employee gets a good exchange rate of interest to benefit at the end...*

*... I deposit the money which the employees request the company to keep. It can be partly used to finance the operation of the production. Once the products are sold and payments received, the money will be returned.*

That, in view of the above, it is evident that Bin Han, *ex admissis*, utilized the monies deposited in the company's accounts to be held in custody for the workers allegedly to be passed on to them at their request, for the running of the company, with a large amount of the said money being regularly transferred to the mother company in China<sup>18</sup>, and this without obtaining his employees prior consent. Therefore the charge of misappropriation brought against appellant Bin Han subsists and the First Court could legally and reasonably find him guilty of the same. In view of all the above, this Court cannot uphold the first grievance brought forward by appellant.

**Considers:**

That, the second grievance raised by appellant Bin Han concerns the fine imposed on the company Leisure Clothing Limited of two hundred thousand Euro. Appellant argues that he cannot understand how the *quantum* of the said fine was calculated, the appellate judgment lacking in sufficient reasons behind the imposition of such a hefty fine, and this when, pending these proceedings, the company paid injured parties more than the actual sums due to them in salaries, and other payments due<sup>19</sup>. He is thus of the opinion that since the victims were compensated for their losses combined with the fact that the actual loss sustained was much less than the *quantum* of the said fine, the imposition of this fine was excessive and unjust.

Now, as previously pointed out, the Attorney General in his note of referral not only indicated article 13 of Chapter 249 of the Laws of Malta, thus signifying the vicarious liability of both the accused as directors of the company Leisure Clothing Limited, but also asking that the Court find guilt in the body corporate itself in terms of article 121D of the Criminal Code. The difference between these two concepts at law and the nature of the criminal liability in the two instances has already been explained in this judgment, thus rendering any further considerations on the matter superfluous.

Suffice it to say that having found guilt in the body corporate, it is then in the discretion of the Court to inflict the punishment it deems fit, and this within the

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<sup>18</sup> Vide evidence of Court appointed expert Marisa Ciappara – 18/10/2016 at folio 1829 et seq. of court records

<sup>19</sup> Vide settlement agreement Vol.8, at folio 2532 of court records – victims paid an aggregate sum of 103,212.43 Euro

parameters laid out by law. Article 121D of the Criminal Code today lays out the punishment of a fine ranging between €20,000 and two million euro. However, at the time of the commission of the offence the applicable punishment was that of a fine between €1,164.69 to €1,164,686.70, with article 248E of the Criminal Code<sup>20</sup>, however, laying down a different punishment as applicable at the time of the commission of the offence, being of a fine ranging between €10,000 and €2,000,000. Consequently, although the fine meted out by the First Court is not one that is close to the minimum established at law, however it is far from the maximum laid out in article 248E at the time of the commission of the offence of €2,000,000. Furthermore, the Court having declared a finding of guilt for both offences of human trafficking and misappropriation, both in their continuous form, the fine meted out will therefore not be varied, since it also reflects the gravity of the offences to which article 121D is being rendered applicable, in terms of articles 248E and 310A of the Criminal Code. Thus, neither the second grievance put forward by the appellant is being upheld.

**Considers:**

That, the third and last grievance brought forward by appellant Bin Han is in relation to the punishment imposed upon him in his personal capacity, which he deems to be too harsh in the light of the circumstances of this case.

Now, in view of the fact that the Court will vary the judgment of the First Court wherein Bin Han was acquitted of the first charge brought against him, thus finding him guilty also of the offence of human trafficking, this grievance will not be upheld.

In considering the punishment to be inflicted the Court will take into consideration the punishment applicable at the time of commission of the most serious offence of human trafficking as amended by Act XVIII of 2013, being that of imprisonment between 4 to 12 years, both accused being found guilty also of the offence of misappropriation and face the sanction of the law with regards to a violation of Chapter 452 of the Laws of Malta, all offences being committed in their continuous form. The Court, however, will take into account the fact that the victims have today

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<sup>20</sup> Punishment applicable by means of Act XVIII of 2013

been compensated for their losses, and that both accused have a clean criminal record. In addition although injured parties have been compensated as aforesaid by defendant company to the tune of €103,212.43, and since it is not possible for the court to establish the exact proceeds derived from the commission of the offences since the salaries withheld were utilised for the benefit of the company, the company thereby profiting not only from the cheap labour employed but also from the monies misappropriated, it will pass on to order the forfeiture of all the property of accused Bin Han, Jia Liu and Leisure Clothing Limited and this in terms of article 22(3A)(d) of Chapter 101 of the Laws of Malta rendered applicable to the relevant offences under the Criminal Code in terms of article 23C(2) of the said Code, accused having a right of recourse in terms of article 22C of Chapter 101 of the Laws of Malta.

**Consequently, for the above-mentioned reasons, the Court is rejecting entirely the appeal brought forward by appellant Bin Han. However, it is upholding the appeal filed by the Attorney General, and thus reforms the appellate judgment in the following manner: -**

- 1) Revokes it in that part of the judgment where accused Bin Han was acquitted from the first charge brought against him, and after having seen articles 248A(1)(2)(3), 248E(1)(3)(4A), 17(h) 18, and 121D of Chapter 9 of the Laws of Malta and article 13 of Chapter 249 of the Laws of Malta, finds him guilty of the said charge;**
- 2) Consequently, revokes it in that part where it imposed upon Bin Han 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, and instead condemns him to a term of effective imprisonment of six (6) years;**
- 3) Revokes that part of the judgment where it found Jia Liu not guilty of all charges brought against him, and after having seen articles 248A(1)(2)(3), 248E(1)(3)(4A), 293, 294, 310(1)(a), 310A, 18, 17(h) and 121D of Chapter 9 of the Laws of Malta, articles 45(1)(2), 47 and 48 of Chapter 452 of the Laws of Malta, regulations 22 of Subsidiary Legislation 452.87, and article 13 of Chapter 249 of the Laws of Malta, finds him guilty of all charges brought against him and condemns him to a term of imprisonment of six (6) years.**

- 4) Confirms it in that part where it found Bin Han guilty of charges 2 to 14;
- 5) Confirms it in the part where it condemned the body corporate Leisure Clothing Limited to the payment of a fine (multa) in the amount of two hundred thousand euros (€200,000); and
- 6) Revokes it in that part where it condemned Bin Han to the payment of all the costs incurred in these proceedings, and instead orders that the payment of the said costs be apportioned equally between both accused Bin Han and Jia Liu, and this in terms of Article 533 of Chapter 9 of the Laws of Malta.

Finally, after having seen article 23B(1)(1A), 23(C)(2) of Chapter 9 of the Laws of Malta, article 3(5) of Chapter 373 of the Laws of Malta and article 22(3A)(d) of Chapter 101 of the Laws of Malta, orders the forfeiture of all the property appertaining to accused Bin Han, Jia Liu and Leisure Clothing Company Limited in favour of the Government of Malta.

Edwina Grima  
Judge