



**COURT OF MAGISTRATES (MALTA)  
AS A COURT OF CRIMINAL JUDICATURE**

**DR. RACHEL MONTEBELLO B.A. LL.D.  
MAGISTRATE**

**Case No.: 638/2020**

**THE POLICE  
(Inspector Eman Hayman)**

**-Vs-**

**DRAGAN SHOJLEV**

**Today, 9th March 2023**

**The Court;**

Having seen that **DRAGAN SHOJLEV** son of unknown parents, born in Veles on the 25th Mary 1984, residing at Labre Flats, Room 5, Triq San Guzepp Labre, Rabat (Gozo) and bearing refugee commission document number 247288/18, was charged with having on the 20th November 2020 at about 9:00am and the proceeding hours and/or days in San Pawl il-Bahar and other localities on Malta through several acts committed in different times but constitute violations of the same provision of the law and committed in pursuance of the same design;

1. Pursued a course of conduct and harassed his ex-partner Louise Axiak, mother of his children Christopher-Louis and Jacob Michael, an offence which was committed repeatedly resulted in severe psychological harm;
2. Pursued a course of conduct in causing his ex-partner Louise Axiak, mother of his children Christopher-Louis and Jacob Michael fear that violence will be used against her and/or her property, an offence which was committed repeatedly resulted in severe psychological harm;
3. By means of an electronic communications network or apparatus threatened the commission of any crime or made any other improper use thereof;
4. Attempted to use force with intent to insult, annoy or hurt his ex-partner Louise Axiak
5. Uttered insults and threats not otherwise provided for in the Criminal Code to the detriment of his ex-partner Louise Axiak, or if provoked, went beyond the limit warranted by the provocation.

And also for having on the same dates, times, localities and circumstances;

6. Breached imposed bail conditions imposed by the Court of Magistrates (Gozo) presided by Mgt Dr. Paul Coppini LL.D whereby various conditions were imposed under a guarantee of 3,000 euros
7. Breached a protection order to the benefit of Louise Axiak imposed by the Court of Magistrates (Gozo) presided by Mgt. Dr. Paul Coppini LL.D after failing to abide by its imposed restriction.

The Court was requested to revoke bail conditions imposed on Dragan Sholjev and order the re-arrest of the accused and the confiscation of the sum guarantee of 3,000 euro in favour of the Government of Malta.

The Court was also requested to issue a Protection Order, during court proceedings against Shojlev Dragan for the benefit of Louise Axiak and her family as per Article 412C of Chapter 9 of the Laws of Malta.

The Court was also requested to provide for the safety of Louise Axiak and her family or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, requires that Shojlev Dragan to enter into his own recognizance in a sum of money fixed by the Court as per Article 383 et seq of Chapter 9 of the Laws of Malta.

The Court was finally requested that in case of a conviction, besides the decided punishment according to law, to order Shojlev Dragan to the payment of costs incurred in the employment of experts, as provided in article 533 of Chapter 9 of the Laws of Malta.

Having heard the Prosecuting Officer read out the charges under oath;

Having heard the accused during the examination plead not guilty;

Having seen that the Attorney General by means of a note dated 17<sup>th</sup> August 2021, sent the accused for trial before this Court in respect of the offences under the following articles of law:-

1. Articles 251A(1)(a) and (b), 251H(a) and (b) of Chapter 9 of the Laws of Malta;
2. Articles 251B(1), 251H (a) and (b) of Chapter 9 of the Laws of Malta;
3. Article 49(a) and (c) of Chapter 399 of the Laws of Malta;
4. Article 339(1)(d) of Chapter 9 of the Laws of Malta;
5. Article 339(1)(e) of Chapter 9 of the Laws of Malta;
6. Article 579(2) of Chapter 9 of the Laws of Malta;

7. Article 412C(11) of Chapter 9 of the Laws of Malta;
8. Articles 17, 31, 383, 384, 385 and 386 of Chapter 9 of the Laws of Malta.

Having heard all the witnesses and evidence;

Have seen all documents and other acts of the proceedings;

Having heard the final oral submissions made by the Prosecution and the defence during the hearing scheduled for that purpose;

Having seen that the case was adjourned for today for delivery of judgement;

Having considered;

**Louise Axiaq**<sup>1</sup> testified that the accused is the father of her twin sons, Jacob and Christopher Axiaq. She filed a Police report on the 20th or 21st November 2020 as she feared for her safety “a man who is going to shake me everyday” and does not like the way that the accused treats her. She explained that she had been in an unhealthy and “toxic” relationship with the accused for six years. Although not a bad man, she explained that they are not made for each other and she does not want to be in a relationship with him any longer as she is tired of all the fighting and the Police reports. She had informed no one of her arrival in Malta on the 30th October 2020 and after a couple of days in Gozo, on the 1st November 2020, she went to the Topaz Hotel in St. Paul’s Bay. On the way to the Topaz Hotel from the laundry with her suitcase in hand, she met the accused walking up the road towards the direction of his sister’s house. Although she was going to continue to walk straight past him as she did not want to make any contact with him, he stopped and grabbed her suitcase and told her to go with him to Birkirkara. She complied and went with him to Birkirkara

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<sup>1</sup> Also known as Charmaine Connie Axiaq – reference Australian passport Doc. IS1. She was registered at birth as Louise Axiaq (certificate of Maltese citizenship, Dok. JG1)

out of fear. She explained that if she had refused, he would control her again and she did not want to be controlled by him.

In the accused's flat in Birkirkara she felt like a prisoner as Dragan and the Serbian person who also lived there, locked her inside and she was not allowed to go out. She also had to ask permission to have a shower and use the toilet. The accused also made her go with him to work at a bakery in Birkirkara. In total, she spent three days at Dragan's place until she waited for him to fall asleep at 2.00 a.m. and she escaped. She called a taxi and went to the Topaz Hotel on the 3rd November 2020, where she booked a room just for herself at €250 per month. She stayed alone in that room but from the 3rd to the 8th November, the accused kept calling her even though there was a Protection Order issued for her safety. She stated that the accused kept telling her that he wants to see her and that he loves her, however she does not believe this. She testified that she never told the accused her whereabouts but he discovered where she was staying from her Facebook timeline which is public. She felt sorry for him as he had nowhere to stay and he hadn't washed his clothes, so on the 9th November 2020 she let him come to the hotel to stay with her where she washed his clothes. She also explained that although he had paid €55 for three nights, the hotel management mistakenly placed this payment onto her room so that two persons were able to reside in her room for one month for only €305. During that whole time they were fighting constantly as in the past and she felt scared that he was going to do something to her. She explained that they went together on a boat ride for which she had booked tickets, where the accused, who has a bad temper, put her down and insulted her about herself such as calling her a hooker, that she was no good, that she was a crazy mother, that everything is her fault and generally being nasty, psychologically, emotionally, verbally and physically but not sexually. He also asked her if she would like to go inside the ocean, a question which scared her.

She also testified that while the accused was staying with her in the hotel room, she was afraid and asked him to leave but he did not want to as he said he wanted to make a future for them, an idea which for her was impossible since he was blaming her for

harming their sons and moreover he had never paid back any of the money she had lent him during the previous six years. She then waited for the accused to leave for work at the bakery and she asked the hotel reception to change the room number so that he would not know in which room she was. She changed the hotel room six times during that period and also changed her phone number. Over a period of two days, the accused called her around four hundred times on her phone and sent several messages. She took photos of him waiting outside the door of the hotel reception and she also saw him sitting outside the hotel for several hours at a time, filming her and waiting for her. When the hotel management eventually told the accused which room she was staying in, he brought her bags of groceries and left them in front of her room. She sent him out of her hotel room three times in all.

**WPS 158 Gillian Henwood** testified that on the 20th November 2020 a certain Louise Axiaq reported at the Domestic Violence Unit, escorted by the Qawra Police, that she had been in a five year relationship with Dragan Shojlev, which relationship ended on the 19th July 2019. She returned to Malta from Australia on the 1st November 2020 and as she was walking in Qawra and he saw her, he went towards her and grabbed her suitcase and told her to go to Birkirkara where he was residing. She reported that she was too scared to refuse and while she was at his residence, they argued and she ran away and went to stay at the Topaz Hotel. Since then, Dragan Shojlev started calling her constantly on her phone and several times at the hotel and he also spent entire days outside the hotel waiting for her to emerge. She did let her into her room as she felt sorry for him although six days before the report she had told him not to contact her. The witness also testified that Louise Axiaq had reported that she was scared to go out of the hotel and did not want to see Dragan or hear from him and she was so scared to switch on her phone that she also changed her sim card and asked that the Police accompany her to the hotel.

**Ina Said**, a rooms division manager at the Topaz Hotel, testified that Charmaine Axiaq arrived alone at the hotel on the 3rd November 2020. On the 9th November 2020 she added a certain Dragan Shojlev to her room against payment of an additional

€55 as the price for a room for two persons is of €300. He stayed with her for only one night as the next day, 10th November, Charmaine Axiak asked the hotel to remove him from her room and not to let him back inside the hotel. In fact Dragan Shojev departed from the hotel on the 10th November 2020 but the following day, Charmaine Axiak called the reception and asked them to allow him in since he was going to stay with her<sup>2</sup>. The witness testified that she informed Charmaine Axiak that if she had a problem with the person, then she should make a Police report. Subsequently, she called the reception to ask them to give her a different room and after a few days, she again asked the hotel to give her a room on a different floor because someone is following her and looking at the windows of her room.

She also testified that Charmaine Axiak was booked at the hotel until the 3rd December 2020 but when she requested to extend her stay till the 20th December, the hotel refused this request due to all the problems that she was giving them, having moved into six different rooms during the period of her stay due to various reasons - not only about the friend she had brought with her - amongst the neighbours of the room, noise, lack of a view and problems with the hotel staff including the housekeeping and front-desk staff. However although her complaints were investigated, nothing was ever found to be amiss. After Charmaine Axiak was informed that her request to extend her stay at the hotel was refused by the hotel, she booked the hotel through an agent and the hotel could not therefore, refuse her booking.

She also confirmed that initially Charmaine Axiak asked the hotel not to let Dragan in the hotel, then she asked that they let him in and finally not to let him in again, where they explained to her that once she had herself brought him to the hotel, they could not continue to interfere between the two of them. The witness also confirmed that two weeks before, she received a call from Days Inn Hotel in Sliema where Charmaine Axiak was staying, where she was asked to give her views regarding this guest and

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<sup>2</sup> Vide Doc. IS4 and Doc. IS9, page 85 and 94 *et sequitur* of the record of proceedings.

was informed by this other hotel that they too did not wish to keep her any longer as a guest due to her daily complaints about the staff.

**Inspector Eman Hayman** testified that the accused's telephone number is 99936505 which number was used in order to call and send text messages to the victim's mobile phone number, 99497139. He also testified that when Dragan Shojlev was arrested and interrogated, he did not deny that he called Louise Axiaq, but insisted that it was Louise who wanted him back and that she wanted him in order to help her find their children who had been removed under a care order. He believed that Louise needed help and he was trying to help her by staying outside the hotel and buying her food, as he had seen that she was not eating even though he could not physically see her.

**During his interrogation, Dragan Shojlev** stated that he is in an on-off relationship with Louise Axiaq since 21st May 2014 and over the years she caused him several problems, he gave her all his money and caused him to lose all the jobs he ever held. He also claims she works a prostitute in Malta and also internationally but they have twins sons together. She constantly tells him that she wishes to marry him and although he is willing to marry her, he is aware that she has mental problems and spent one month at Mount Carmel Hospital before she delivered the twins. He denied that he made contact her in Qawra and explained that she had called him several times from Australia to tell him she will be coming to Malta. She turned up in Birkirkara with a suitcase and told him that she had come from her cousin Joey in Gozo as he had thrown her out after she arrived from Australia and she wanted to move in with him and marry him. He told her that she cannot contact him as a Protection Order had been issued in order that he does not contact her, and so he made a report to the Birkirkara Police Station in this regard, where he was informed that it was unnecessary to make the report that he wished to make. He declared to be aware of the conditions of the Protection Order that he was not allowed to contact Louise Axiaq or to meet her or take photos of her and confirmed that there are criminal proceedings pending against him before the Gozo Court because she falsely reported a incident of domestic violence.



The accused stated that it was Louise Axiaq who first began to contact him and call him all the time wanting to meet but he did not visit her. She came to his place at Birkirkara but she did not like the place and wanted to move to Bugibba where she could find more work in prostitution. She left the flat in Birkirkara and called him to inform him that she was staying at the Topaz Hotel and asked him to go there and to pay €55. He complied and went there, paid €55 and there had sexual relations with Louise but the next day she told him to leave as she has another boyfriend Omar. He declared that his mobile number is 99936505. They went together to a boat party and then they argued as she wanted to know why he did not ask her to marry him and why he did not post photos with her on his Facebook page. When he explained why, she began to insult him. He also said that he had to leave as he had to catch the last bus to Birkirkara as he had work the next day and she told him that he could return the next day. When he called her that he was on the way to the hotel the next day, she told him not to come as she did not want him. He went anyway to bring her fruit and also food because she was in a psychological crisis as she was not taking her therapy and was acting in an unstable manner and aggressively blaming him for not wanting to marry her and for the Government taking their children from her. This occurred six days previously: she told him from the terrace that she does not want to see him and she would call the Police, so he tried with messages and calls. He also stated that Louise called him one hundred times while he called her around fifty times. He denied that he spent a long time outside the Topaz Hotel and he claimed that he only went there to deliver fruit to the hotel reception with a message from him that he loved her. He stated that he did call her the day before around 8 o'clock and sent her many messages and also asked her to take her out to dinner but she made it sound like she was with another man. He then told her that he was outside the Topaz Hotel when this was not true as he was in Swatar with a friend of his, and she said that she would call the Police. He insisted that he loves her as she is partner with whom he has children and does not want to share her with other men. He also claimed that Louise Axiaq changed the hotel room three times as she was prostituting herself at the hotel.

**Dragan Shojlev, the person accused,** chose to testify in these proceedings. He denied, in his testimony that he asked Louise Axiaq to go to his residence in Birkirkara. He explained that she had called him everyday about two months or more before she returned to Malta, to inform him that she was coming back to him as she loved him. He told her that she could not do that as he would be in breach of his bail conditions and would end up in jail as he was prohibited from contacting her. He therefore filed a report at the Birkirkara Police Station. However eventually she turned up with a large suitcase and found him in Birkirkara, telling him that she was homeless and had nowhere to go. Although he reiterated that she could not visit him, she was sentimental and broken and because she is the mother of his two sons, he did not wish to leave her out in the streets. However she told him that she must wash her clothes and although it was 2.00 a.m., she was going to call a taxi to take her to Bugibba. He went with her because it was night-time and the taxi dropped her off in Bugibba while he returned home. The following night she returned to his place in Birkirkara and he went with her back to Bugibba where she asked him to go with her to the Topaz Hotel where she was staying and after registering himself at the hotel, he stayed there for two nights. He had seen that her fridge at the hotel was empty and that she was hungry so he went to the supermarket near the Topaz Hotel and bought some food. Louise then booked a boat party and they went together to this party where they had an argument however they did return to the hotel where they slept together. However he left early as he needed to catch the last bus back to Birkirkara since he had work the following day. At that point Louise got angry and told him not to return anymore, but before he left he told her that he will bring her fruit the following day because she had lost too much weight. In fact, the next day he returned with bananas and oranges but although he tried phoning her for over one hour from outside the hotel beneath the terrace, she did not answer. He began to worry so he went to ask the hotel reception whether Louise was at the hotel. When he was informed that she was there, he went up to her room but she told him that she does not want him. He therefore told her that he would leave and drop off the bags with fruit at the reception desk. He admitted in his testimony that he did call her and send her

messages telling her that her mission was to destroy his life again and when one time she answered the phone, she told him that she would call the police.

Having considered;

That the defence during final oral submissions, pointed out that the note filed by Louise Axiaq on the 6th July 2021 where she declared to renounce to the criminal action in respect of the accused, must be taken to mean that the proceedings are to be discontinued as provided for in Article 543(e) of the Criminal Code.

The Court does not subscribe to that view. Article 543(e) of the Criminal Code speaks of a request made by the alleged victim of an offence involving domestic violence, for the stay of proceedings: in the case at hand, it is evident that Louise Axiaq never requested, neither in her said note and nor verbally before the Court, for these proceedings to be discontinued or stayed. The criminal action in respect of the accused was instituted upon a report filed by said Louise Axiaq with the Domestic Violence Unit upon which the Police were required to proceed *ex officio* against the accused irrespective of the complaint or the withdrawal thereof, by the victim. Therefore, the renunciation of the criminal action cannot produce the effect of a stay of proceedings. The Court would, *de minimis*, require the alleged victim to be personally present and testify under oath before the Court in order to even consider a request to stay proceedings, which request could then only be granted after particular consideration is given by the Court to the best interests of the complainant, any minors involved, and any other relevant third parties, as would result from the sworn testimony of the victim given upon and purposely in support of a request of the stay of proceedings. Nothing less than this could be sufficient in order that the Court might entertain a request that proceedings in respect of an offence involving domestic violence, as is without doubt the crime of harassment of a former or current partner of the accused, are stayed in terms of Article 543(e) of the Criminal Code. However in this case, Louise Axiaq never appeared before the Court following the filing of her

note on the 6th July 2021, neither personally nor through her lawyer, in order to request the Court to stay proceedings.

However, the declaration of Louise Axiaq that she wishes to renounce to the criminal action shall be considered as a mitigating factor which the Court will take into account for purposes of punishment in the eventuality of a finding of guilt.

Having considered;

The Court after having had much difficulty trying to make sense of the versions of the injured party and the accused, can only reach two positive conclusions: that their relationship is a highly unstable, explosive and unpredictable one and that both parties showed mutually erratic, irrational and extreme behaviour.

The circumstances of Louise Axiaq's arrival in Malta and her encounter with the accused, also remain unclear and the Court is not convinced of her version that she came across the accused in Bugibba and felt that she had to return with him to his residence in Birkikara because she feared him. The Court in this regard tends to believe defendant's version that it was Louise Axiaq who turned up in Birkirkara and persuaded him to join her at the Topaz Hotel. This is confirmed by Ina Said who testified that Louise Axiaq paid a further €55 to allow another person to stay in the hotel room for the remainder of the reservation period. The Court also observes that having testified that the accused locked her up in his flat for two or three days, Louise Axiaq failed to report this episode and accused's behaviour to the Police, particularly when she was aware that a Protection Order was in place against him, prohibiting him from making any contact with her and molesting her.

As for her allegation that she feared the accused, Louise Axiaq also failed to explain the reasons which led her to fear the accused and did not, in her testimony - save for reference to an ambiguous suggestion he made as to whether she would like to go into the ocean while at a boat party - remark that he threatened her or used some form of

violence which induced her to go with him to his residence. The Court cannot fail to point out that Louise Axiaq's erratic behaviour in allowing the accused to register himself as a guest in her hotel room immediately after she alleged to have escaped her imprisonment in his residence, turning him out of the hotel and then again giving instructions to allow him back in, does very little to convince the Court that she feared the accused would use violence against her or that he was harassing her. Even if Louise Axiaq had to be believed when she testified that she let the accused move into her hotel room because she felt sorry for him, it is evident that at this point, the accused could not have been acting in a manner that was distressing or alarming to her: undoubtedly, a person who fears the use of violence against them would not, acting rationally, invite the alleged perpetrator to share her hotel room and also buy him tickets to join her at a boat party the following day.

The Court also understands that the subsequent fall-out between the parties is the result of an argument that ensued between them at the said boat party and yet another manifestation of Louise Axiaq's evident volatile, inconsistent and difficult behaviour, evidenced also by the multiple and apparently unfounded complaints to the hotel management<sup>3</sup> as well as by her behaviour before the Court where on more than one occasion, she was invited to calm down and was impatient, aggressive and disrespectful.

Although the Court cannot identify in Louise Axiaq's testimony any one episode where the accused acted in a manner that would cause her to fear that he would use violence against her or her property, at least within the time-period defined in the charge-sheet, it is necessary to examine in further detail the accused's conduct following the argument between the parties following the boat party, where she instructed the hotel not to allow him back in. Although the Court is not at all satisfied that during the few days until then, the accused harassed Louise Axiaq or behaved in a manner as to cause her to feel distressed or pressured, the same cannot be said for the accused's behaviour subsequently to that incident.

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<sup>3</sup> See Inna Said's testimony and the correspondence exhibited, Dok. IS8.

The Court observes that our law does not give a general definition of behaviour that constitutes harassment and it is only Article 251C of the Criminal Code which, with reference *inter alia* to this particular crime, that provides a description of conduct that amounts to harassment: “*In articles 251A to 251BA, both inclusive, references to harassing a person include alarming the person or causing the person distress*”.

**Blackstone’s Criminal Practice** (2012 Ed.) describes the conduct amounting to harassment, as follows<sup>4</sup>:-

*“‘Harassment’ is generally understood to involve improper oppressive and unreasonable conduct that is targeted at an individual and calculated to produce the consequences described in s. 7. By s. 1(3) of the Act (see B2.143), reasonable and/or lawful courses of conduct may be excluded. The practice of stalking is arguably the prime example of harassment (Curtis [2010] 1 Cr App R (S) 193) but a wide range of other actions could, if persisted in, be so categorised. A course of conduct which is unattractive and unreasonable does not of itself necessarily constitute harassment; it must be unacceptable and oppressive conduct such that it should sustain criminal liability. See Majrowski v Guy’s & St Thomas’s NHS Trust [2007] 1 AC 224, per Lord Nicholls at [30]. Harassment includes negative emotion by repeated molestation, annoyance or worry. The words ‘alarm and distress’ are to be taken disjunctively and not conjunctively, but there is a minimum level of alarm or distress which must be suffered in order to constitute harassment.”* [emfasi tal-Qorti]<sup>5</sup>

In a judgement handed down by the Court of Criminal Appeal in the names **Il-Pulizija vs James Demanuele** decided on the 26th November 2009, it was held:-

*“... Illi t-terminu legali fastidju (bl-Ingiliz "harassment") gie definit mill-Black's Law Dictionary - (7th. edit.) bhala:- "Words, conduct or action (usu. Repeated or*

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<sup>4</sup> Blackstone’s Criminal Practice, 2012 Ed, B.2.140, p. 285.

<sup>5</sup> **Il-Pulizija vs Joseph Bajada** decided by the Court of Magistrates (Gozo) 2.05.2013.

*persistent) that being directed at a specific person, annoys, alarms or causes substantial emotional distress in that person and serves no legitimate purpose", dan l-element ta' ripetizzjoni jew persistenza ma jridx jigi konsidrat "in isolation" b' riferenza biss ghall-kaz mertu tal-kawza imma wkoll irid jitqies fl-isfond tar-retroxxena u ta' l-agir precedenti tal-gudikabbli."*

The Court of Criminal Appeal, in the sentence handed down in the case **Il-Pulizija vs. Alan Caruana Carabez**<sup>6</sup>, provided:-

*".... f' kazijiet bhal dawn ir-retroxena ghal kull incident hija importanti biex il-Qorti tkun tista' tispigola l-incident izolat u accidental minn agir abitwali ta' fastidju fuq periodu ta' zmien." Pero', xorta wahda jkun irid jirrizulta mill-provi ghall-fini tal-parametri tal-akkuza nnifisha."*

... ..

*... Kull tip ta' dan l-agir pero' hu kalkolat li johloq certa biza' f'dak li jkun b'mod li johloq sensazzjoni li qed tigi segwit u impoggi taht certa pressjoni ingusta. Hu proprju dan li din il-ligi l-gdida trid tipprojbixxi."* (enfasi ta' din il-Qorti)<sup>7</sup>

Louise Axiaq testified that she received persistent phone calls and text messages from the accused and was afraid to emerge from her hotel room even because he was watching her for several hours from the road outside the hotel over the following few days, ostensibly between the 13th and 17th November 2020. In fact, it does result from the evidence that had requested the personnel at the hotel reception desk to bar the accused from entry to the hotel and that she moves to another room on a different

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<sup>6</sup> Decided 21.6.2007.

<sup>7</sup> In its judgement in the names **Il-Pulizija vs Denise Falzon**<sup>7</sup>, the Court of Criminal Appeal explained:- "... hemm distinzjoni netta, fil-fehma ta' din il-Qorti, bejn dik l-imgieba li qed tohloq fastidju u dik li tohloq semplicement inkonvenjent. ... Illi jidher allura li t-test li ghandu jigi adoperat biex jigi stabblit jekk hemmx fastidju 'illecitu' o meno huwa billi jigi applikat it-test oggettiv iktar milli dak soggettiv filwaqt pero li jittiehed qies tal-fattispeci kollha tal-kaz u l-assjem taċ-cirkostanzi kollha li setghu wasslu lil kwerebant jiehu l-passi li ha."

floor<sup>8</sup>. She also testified that she received incessant and unrelenting calls and messages from the accused on her phone<sup>9</sup>.

The Court examined the call data records pertaining to the call profile of the number 99497139 registered in the name of Connie Axiaq<sup>10</sup>, received no less than circa 1,300 call and text messages and a further circa 340 attempted and unsuccessful calls from a number that corresponds with that which the accused during interrogation, declared to be his number, 99936505, between the 4th November 2020 and the 20th November 2020. Many of those calls and messages were indeed made during the aforementioned period.

This evidence alone might be sufficient evidence in itself of a conduct that is not only objectively and intrinsically assiduous but also highly distressing and it can reasonably be viewed as harassment as defined in accepted case-law.

It has been consistently held in local case-law that harassment includes:-

*“Kull tip ta’ dan l-agir pero’ hu kalkolat li johloq certa biza’ f’dak li jkun b’mod li johloq sensazzjoni li qed tigi segwit u impoggi taht certa pressjoni ingusta. Hu proprju dan li din il-ligi l-gdida trid tipprojbixxi.”*

More so when this evidence is placed within the context of the fact that the accused, even admittedly, waited for several hours over a span of two days outside the Topaz Hotel, watching and waiting for her to appear. Inspector Eman Hayman exhibited two photos (Dok. EH1 and Dok. EH2) which he confirmed in his testimony that were handed to him by Louise Axiaq as stated in her testimony. Although Louise Axiaq was not shown these photos in order to personally confirm that these are indeed the photos that she mentioned in her testimony, and although it is also true that the dates

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<sup>8</sup> See Dok. IS2 and Inna Said’s testimony.

<sup>9</sup> Testimony of Charmaine Zammit – CD Dok. CZ1 (“Switch cdrs”). Also see testimony of Inspector Eman Hayman, 14th December 2020.

<sup>10</sup> Passport number PA8399143, same as indicated in copy of Charmaine Connie Axiaq’s Australian passport (Dok. IS1).



on which she took these photos does not result unequivocally, the Court is satisfied that these photos were indeed taken in the days preceding the 20th November 2020, during the period of two or three days following the 13th November 2020 when Louise Axiaq requested the hotel management to bar the accused from entering the hotel. This falls clearly within the time-frame indicated in the charge sheet as the period during which the alleged harassment occurred.

Louise Axiaq testified that this behaviour made her believe that the accused was waiting for her and would follow<sup>11</sup>, which caused her to feel fear<sup>12</sup>. Even if accused's version, that he was worried about Louise Axiaq's health and waited for her outside the hotel to bring her food, is to be believed, the Court is unconvinced that this alleged purpose can be considered legitimate or reasonable and in any event does very little to explain the absurdly impossible number of phonecalls and text messages which can only be objectively perceived as unwarranted, excessive and consequently unreasonable behaviour.

In fact, the Court is satisfied that from an objective perspective, any reasonable person in possession of the same information would think that the accused's course of conduct in these circumstances amounted to harassment of the other person<sup>13</sup>. *Multo magis* if Louise Axiaq is to be believed when she testified that she asked the accused not to contact her again and not to return to the hotel, reasonable behaviour would require that he does not persist in his behaviour, particularly when he claims that she is highly-strung and suffering from a psychological crisis.

As already pointed out, the parties' relationship can only be described as atypical and possibly also bizarre and that Louise Axiaq might behave erratically, aggressively or unpredictably, or indeed suffered from bouts of psychological instability as alleged by the accused<sup>14</sup>. Although this should not, in the Court's view, detract from the fact that

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<sup>11</sup> Testimony 1st March 2021, page 151.

<sup>12</sup> "I'm still shaking and I'm still having nightmares" – testimony 1st March 2021.

<sup>13</sup> Article 251A(2) of the Criminal Code.

<sup>14</sup> No evidence in this regard was tendered by the defence.

the accused's conduct as a whole, particularly during the three or more days between 13th and 17th November 2020, appears to have been extreme and unreasonable, it is not convinced that Louise Axiaq's version of events with regard to the accused's behaviour during this time-period, is reliable.

The Court examined in depth the call data records exhibited in the record (Dok. CZ1) and although it is true that the accused made countless calls and sent innumerable messages to Louise Axiaq between the 4th and 20th November 2020, it would also result upon further examination of the call data records that the accused and Louise Axiaq spent a total of circa 7,244 seconds<sup>15</sup> in call-time as a result of phonecalls made by the accused to her number during the said period. This undoubtedly means that Louise Axiaq did not, as opposed to what she stated in her evidence, switch her phone off and purchase another SIM card in order to avoid the accused's calls and messages. Nor did she consistently hang up on the accused's calls. On the contrary, she entertained these phonecalls even after she alleged to have locked herself in her hotel room in order to avoid the accused.

**The Court would reasonably and logically expect that a person who claims to have been harassed by another person and made to feel distressed and pressured by his actions, would certainly not have answered repetitive calls from her alleged stalker and carried on conversations with him. Less explicable is the fact that it also results that Louise Axiaq herself during the aforementioned period, sent herself various text messages to the accused's number and called him several times from her own number. The Court identified a total of 4,410 seconds<sup>16</sup> of call-time as a result of phone calls that she herself made to the accused, including during the period after she claims to have tried to terminate all contact with him, in addition to the call-time registered in calls made to her from the accused' number.**

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<sup>15</sup> Over two hours.

<sup>16</sup> Almost 1 hour 15 minutes.

Faced with this objective evidence which contradicts and effectively undermines and disproves Louise Axiaq's testimony, the Court cannot rely on her version of events and has serious doubts also with regard the veracity of her statement that the accused's behaviour made her feel afraid and unjustly oppressed. Indeed, the victim's conduct as results from the call records, where she made an abundance of calls to the accused and entertained rather than shunned, his overabundance of calls and messages, is not quite compatible with the reaction of alarm or distress that one would expect from a victim of genuine harassment. The Court heard both parties testify and cannot, in the light of such evidence, be morally convinced that the victim felt harassed by the accused's behaviour when the contact between them was evidently mutual, and consequently cannot either dismiss the accused's version as improbable.

Consequently, the accused cannot be found guilty of harassing Louise Axiaq during the period to which the charges refer.

As already established previously, the elements of the crime under Article 251B of the Criminal Code, were not satisfactorily proven to the required degree and consequently the accused is being acquitted of the second charge.

Having considered;

The accused is also being charged with having by means of an electronic communications network or apparatus, threatened the commission of any crime or made any other improper use thereof<sup>17</sup>.

There is undisputed evidence in the record of proceedings that the accused made use of an electronic communication network, when he admittedly called and sent text messages Louise Axiaq by means of a mobile phone network. However the Prosecution failed to show that the accused threatened to commit a crime during one of these phonecalls or messages. As for the requisites of paragraph (c) of the said

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<sup>17</sup> Article 49(a) and (c) of Chapter 399.

Article 399, also cited by the Attorney General in his note committing the accused for trial by this Court, it has been held:-

*“Huwa assodat illum fil-ġurisprudenza in materja illi l-fraži “użu iehor mhux xieraq” ma jfissirx kwalunkwe użu jew kull offiża, insult jew kelma żejda, iżda għandha tiġi interpretata b’mod ferm aktar strett biex tirreferi b’mod ewlieni għal theddid, estorsjoni u attivitajiet illeċiti.”*

The Court found no evidence that the accused committed any of the acts mentioned in this paragraph and consequently, must acquit him of the thirs charge.

Having considered;

As for the contravention under Article 339(1)(e) of the Criminal Code, that is, uttering insults or threats not otherwise provided for in this Code, or being provoked, carries his insult beyond the limit warranted by the provocation, the Court is of the view that it results from Louise Axiaq’s testminony that the accused called her “a hooker”, that she “was no good” and that she was “a crazy mother”. Utterances that the Court agrees amount to insults since they are undisputedly disparaging statements that are intended to offend the victim.

However, as already pointed out, it would result that Louise Axiaq by means of a note signed by herself ostensibly in the presence of Dr. Arthur Azzopardi on the 5th July 2021 and filed in the record of the proceedings on the 6th July 2021, declared that she renounces to the criminal action. Consequently, the Court shall refrain from taking further cognisance of the action in respect of this contravention and shall also refrain from taking cognisance of the action in respect of the fifth charge in terms of Article 339(1)(d) of the Criminal Code.

Having considered;

That the accused is charged with having breached one or more of the conditions imposed in the decree with granted him bail, in terms of Article 579(2) of the Criminal Code.

Inspector Bernard Charles Spiteri testified that he had arraigned the accused person in these proceedings, Dragan Shojlev, under arrest before the Court of Magistrates (Gozo) upon a report of domestic violence filed by Louise Axiaq and was granted bail on the 30th August 2019 by means of a decree marked Dok. BS1<sup>18</sup>, subsequently varied by a decree dated 9th July 2020<sup>19</sup>. A Protection Order was also issued against Dragan Shojlev on the same date, prohibiting him from contacting or molesting Charmaine Axiaq, amongst other conditions, until final judgement is delivered in the proceedings<sup>20</sup>. Inspector Bernard Charles Spiteri testified that indeed, the criminal proceedings against the accused were still pending as of the date when the witness testified, 1st March 2021.

Upon examination of the said decree, it would result that one of the conditions imposed on the accused was “*that he does not speak to or in any way approach the witnesses of the Prosecution.*” It is undisputed that during the continuance of the proceedings in which the said bail decree was delivered, that is in November 2020<sup>21</sup>, the accused not only spoke to but also frequented and slept with Louise Axiaq, on whose report the said proceedings were taken against the accused and who, as confirmed by Inspector Bernard Charles Spiteri in his testimony, was the injured party in the said proceedings. Thus, the accused must be found guilty of having failed to observe one of the conditions imposed in the decree granting him bail.

However the Court took judicial notice of the judgement delivered on the 29th April 2022 in the proceedings against the accused in the names **The Police (Inspector Bernard Charles Spiteri) v. Dragan Shojlev**, during which he was granted bail in

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<sup>18</sup> Page 106 of the record.

<sup>19</sup> Dok. BS3.

<sup>20</sup> **The Police (Inspector Bernard Charles Spiteri) v. Dragan Shojlev.**

<sup>21</sup> At this time, proceedings against the accused in which he was granted bail, were still pending – see testimony of Inspector B. C. Spiteri, 1st March 2021.

virtue of the decree of the 30th August 2019 and took note of the fact that the accused was ultimately acquitted of all charges brought against him. This acquittal although irrelevant for the purposes of establishing guilt or otherwise for the purposes of the crime under Article 579(2) of the Criminal Code since, as already established, the decree was in force when the accused breached one of its conditions in November 2020, shall be taken into account for the purposes of the punishment to be inflicted on the accused upon a finding of guilt under said Article 579(2).

The same considerations apply in respect of the crime defined in Article 412C(11) of the Criminal Code, attributed to the accused in the seventh charge in the summons, that is, having breached any prohibition or restriction imposed in the Protection Order issued on the 30th August 2019 in respect of the accused for the benefit of the safety of Charmaine Axiaq (Dok. BS2)<sup>22</sup>. The accused must be found guilty as charged since it is evident that he breached the conditions marked (a) and (b) which prohibited his approaching or following the movements of Charmaine Axiaq and restricted his contacting or molesting the said person. As would abundantly result from the evidence, even by the accused's own admittance, he acted with total and unashamed disregard for these two restrictions on and during the days preceding 20th November 2020.

However, for the purposes of punishment, the Court shall take into account both the accused's acquittal in the proceedings in respect of which this Protection Order was issued, and Louise Axiaq's renunciation to the criminal action in respect of the accused where she also declared that she was no longer insisting on the enforcement of the Protection Order issued by this Court in the present proceedings, on the 4th March 2021. The Court must also consider the fact that as already established, Louise Axiaq herself appears to have not only taken the initiative to contact the accused herself initially, upon her arrival in Malta, but also contacted him several times and also entertained his own calls and messages.

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<sup>22</sup> Page 107 of the record.

Moreover, the accused has a completely clean criminal record and, as already established, the victim declared that she no longer wishes to insist on the enforcement of the Protection Order ostensibly in view of the long-standing albeit erratic relationship between the parties and the fact that they are the parents of two minor children. All these circumstances convince the Court that it would be inexpedient to inflict punishment even because it considers that a Probation Order, a Community Service Order or a Combination Order are not appropriate, and that consequently, it would be fitting to make an order discharging the offender conditionally (“an order for conditional discharge”) for the purposes of the finding of guilt for the crime of harassment under Article 251A with the aggravating circumstances defined in Article 251H(a) of the Criminal Code.

As for the forfeiture of the sum stated in the bail bond in terms of the provisions of Article 579(2) of the Criminal Code, the Court deems that the gravity of the condition that was proven to have been breached by the accused’s conduct, is undisputed. After all, the interference or attempt to interfere with witnesses for the Prosecution amounts to an obstruction or attempt to obstruct the course of justice and so the condition that the accused person who is released from detention on bail, refrains from approaching and speaking to witnesses for the Prosecution at all stages of the proceedings, must be considered as one of paramount importance. However as already pointed out, the Court shall take into account the fact that the proceedings in which the accused was granted bail, resulted in the accused’s acquittal and the fact that the victim chose to renounce to the criminal action and not insist on the enforcement of the Protection Order issued in his regard.

**For all these reasons while declaring the accused not guilty of the first, second and third charges and acquits him and while refraining from taking cognisance of the fourth and fifth charge, after having seen Articles 17, 412C(11) and 579(2) of the Criminal Code, finds DRAGAN SHOJLEV guilty of the sixth and seventh charges but after having seen Article 22 of Chapter 446 of the Laws of Malta,**

**discharges him subject to the condition that he does not commit a criminal offence during the period of three (3) years from the date of this order.**

**For the purposes of Article 579(2) of the Criminal Code, orders that the sum of three hundred Euro (€300) of the total amount stated in the bail bond established in the decree dated 30th August 2019, shall be forfeited to the Government of Malta, but rejects the Prosecution's request for the revocation of bail and the re-arrest of the offender.**

**After having seen Article 383 of the Criminal Code and in view of the fact that it is expedient to so order, the Court binds over the offender by requiring him to enter into his own recognizance in the sum of two thousand Euro (€2,000) for a period of twelve (12) months to keep the peace with and not to molest Louise also known as Charmaine Connie Axiaq.**

**DR. RACHEL MONTEBELLO  
MAGISTRATE**