Criminal Court of Appeal

Hon. Judge Edwina Grima, LL.D

Appeal No: 15/2020

The Police

vs

Desislava Vasileva Maksimova

Today, the 31st of May 2023

The Court,

Having seen the charges brought against appellant Desislava Vasileva Maksimova, holder of Bulgarian identification card number 640025050, wherein she was accused before the Court of Magistrates (Malta) of having:

1. Between the night of the 11th and the early hours of the 12th of January 2020, whilst at residence number 74, Toni Bajada Street in St. Paul's Bay, without the intent to kill or to put the life of Georgi Hristov Hristov in manifest jeopardy, with the use of a cutting or pointed instrument caused the mentioned grievous bodily harm;
2. On the 11th and the 12th of January 2020, in St. Paul's Bay, knowingly suppressed or in any other matter destroyed or altered the traces of, or any other circumstantial evidence relating to an offence.

The Court was also requested to consider the accused as being a recidivist.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 27th of September 2022, wherein the same Court, after having seen (1) Articles 17, 31, 111(2), 214, 216(1)(a) and 217 of Chapter 9 of the Laws of Malta, found the accused guilty under the said Articles and condemned her to two years imprisonment and (2) after having seen Articles 49, 50 and 218 of Chapter 9 of the Laws of Malta, did not find the accused guilty under the said articles and acquitted her of the same. The Court also ordered the accused to pay all the court expenses relative to the case amounting to €2,741.74 to the Registrar of Courts under Article 533 of Chapter 9 of the Laws of Malta. The Court also ordered the Commissioner of Police to immediately initiate legal proceedings against Georgi Hristov Hristov on charges of domestic violence as well as charges relating to the injuries caused to the accused under the Articles of Law he deems fit and charges under Article 111(2) of Chapter 9 of the Laws of Malta, amongst others, which may result from the investigation of the Police relating to this incident.

Having seen the appeal application filed by appellant Desislava Vasileva Maksimova, on the 12th of October 2022, wherein she requested this Court to vary the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature given on the 27th of September of the year 2022 and this by confirming that part of the judgment where the Court of First Instance found the appellant not guilty under Articles 49, 50 and 218 of Chapter 9 of the Laws of Malta, and to declare the appellant not guilty of the first and second charges proferred against her and to acquit her of these charges and of any penalty and order imposed upon her because of this finding of guilt and in the case that appellant is not acquitted and is found guilty of the first or second charges, or of both charges proferred against her, to annul and revoke that part of the judgment referring to punishment, and impose a different punishment which is more fit and appropriate than that decided by the Court of Magistrates including the order regarding the payment of the Court expenses and which sentence will be more consonant with the facts and the circumstances of the case.

Having seen all the records of the case.

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

Having acceded to the request of appellant for the compilation of a pre-sentencing report in her regard.

Having heard Probation Officer Joanna Farrugia give evidence on oath and having seen her report marked Document JF1.

Having heard submissions by the parties.

Considers:

The first grievance brought forward by appellant relates to the merits of the case and the evaluation of the same made by the First Court with regards to the first charge. Appellant deems that the First Court failed to apply procedural law correctly and arrived at its conclusion of guilt on evidence which certainly does not prove her guilt beyond a reasonable doubt as required by law.

This Court reiterates, as expounded in jurisprudence, that the only instance in which this Court may revoke a judgment delivered by the First Court on its merits is when it deems that the said judgment is unsafe and unsatisfactory. Thus the Court has re-examined the acts of the proceedings and this in order to determine whether the evaluation of the evidence carried out by the First Court was reasonably and legally correct[1].

[1] 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 Asciak 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 l-Appelli 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.

Considers:

The incident which centres around the merits of this case took place between the 11th and 12th of January 2020 when appellant reported to the Police that her boyfriend had just been stabbed. When the Police arrived on the scene, they found Georgi Hristov Hristov lying on the kitchen floor of appellant's residence covered in blood. The victim explained to the Police that he had been mugged by two male persons on his way home, who had attacked him, a story that was confirmed by appellant. However, the Police noticed that there was no blood in the first room of appellant's residence nor was there any trace of blood on the street where the alleged mugging had supposedly taken place, and so they questioned the victim and appellant once again with regards to their allegations. It then transpired that this was a domestic violence incident and that the victim had returned home after a drinking spree, had physically abused appellant by slapping her in the face, appellant retaliating to this aggression by stabbing the victim with a knife she found at hand, inflicting grievous injuries upon the same.

Appellant is claiming that she was wrongly convicted of the charges brought against her, being herself a victim of domestic violence in this scenario. Now from appellant's statement released to the Police upon her arrest on the 13th of January 2020, after forfeiting her right to legal counsel, there results an admission by appellant of having stabbed the victim in the chest area. She stated that on the night of the incident, the victim had returned home intoxicated after having drunk a bottle of vodka and that an argument had ensued between them. She stated that she pushed her partner during this verbal argument after which victim turned violent hitting her on the face. Appellant retaliated by grabbing a knife from the kitchen strainer and stabbed her partner once in his chest. She further explained that she had done so because of "*anger, frustration, disappointment, pain because he had lied to me again*", and also out of self-defence when she saw her partner trying to assault her a second time. She further stated that as soon as she realised what she had done, she called an ambulance and tried to help the victim. Finally she explained that she had washed the floor of her residence from the bloodstains, had proceeded to throw the

knife that she had used in the sea, and that she had lied to the Police about what had transpired because the victim had urged her to do so in order to avoid further trouble. This was the same version of facts that appellant gave in her testimony when she took the witness stand before the First Court and this Court has no reason to doubt appellant's version of events.

This version of events put forward by appellant is further corraborated by the resultant injuries sustained both by the victim as well as by appellant herself when the latter was struck in the face by her aggressor. Dr Mario Scerri, the medico-legal forensic expert appointed by the Court classified the stab wound inflicted on the victim as being an injury of a grievous nature which however did not carry any long-term permanent effects or disabilities. Furthermore, Dr Mario Scerri also examined appellant who had visible injuries on her face, which injuries were certified as consisting of a hematoma around her left eye, as well as abrasions and bruises around her lip, both compatible with blunt trauma. Dr. Scerri stated that all the injuries on appellant's face were fresh in nature and thus compatible with a recent episode of blunt trauma as described by appellant when she alleges that she was hit in the face by her partner, thus rendering her version of events credible.

The same cannot, however, be said with regards to the victim's version of facts who testified in an extremely vague and evasive manner before the First Court, where he basically claimed that he could not remember what had transpired in the incident at hand, and this due to his acute alcohol problem. This Court is morally convinced that Hristov is not stating the truth to avoid landing in hot water.

Therefore this Court is morally convinced that appellant did indeed inflict the stab wound in question onto the victim. She admits to this course of action herself both in her statement and in her testimony. However, it has resulted amply and clearly from the evidence produced that this was a domestic violence incident and that the victim was an extreme alcoholic who verbally abused appellant whenever he was drunk. It also resulted that on the day of the incident the victim was indeed drunk and that he had been the first to inflict an injury on appellant, after she had confronted him

about his drinking problem. Furthermore, it also resulted that the victim was about to hit appellant again when she grabbed the first thing she found at hand which was the kitchen knife, with which she stabbed her partner. Finally, it also resulted that the children of appellant were in the same residence where this incident occured, although they did not witness the same.

In view of this version of events the defence raised the plea of self-defence as a justifiable and exonerating circumstance in terms of article 223 of the Criminal Code wherein no offence results where the crime, in this case that of grievous bodily harm, is imposed by "the actual necessity either in lawful self-defence or in the lawful defence of another person". Article 224 further provides some instances wherein this defence may be successfully raised:

> **224. Cases of actual necessity of lawful defence shall include the following:**
>
> **(a) where the homicide or bodily harm is committed in the act of repelling, during the night-time, the scaling or breaking of enclosures, walls, or the entrance doors of any house or inhabited apartment, or of the appurtenances thereof having a direct or an indirect communication with such house or apartment;**
>
> **(b) where the homicide or bodily harm is committed in the act of defence against any person committing theft or plunder, with violence, or attempting to commit such theft or plunder;**
>
> **(c) where the homicide or bodily harm is imposed by the actual necessity of the defence of one's own chastity or of the chastity of another person.**

The First Court however rejected this defence and found that although this was a case of domestic violence where appellant had retaliated to her partner's aggression, however this reaction was out of proportion and therefore found her guilty of the first charge brought against her.

Now the three elements at law that are doctrinally required for the crime of homicide or the offence of bodily harm against the person to be legally justifiable, are that the threat or the aggression committed must be a serious one, unprovoked and inevitable which offence threatens imminent injury or death, and that the reaction must be proportionate to this threat/aggression as so qualified. Thus, the

danger perceived must be unjust, grave, and inevitable for this defence to be successfully entertained, with the response being objectively proportionate to the extent of the aggression.

> **"Id-dritt ghall-legittima difesa jitwieled u huwa konsegwenza naturali mid-dritt fundamentali ta' kull bniedem li jipprotegi lilu nnifsu minn xi aggressjoni jew dannu anke bl-uzu ta' forza. Izda il-ligi timponi certi kundizzjonijiet biex din l-eccezzjoni tigi milqugha. Cioe' t-theddid ta' xi aggressjoni jew dannu jew perikolu irid ikun ingust, gravi w inevitabbli. Id-difiza trid tkun saret biex jigu evitati konsegwenzi li jekk jaffettwaw ruhhom jikkagunaw hsara irreparabbli lid-difensur jigifieri hsara jew offizi fil-hajja, gisem u/jew partijiet tal-gisem tad-difensur. L-imputat difensur irid jipprova li dak li ghamel, ghamlu stante li fl-istat psikologiku li kien jinsab fih f'dak il-mument biex jevita xi perikolu li ma setghax jigi evitat b'xi mod iehor. Jigifieri il-perikolu ghandu jkun attwali, istantaneju u assolut u ma jridx ikun xi perikolu anticipat. Il-perikolu ghandu jkun attwali jigifieri ta' dak il-hin u mhux xi theddida ta' perikolu li tkun saret hinijiet qabel ghax dan jista jaghti lok biss ghal provokazzjoni u mhux difesa legittima. Il-perikolu irid ikun assolut cioe' li f'dak il-mument li qed jsehh ma setghax jigi evitat b'xi mod iehor.[2]"**

In the oft-quoted judgment on the subject matter at hand *The Republic of Malta vs Domenic Briffa*[3] it was thus decided:

> **"Sabiex wiehed jista' jitkellem fuq legittima difiza li twassal ghall-gustifikazzjoni jew non-imputabilita` (a differenza ta' semplici skuzanti - art. 227(d)), iridu jikkonkorru, kif diga` nghad, l-elementi kollha li dottrinalment huma meqjusa necessarji, cioe` l-bzonn li l-minaccja tkun gravi, tkun ingusta, tkun inevitabbli u fuq kollox li r-reazzjoni tkun proporzjonata ghall-minaccja jew ghall-aggressjoni.**
>
> **Dwar l-element ta' l-inevitabilita` il-Professur Sir Anthony Mamo, fin-noti tieghu "Lectures in Criminal Law, Part I", ighid hekk (pagna 104):**
>
> **"The accused must prove that the act was done by him to avoid an evil which could not otherwise be avoided. In other words the danger must be sudden, actual and absolute. For if the danger was anticipated with certainty, a man will not be justified who has rashly braved such danger and placed himself in the necessity of having either to suffer death or grievous injury or to inflict it. In the second place the danger must be actual: if it had already passed, it may, at best, amount to provocation or, at worst, to cold-blooded revenge, and not to legitimate defence; if it was merely apprehended, then other steps might have been taken to avoid it.**

[2]Qorti tal-Appell Kriminali 20 ta' Jannar, 1995 fl-ismijiet 'Il-Pulizija vs Joseph Psaila'

[3] 16 ta` Ottubru 2003

Thirdly, the danger threatened must be absolute, that is, such that, at the moment it could not be averted by other means."

Dwar il-kwistjoni ta' l-inevitabilita` tal-perikolu jew minaccja, din il-Qorti, diversament komposta, fis-sentenza tat-23 ta' Gunju, 1978 fl-ismijiet Ir-Repubblika ta' Malta v. Frangisku Fenech, wara li accennat ghall-kontroversja klassika bejn dawk li jghidu li jekk l-aggredit seta' jahrab kien tenut li jaghmel hekk u dawk li jghidu li l-aggredit ma ghandu qatt jirtira, kompliet hekk:

"Din il-Qorti hi tal-fehma li llum ma tistax izjed taccetta bhala proposizzjoni assoluta illi (barra, naturalment, mill-kaz tal-"commodus discessus") jekk l-aggredit seta' jevita l-hsara, allura kien tenut jahrab u illi jekk ma jahrabx ma jistax minhabba f'hekk jinvoka din l-iskriminanti; izda fl-istess hin ma tahsibx li tista' taghti salvakondott ghall-ispavalderija zejda. Dawn huma l-limiti gusti tal-kwistjoni u pjuttost milli tifformalizza proposizzjoni rigida applikabbli ghall-kazijiet kollha, din il-Qorti tippreferixxi li l-kwistjoni tigi risolta kaz b'kaz, u fuq l-iskorta tal-principji salutari li jiggovernaw dan il-kaz klinikament tipiku ta' gustifikazzjoni."

Din il-Qorti, kif issa komposta, tazzarda zzid li l-mod kif il-kwistjoni ta' l-inevitabilita` tal-perikolu jew minaccja ghandha tigi affrontata hu li wiehed jistaqsi: l-agent (ossia l-aggredit) seta', tenut kont tac-cirkostanzi kollha, ragjonevolment jevita dak il-perikolu jew dik il-minaccja? Jekk il-buon sens jiddetta li l-agent seta', billi jaghmel manuvra jew pass f'direzzjoni jew ohra, jew anke billi semplicement ma jiccaqlaqx, facilment jevita l-periklu jew minaccja li kien qed jara fil-konfront tieghu, allura, jekk ma jaghmilx hekk jigi nieqes l-element tal-inevitabilita` tal-perikolu jew minaccja. Jekk, pero`, mill-banda l-ohra, tenut kont tac-cirkostanzi kollha, il-buon sens jiddetta li l-agent ma kellu jaghmel xejn minn dan jew, anzi, kellu jibqa' ghaddej fit-triq li twasslu aktar qrib dak il-perikolu jew dik il-minaccja, allura b'daqshekk ma jigix nieqes l-element ta' l-inevitabilita`[4]."

Mela l-agent irid ikun qed jirreagixxi (ghall-aggressjoni jew minaccja minnu ga` percepita bhala ingusta u gravi) proprju biex ma jhallix il-hsara mhedda ssehh. Jigifieri s-sitwazzjoni trid tkun wahda fejn l-aggressjoni jew minaccja x'aktarx issir wahda verament inevitabbli, u mhux semplicement prezunta li hi inevitabbli. A propozitu tar-rekwizit ta' l-attwalita`, il-gurista Taljan Francesco Antolisei jghid hekk:

> **"Il codice Zanardelli parlava di pericolo 'imminente', dando luogo a molte incertezze. Con la nuova formula [pericolo attuale] si e` voluto porre in rilievo che la situazione pericolosa deve esistere nel momento del fatto. Pericolo attuale e` pericolo presente. Pertanto, un pericolo meramente futuro, e cioe` la probabilita` che in seguito si verifichi una situazione pericolosa non basta; e se ne comprende la**

ragione, giacche` in tale caso l'aggredito ha la possibilita` di invocare efficacemente la protezione dello Stato"

That the *ratio legis* behind the institute of legitimate defence is the right to self-preservation of a person or of his loved ones, in such a way that the killing or grievous harm becomes justified. This happens when a person finds himself face to face with an aggression so serious that he is unable to resort to other means of escape so as to avoid the danger, thus being forced to resort to the means to protect onself from that danger which is actual, serious and unavoidable.

Thus, if the aggrieved person has a choice at the moment of the aggression as to the course of action to be adopted, and if it is possible for him to avoid that danger, or if he can seek help from the authorities and fails to do so, but faces the danger himself, then the justification of self-defence is missing. For the defensive act to be justified, the act of aggression must be of a certain magnitude and danger and must amount to a violent crime, or it must occur in such circumstances that raise a reasonable fear of danger to life or personal safety of the victim or of third parties. In addition, the force exercised in order to repel this danger or threat as posed by the offender must not be disproportionate but must be reasonable and commensurate to the force or the threat received or perceived. In conclusion therefore:

a. **The defendant must be (or believed he or she was) facing an unjust threat from the victim.**
b. **The defendant must use a level of force against the threat (or the threat as it was believed to be) which was reasonable in the circumstances.**

Thus, in the light of jurisprudence, although the Court concurs with the reasoning of the First Court that the crime with which appellant is charged cannot be justified on the grounds of self-defence since the force exercised by appellant to repel the aggression was not proportionate to that received, appellant actually stabbing her aggressor with a knife and this in response to a blunt force when she was hit in the face combined with a threat of being punched once again, however the crime is excusable on the grounds of the exercise of excessive self-defence in terms of article

230(d) and 227(d) of the Criminal Code[5], since although the main elements required for the justification of self-defence result, however appellant's reaction to the use of force was disproportionate to that received, having retaliated to a punch by a stab wound.

> ***L'eccesso colposo sottintende, a sua volta, i presupposti della scriminante col superamento dei limiti a quest'ultima collegati; per stabilire se nel commettere il fatto si siano ecceduti colposamente i limiti della difesa legittima, bisogna prima identificare i requisiti comuni alle due figure giuridiche, poi il requisito che le differenzia: accertata la inadeguatezza della reazione difensiva, per l'eccesso nell'uso dei mezzi a disposizione dell'aggredito in un preciso contesto spazio-temporale e personale, occorre procedere ad un'ulteriore differenziazione tra eccesso dovuto ad errore di valutazione ed eccesso consapevole e volontario, dato che solo il primo rientra nello schema dell'eccesso colposo delineato dall'art. 55 c.p., mentre il secondo consiste in una scelta reattiva volontaria, la quale certamente comporta il superamento doloso degli schemi della scriminante.- Cass. n. 8999/1997***

It is important to bear in mind when assessing whether the force used was reasonable the words of Lord Morris in (*Palmer v R 1971 AC 814*);

> ***"If there has been an attack so that self-defence is reasonably necessary, it will be recognised that a person defending himself cannot weigh to a nicety the exact measure of his defensive action. If the jury thought that that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought necessary, that would be the most potent evidence that only <u>reasonable</u> defensive action had been taken ..."***

Now from appellant's statement and testimony although it is evident that she was a victim of a verbal and physical aggression, however the incident had been instigated by none other than herself confronting her partner when she knew very well that in a state of intoxication, he would end up verbally abusing her. This being premised however, there is no doubt that appellant tried to repel this aggression by exercising a use of force which was not commensurate with the violence received. *Ex admissis* she states:

---

[5] .... where it is committed by any person who, acting under the circumstances mentioned in article 223, shall have exceeded the limits imposed by law, by the authority, or by necessity: Provided, moreover, that any such excess shall not be liable to punishment if it is due to the person being taken unawares, or to fear or fright.

> ***"He was aggressive with words, and then when he hit me I was again surprised because it was the first time he hit me .... and he was coming to hit me again and I started to protect myself."***

Not only but in her statement released to the Police upon her arrest appellant states that she stabbed her partner because she was feeling anger, frustration, disappointment and pain, however not fear, and consequently neither can an impunity from punishment be entertained since the circumstances envisaged in the proviso to article 227(d) of the Criminal Code are not proven, although a offence is excusable on the grounds of excessive self-defence, appellant clearly stating both in her statement and in her testimony that she grabbed the knife and stabbed her partner in order to defend herself when she was taken by surprise by her partner's use of violence against her.

Finally with regards to the crime mentioned in article 111(2) of the Criminal Code, with which appellant is charged, it must be noted that although the law speaks of any person, as being the perpetrator of the offence, however Professor Anthony Mamo in his Notes on Criminal Law is of the opinion that this terminology used cannot include the executor of the crime who is trying to suppress, alter or destroy the material and circumstantial traces of the offence committed by him, since if the executor of the crime under investigation does this, his actions will be considered as a part of the execution of the main offence committed by him. The intention of the perpetrator of this offence under article 111(2), must be such as to lead astray or mislead the course of justice and the crime is consummated even if the perpetrator has not succeeded in his intentions. The material act must necessarily consist in the positive and direct act of the agent in destroying or hiding any material trace or any clue that can lead the investigators to uncover the crime or the offender of the main or principal crime. Professor Mamo states:

> **"The subject of this offence can be 'whosoever', that is any person, but according to the best accepted authorities <u>this generalisation does not include the parties themselves to the principal offence</u>. In other words, if a person who has himself committed an offence, suppresses, or destroys the traces or evidence thereof he would not be guilty also of this further offence: his action in any such case would but be a continuation of his**

> **principal offence. .... But such suppression etc., must be done knowingly that is to say the agent must have full consciousness that an offence has been committed – whether or not he knows who is the particular offender – and he does the act not by mistake or ignorance or through negligence but intentionally to obstruct or frustrate the action of justice."**

Thus, it is clear that the perpetrator of an offence will naturally in most cases try to cover his tracks. However, he would not be guilty also of this "secondary" offence since his acts will constitute a continuation of the material acts or acts at the basis of the main or principal offence committed by him – his actions amounting to a mere continuation of execution of the crime committed by him. Therefore, appellant having been found guilty of the main offence, being that of grievous bodily harm, could not have been found guilty also of this second offence, the actual suppression of the evidence constituting a continuation of the material acts committed by appellant in the commission of the main offence of grievous bodily harm, by trying to cover her tracks so as not to be apprehended by the police. Consequently, the Court will uphold appellant's grievance in this regard and will revoke the judgment of the First Court wherein she was found guilty of this offence too.

Considers:

Having concluded, therefore, that appellant could have been found guilty of the first charge brought against her, which crime is however excusable in terms of articles 230(d) and 227(d) of the Criminal Code, and also that she should have been acquitted by the First Court from the second charge brought against her, it follows that appellant's second grievance with regards to the punishment imposed by the First Court upon her, wherein appellant is deeming the same to be excessive, will be upheld.

That upon a request by appellant the Court ordered that a pre-sentencing report be prepared by a Probation Officer which report was filed by Officer Joanna Farrugia on the 29th of March 2023 where she thus concluded:

> **"It is felt that a prison sentence would be detrimental to the appellant both from her mental health perspective but also to her family as she has two**

dependents, her minor daughter and her elderly mother. However, due to the serious nature of this case and past criminal history it is felt that a probation order would be too lenient in this instance. Thus, it is being humbly requested that, if, in the case of the First Court, this Court also finds the appellant not guilty of being a recidivist, that the period of imprisonment is suspended for a period that the Court deems fit. In this instance it is felt that supervision would be an added stressor to the appellant's life as although she cooperated with the probation officer and attended all appointments, it was a struggle for her especially due to her familiar situation as her mother was hospitalised at the time. She is also receiving the help she needs from her social worker."

The Court concurs fully with this recommendation which will be upheld.

Now article 233(1)(a) of the Criminal Code contemplates, in the instance where the offence of bodily harm is excusable in terms of article 230(d), a punishment on conviction to imprisonment for a term not exceeding one-third of that established for the crime when not excusable. Since appellant was condemned to a period of imprisonment for two years by the First Court which is the minimum envisaged at law for the offence of bodily harm in terms of articles 216(1)(a) and 217 of the Criminal Code, the Court deems that a period of imprisonment of eight months, which term of imprisonment will be suspended for one year, falls within the parameters of the law and the recommendations made by the Probation Officer, the crime of bodily harm being excusable due to an excessive form of self-defence in terms of article 230(d) and 227(d) of the Criminal Code.

Consequently, for the above mentioned reasons, the Court accedes, in part, to the appeal filed by appellant and reforms the judgment of the First Court of the 27th of September 2022 in the following manner:–

1) **Confirms it where it found appellant not guilty of being a recidivist in terms of Articles 49, 50 and 218 of Chapter 9 of the Laws of Malta;**
2) **Revokes it where it found appellant guilty of the second charge brought against her, and this in terms of Article 111(2) of Chapter 9 of the Laws of Malta, and consequently acquits her from the same charge;**
3) **Confirms it where it ordered the Commissioner of Police to initiate criminal proceedings against Georgi Hristov Hristov on charges of**

domestic violence, as well as on charges relating to the injuries caused to appellant together with any charges in terms of Article 111(2) of Chapter 9 of the Laws of Malta, amongst other charges which may result from the investigations of the Police;

4) **Confirms it where it ordered appellant to pay all the court expenses relative to the case amounting to €2,741.74 to the Registrar of Courts in terms of Article 533 of Chapter 9 of the Laws of Malta;**
5) **Confirms it where it found appellant guilty of the first charge brought against her, which offence however is excusable in terms of article 230(d) of the Criminal Code; and**
6) **Revokes it where it imposed a term of two years imprisonment and instead, after having seen article 233(1)(a) of the Criminal Code condemns appellant to a term of imprisonment of eight months, which term of imprisonment is being suspended for a period of one year and this in terms of article 28A of the Criminal Code.**

The Court explained to appellant the consequences according to law were she to commit an offence punishable with imprisonment during the operational period of her suspended sentence, and this in terms of Articles 28A and 28B of Chapter 9 of the Laws of Malta.

Edwina Grima
Judge