



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

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

Case No.: 654/2021

**THE POLICE
(Inspector Godwin Scerri)**

-Vs-

**UGLJESA LALIC
-OMISSIS-**

Today, 8th May 2023

The Court,

Having seen the charges¹ brought against **UGLJESA LALIC** of 27 years, son of Zarko and Stefania nee Sarek, born in Croatia on the 8th September 1993, residing at 'Delphi Court' Flat 15, Tamar Street, St. Paul's Bay and holder of Maltese residents permit bearing number 235117A and *Omissis* who were accused of having on the 5th September 2021 at around 22:30 hrs at Harel Street in St. Paul's Bay:

¹ Charge sheet filed on the 16th September 2021 and correction authorised by decree of the 30th September 2021

1. Without the intent to kill or to put the life of Milan Panic in manifest jeopardy caused the mentioned slight bodily harm by means indicated in *Article 217 of Chapter 9* and in breach of *Article 211(1)(2) of Chapter 9 of the Laws of Malta*.
2. On the same date, time, place and circumstances disturbed the repose of the inhabitants by rowdiness or bawling, or in any other manner in breach of *Article 338(dd) of Chapter 9 of the Laws of Malta*.
3. On the same date, time, place and circumstances of being drunk and incapable of taking care of himself whilst in public place or place exposed to the public in breach of *Article 338(ff) of Chapter 9 of the Laws of Malta*.

Lalic Ugljesa is also solely accused of having,

4. On the 5th of September 2021 at around 23:30hrs at Tamar Street in St. Pauls Bay, committed voluntary damages to the detriment of third parties, with damages exceeding the amount of 2500euro, in breach of *Article 325(1)(a) of Chapter 9 of the Laws of Malta*.
5. On the same date, place, time and circumstances, committed the crime of theft aggravated by means, value, place and time to the detriment of Milan Panic, in breach of *Articles 263, 267, 269 & 270 of Chapter 9 of the Laws of Malta*.
6. On the same date, place, time and circumstances, caused any unnecessary pain, suffering or distress to a domestic animal in breach of *Article 8(2) of Chapter 439 of the Laws of Malta*.

7. On the same date, place, time and circumstances, when not in a case of an emergency which visibly indicates extreme pain conducive to death, killed a domestic animal in breach of *Article 13 of Chapter 439 of the Laws of Malta*.

The Court was also requested to issue a protection order to the benefit of Milan Panic in terms of *Article 412 (C) of Chapter 9 of the Laws of Malta*, during the proceedings of the case and in the event of guilt.

The Court was also requested that if the accused is found guilty, condemns the same to the payment, wholly or in part, to the registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee in terms of *Article 533 of Chapter 9 of the Laws of Malta*.

Having heard the accused during the examination plead not guilty;

Having seen that the Attorney General by means of a note dated 30th September 2022 sent the accused for trial before this Court in respect of the offences under the following articles of law:-

- Articles 214, 215 and 221(2) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Article 338(m) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Article 338(ff) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Article 325(1)(a) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Articles 261(b)(c)(e)(f), 263(a), 264, 265, 266, 267, 269(g), 270, 278(1)(2)(3)(4), 279(b), 280(1)(2), 281(b) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Article 8(2) and 45 of the Animal Welfare Act, Chapter 439 of the Laws of Malta;

- Article 13(1) and 45 of the Animal Welfare Act, Chapter 439 of the Laws of Malta;
- Articles 15A, 17, 20, 31, 382A, 383, 384, 385, 386, 412C, 412D, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

Having heard all the witnesses and seen all the 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;

The accused is charged primarily with the crime of slight bodily harm on the person of Milan Panic and with having committed this crime by one of the means mentioned in Article 217 of the Criminal Code, that is, with arms proper, or with a cutting or pointed instrument, or by means of any explosive, or any burning or corrosive fluid or substance.

From the evidence adduced as part of the record, it would result that the bodily harm was suffered by Milan Panic during a fight that broke out on the 5th September 2021 Monovale Bar in Bugibba, between the injured party and the accused and his brother Davorin Lalic, who had met up for some drinks with another two friends.

Milan Panic testified that the accused was arguing with his brother and then turned to him and called him an idiot. When he asked Ugljesa why he had addressed him in this manner and also reminded him that he accepted to host him in his apartment, he challenged him and headbutted him and as he rose to stand up, the accused, who was

behind him, hit him with a bottle on the nape of his neck. He confirmed that the accused had been drinking Skol beer from a bottle at that time. At that point he fell onto the bench, where Davorin Lalic sat on him and punched him a few times, while the accused took two or three bottles and tried to hit him with them. However, he somehow managed to move away however when he tried to leave the bar, he found the accused at the exit where he punched him in his eye.

The victim's version is substantiated by the footage of the incident² which was examined in detail by the Court and shows the person accused rising from the table during a discussion, approaching Milan Panic, addressing him aggressively and, while he was still seated, headbutts him and hits him several times. At the same time, the victim also received blows at the same time from another person seated on the other end of the same bench. While he was standing behind Milan Panic, the person accused is also clearly seen beating him over the head with a dark-coloured bottle that he grabbed from the table while the victim is held down by another person. The bottle breaks while being struck over the victim's head but the accused continues to hit the victim over the head with the broken bottle. He then grabs another bottle but does not manage to hit the victim with it and as the victim manages to rise and attempts to leave the table, the accused finally punches him in the face³.

This footage was confirmed to have been handed to the Police by the owner of the bar, Mark Debono who testified⁴ that the day following the incident that took place on the 5th September 2021, the Police were handed a USB drive containing the footage of the incident from the CCTV camera installed on the premises which footage he confirmed to have transferred and saved onto a USB drive. He confirms that the USB drive Dok. GS4 might be the USB drive onto which he transferred and saved the footage, which was then handed to the Police by his business partner Eugenio Cini.

² USB drive Dok. GS4.

³ See still images at pages 331, 336 and 337 of the record: extracted from USB drive Dok. GS4 by court-appointed expert Dr. Steven Farrugia Sacco

⁴ 6th January 2022.

The said Mark Debono, who witnessed the incident, corroborated Milan Panic's version in substance when he testified that he witnessed two persons punching and hitting another person over the head and saw bottles being used during this fight.

The accused, Ugljesa Lalic, in a statement released to the Police during his interrogation on the 6th September 2021 and after having been afforded all his legal rights, declared that he argued with Milan Panic, with whom he had been friends for over fifteen years, because he was trying to make fun of him in front of their friends, asking him where he would be sleeping that night and accusing him of having nothing in his life and that he had taken him into his own home. He agreed that he had been drinking beer at Monovale Pub and was drunk at the time. He claimed that Milan Panic had addressed him rudely and mentioned his late mother who he knew to be dead. Finally, he acknowledged that he and his brother are indeed the persons who are seen in the footage from CCTV camera at Monovale Pub, hitting Milan Panic several times.

He also stated that after having left Monovale Pub after the incident, he went to collect his belongings from the apartment she shared with Milan Panic, where he admitted that he damaged the TV, mirror, plants and other furniture in the apartment but insisted that he took Milan's watch unintentionally, mistaking it for his own watch which was similar. He also said that he was sorry.

The person accused also testified before the Court⁵.

Having considered;

That after having reviewed all the relevant evidence, the Court deems that the Prosecution brought sufficient evidence that proves beyond a reasonable doubt that the injuries suffered by Milan Panic during the assault at the Monovale Pub were caused by the accused as well as by his brother Davorin Lalic. This persuasion, in so

⁵ 19th January 2023 (fol 411)

far as the accused's role in the commission of the crime is concerned, is further reinforced by the accused's own confession during his interrogation.

The Court does not find sufficient evidence that the accused was provoked into assaulting the victim and hitting him on the head with a bottle and in any event, no suggestion was made made by the defence, not even during final oral submissions, that the Court should apply the extenuating circumstances mentioned in Article 227 of the Criminal Code. Indeed, the accused himself failed to mention in his own sworn testimony that he was provoked or that he acted under the first transport of a sudden passion, heat of blood or mental excitement in consequence of which he was, in the act of committing the crime, incapable of reflecting.

Milan Panic testified that as a result of the assault at the hands of the accused, specifically due to the blow to his head with the bottle, he received seven sutures on the right-hand side of the back of his head. He also confirmed that he suffered several bruises and abrasions. These injuries were certified by Dr. Marica Galea who examined Milan Panic on the 6th September 2021 at 1.25 a.m. at the Mosta Health Centre. She testified that he had an open laceration wound on the occipital area, at the back of the head, which required seven sutures, and also a bruise on the upper eyelid of the left eye, some abrasions on his back as well as redness on his right scapula. The certificate signed and confirmed by the witness states that the injuries suffered by Milan Panic were of a slight nature, save complications.

As for the laceration wounds at the back of the victim's skull, which lacerations had to be stitched with seven sutures, the CCTV footage (Dok. GS4) and the victim's testimony abundantly prove that they were caused by none other than the accused when he smashed a bottle over the victim's head and continued to hit him on the head several times with the same bottle. The CCTV footage, clear as it is, shows only the accused and nobody else, grabbing a bottle from the table and striking it over the victim's head. In the Court's view, these lacerations to the victim's head, struck as it was with a broken bottle, were caused by means of a cutting and pointed instrument in

terms of Article 217 of the Criminal Code which means that in the circumstances, the applicable punishment is that mentioned in Article 221(2) of the Criminal Code.

Having considered;

It is undisputed that Ugljesa Lalic, the person accused, had in the preceding days, been living in the apartment rented out to Milan Panic, property of Gordon Gilford.

It is abundantly proven from the evidence adduced in the record, and even by the accused's own admission, that on the evening of the 5th September 2021 after having left Monovale Bar, he visited the apartment rented out to Milan Panic, where he damaged the TV, mirror and other furniture. Davorin Lalic, the accused's brother, also confirmed in his testimony that after the fight at Monovale Bar he drove his brother to Milan's flat in order to collect his belongings and he also confirmed that subsequently, the accused told him that he had caused some damage to the furniture in the apartment.

Gordon Gilford, the owner of this apartment at 15, Delphie Court, Triq it-Tamar, Bugibba, confirmed in his testimony that the objects and furniture that were found to be damaged during the night between the 5th and the 6th September 2021, were the following: mirror, main door, television, fridge, freezer, oven, extractor hood, internal door, part of the wardrobe in the spare bedroom and other damages in the main bedroom⁶. He also confirmed that these damages rendered the apartment uninhabitable which meant that it could not be rented out until the necessary repairs were carried out and the apartment cleaned from the smashed glass and bloodstains and also eggs thrown at the wall. He subsequently testified that the total value of the damages caused to the apartment is of €6,205 not including the expenses required for the plastering and painting of the apartment⁷.

⁶ Refer to testimony of Gordon Gilford, 16th September 2021 and photos Dok. GG1 until Dok. GG13.

⁷ Refer to supporting documentation Dok. GG14 and GG15.

This means that the amount of the damage caused by the accused to the detriment of Gordon Gilford alone exceeds the sum of €2,500 mentioned in Article 325(1)(a) of the Criminal Code.

Meanwhile, the accused is also charged with having wilfully committed damage to the movable property belonging to Milan Panic. Panic testified that his laptop and printer both sustained damages following the rampage carried out by the accused in apartment, and he produced photos showing the damages sustained.

The Court has little if any doubt that the prosecution brought forward sufficient evidence that satisfactorily proves that the accused wilfully caused damage to the property of Gordon Gilford and to objects belonging to Milan Panic in an amount that exceeds the value established by Article 325(1)(a) of the Criminal Code.

In fact, Gordon Gilford testified that he reached a settlement with the accused⁸ who paid him the total sum of €5,500 in full and final settlement of all damages caused in the apartment at 15, Delphi Court, Block D, Triq it-Tamar, Qawra. He also confirmed in his testimony before the Court that he has no further claims against Ugljesa Lalic in connection with the damages that were caused to his property.

During the hearing of the 17th April 2023, the lawyer for the injured party, Milan Panic, confirmed in his presence that he had no further claims against the accused in respect of the damaged and lost items forming the object of the fourth and fifth charges brought against the accused.

The fact that the accused immediately reimbursed both Gordon Gilford and Milan Panic the value of the damages caused by him shall be taken into consideration by the Court for the purposes of punishment to be inflicted upon a finding of guilt for the commission of the crime mentioned in Article 325(1)(a) of the Criminal Code, which carries a punishment of imprisonment for a term of eighteen months to four years and

⁸ True copy of private writing dated 11th November 2021.

in the circumstances the Court is of the view that the said punishment should be awarded in its minimum.

Having considered;

That as for the fourth charge whereby Ugljesa Lalic is accused of having committed aggravated theft to the detriment of Milan Panic, Panic testified that a Dolce Gusto coffee machine, a bottle of perfume and two of his watches went missing from the apartment. He confirmed that the two watches and the perfume were returned to him and although the accused also tried to return the coffee machine, he did not accept it back since it was broken. He also confirmed that the accused had a similar Casio watch.

In the Court's view, while it is amply proven even by his own admission that the accused removed items belonging to Milan Panic from the rented apartment on the night of the 5th September 2021, the Prosecution failed to bring sufficient evidence to convince the Court beyond a reasonable doubt, of the concurrence of all the elements that are required to prove the crime of theft, above all, the formal element of the crime. The Court after having reviewed all the evidence, cannot be morally convinced that when the accused removed the objects belonging to Milan Panic from the apartment, he acted with the necessary and specific *dolo* that is, voluntarily with the intent to acquire an advantage for himself or some other person (*lucro*).

It has been held that:

*“... nella nozione di profitto rientra qualsiasi utilita` o sodisfazione, anche puramente morale, che l'agente intenda ricavare dall'impossessamento della cosa.”*⁹

⁹ Corte di Cassazione, 9 ta' Ottubru 1980. This is also the opinion expressed by Prof. Sir A. Mamo [Notes on Criminal Law, 1958, Vol. II].

While it is true that case-law is established in that the crime of theft is complete and consummated as from the moment that the object is removed from the place where it was to be found, this existence of the formal element must be determined from an examination of the circumstances of the case. In the case at hand, it is uncontested that the accused went to the apartment in order to collect and remove his belongings. It is true that while there, he also caused substantial damage to the apartment as well as to objects belonging to Milan Panic, however this does not in and of itself establish the intent to commit theft. In fact, while it results that the accused owned a Casio watch which was identical to his own Casio watch that went missing from the apartment, he had also acknowledged from the outset during his interrogation that while he was clearing the apartment of his belongings, he had also mistakenly taken away some objects that belonged to Milan Panic and wanted to return them to him.

He testified:-

“I entered the flat, I was packing, I wanted to pack my things and leave, I was packing ... by mistake I wake some watches and perfume of Mr. Milan by mistake, because we have similar watches and things, by mistake I put them in my bag. When I realise I got to do it the next day, I gave him back all the things because I take it by mistake.”¹⁰

The Court also observes that the personal nature of the objects removed by the accused is such that in the circumstances where the accused wanted to hastily remove all his belongings from the premises while his brother was waiting downstairs in the car, and where it there is room for a clear inference that he wanted to leave the premises before third parties were alerted to the damages he caused, it is reasonable to believe that the missing items would have been mistaken for the accused’s own belongings. The Court therefore deems that the accused’s version has been proven on a balance of probabilities.

¹⁰ 19th January 2023.

This conclusion is reinforced by the fact that Milan Panic subsequently testified that the accused did indeed return the missing items, save for the coffee machine, and from the declaration that was registered at the hearing of the 17th April 2023, the Court understands that he is satisfied with the restitution made by accused.

Consequently the accused cannot be found guilty of the fifth charge relating to the crime of aggravated theft.

Having considered;

As for the sixth and seventh charges brought against the accused in terms of the Animal Welfare Act (Cap. 439), the Court saw the photos taken and exhibited by PS186 Kristian Mintoff who photographed the damages in the apartment rented out to Milan Panic and it is immediately evident in the Court's view that the accused's version that he did not smash the cage or even realise that the cage had fallen to the floor or that the bird had died, is not credible.

The state of the cage and the dead bird as shown in the photos leave no doubt in the Court's mind that the bird cage did not merely fall to the floor accidentally, because in such a case - particularly when according to the accused the cage was kept on a low table in the corridor - the bird would have certainly not suffered the injuries shown in the photos and nor would it have necessarily ended up outside the cage, less so with its wings evidently torn off and its blood smudged onto the floor. The state in which the bird appears in the photo support the view that the bird was either smashed onto the floor or trodden on, a state which is incompatible with a situation where the cage might have fallen to the floor with the bird inside¹¹. The accused admitted that he deliberately damaged the furniture and other objects in Milan Panic's rented apartment and consequently, having established that the accused acted alone when causing the damage to the apartment and the belongings of Milan Panic, it is undisputed that the

¹¹ Refer to photo MP10 and photos at page 207 until 209 of the record of proceedings.

bird was also slain in the course of this rampage and therefore deliberately and not accidentally.

Furthermore, the Court has no hesitation to infer from the facts resulting from the evidence, that the state in which the bird is shown to have ended up could not have been caused without the animal having undergone a substantial dose of trauma, pain and suffering, even if only for a few seconds. Consequently, since it was not shown on a balance of probabilities, that the demise of the bird was the result of a third person's actions and since it is excluded that this was due to an accident, the Court is morally convinced that the accused not only killed the bird but also caused it to undergo unnecessary pain and suffering which led to its death. The accused did not allege and brought no evidence to show that the bird was killed due to an emergency or because it was in extreme pain.

Consequently the accused must be found guilty of (i) having breached the provisions of Article 8(2) of Chapter 439 of the Laws of Malta which stipulate that no animal shall be caused any unnecessary pain, suffering or distress or subjected to any activities which are not in his nature, and also of (ii) having killed an animal¹² of a domesticated breed in circumstances exclude that there existed an emergency which visibly indicated extreme pain conducive to death. The Court must therefore apply the punishment stipulated in Article 45(1)(a) of Chapter 439 of the Laws of Malta.

Having considered;

That the accused is charged with having committed the contraventions specified in Article 338(m) and Article 338(ff) of the Criminal Code.

In his testimony the accused confirms that he was drunk at the time when he went to the apartment rented out to Milan Panic in order to pack and take his belongings while in his statement, he acknowledged that he was drunk that evening.

¹² "Animal" means all living members of the animal kingdom, other than human beings – Article 2 of Cap. 439.

These admissions are not in the Court's view sufficient to establish the accused's guilt in respect of the contravention mentioned in Article 338(ff) of the Criminal Code because while it is true that the material element of drunkenness is proven, the other element that is required to be proven cumulatively, that is, that the accused was incapable of taking care of himself in a public place, was not sufficiently proven. Nowhere does it result from the evidence that the accused could not take care of himself and the fact that he acted in an uncontrollably aggressive manner at Monovale Pub does not amount to an incapability of taking care of one's self.

As for the contravention under Article 338(m) of the Criminal Code, that is having, at night time, disturbed the repose of the inhabitants by rowdiness or bawling, or in any other manner, the Court again cannot find the accused guilty.

In the judgement delivered by the Court of Criminal Appeal in the names **Il-Pulizija vs. Marco Debono**¹³, it was held that for the purposes of this contravention it must be proved that the rowdiness or bawling amount to a "*nuisance*", that is, that "*substantive inconvenience and material discomfort*" is caused to other persons who live in the vicinity of the rowdiness. It was also held that the inconvenience must be grave and not easily tolerated, as well as continuous and intense.

However, the same Court, in a later judgement, **Il-Pulizija vs Stephen Attard et**, held that the afore-mentioned criteria were too strict and that a more flexible approach to would be in order. The Court also reaffirmed that it must in each case on the basis of the evidence adduced, evaluate the testimony of the inhabitants who would have complained of the disturbance in order to determine whether the rowdiness effectively amounted to a disturbance or an inconvenience or otherwise, always according to the particular circumstances of the case.

¹³ Decided on the 18th November 2011.

This Court is of the view that the accused cannot be found guilty of this contravention because it was while the material element of the rowdiness is sufficiently established from the evidence – it does not result that this actually disturbed the repose of any person. Indeed no inhabitant of the vicinity was brought to testify that the incident that took place at the Monovale Pub on the 5th September 2021 disturbed them and caused an inconvenience and consequently, the element of the disturbance of the repose of inhabitants was not proved.

Having considered;

That for the purposes of punishment, the Court took into account various factors amongst which the extreme behaviour of the accused as shown in the CCTV footage, striking Milan Panic's head with a glass bottle several times, causing the head injuries suffered by Milan Panic.

It also considered that the accused has a clean criminal conduct but most of all the fact that he compensated Gordon Gilford and Milan Panic for all the damages and loss that they incurred as a result of his actions constituting the crime under Article 325(1)(a) of the Criminal Code. The apology made by the accused in his statement (which released only a short time after the incident) for having committed the crimes, shall also be taken into account, together with the fact that the accused and the victim were old friends who were living together and that this incident, albeit extreme, was an isolated one, for which the accused expressed remorse.

The Court also considered that the actions of the accused constituting the crime of having caused slight injuries to Milan Panic in terms of Article 221(2) of the Criminal Code, and his actions constituting the crime of wilful damage to property in terms of Article 325(1)(a) of the same Code, although breaching more than one provision of law and committed at different times, were committed in pursuance of the same design, and consequently the Court shall apply only the punishment for the graver offence, that is the offence under Article 221(2) of the Criminal Code. In the

aforementioned circumstances the Court also considers it would be fitting to use its discretion under Article 28A of the Criminal Code and in any event, this is indicated by the provisions of subarticle (2) of the said Article 28A.

For these reasons the Court, while finding the accused not guilty of and acquits him from the second, third and fifth charges, after having seen Articles 17, 31, 217, 221(2) and 325(1)(a) of the Criminal Code, finds UGLJESA LALIC guilty of the first and fourth charges and condemns him to imprisonment for two (2) years but upon application of Article 28A of the Criminal Code orders that this sentence shall not come into effect unless during a period of four (4) years, the offender commits another offence punishable with imprisonment.

After having seen Articles 8(2), 13 and 45(1)(a) of Chapter 439 of the Laws of Malta (Animal Welfare Act), finds UGLJESA LALIC guilty also of the sixth and seventh charges and condemns him to a fine *multa* of two thousand Euro (€2,000) to be paid within one year.

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 Milan Panic.

In terms of Article 533 of the Criminal Code, Chapter 9 of the Laws of Malta, orders UGLJESA LALIC to pay to the Registrar of Court the sum of six hundred and twenty nine Euro and seventy one cents (€629.71) by way of costs incurred in connection with the employment of Dr. Steven Farrugia Sacco¹⁴ as court expert in these proceedings, within six (6) months.

¹⁴ Dok. SFS, refer to page 309 of the record.

Orders that a copy of this judgement is served on the Registrar of Courts for the purposes of Article 533 of the Criminal Code.

**DR. RACHEL MONTEBELLO
MAGISTRATE.**