



## **Criminal Court of Appeal**

Hon. Judge Edwina Grima, LL.D

Appeal No: 75/2023

**The Police**

**vs**

**Michael Leonard Paul Hammond**

Today, the 28th of July 2023

The Court,

Having seen the charges brought against appellant Michael Leonard Paul Hammond, holder of Maltese identity card number 223401L, wherein he was accused before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having on the 29th of August 2022 on these Islands:

1. Made improper use of any means of electronic communications network or apparatus;
2. For having during the same period, place and circumstances, used any threatening, abusive or insulting words or behaviour or displayed any written or printed material which is threatening, abusive or insulting, or otherwise conducted himself in such a manner, with intent thereby to stir up violence or hatred against another person or group of persons on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, age,

disability, religion or belief or political or other opinion or whereby such violence or hatred is likely, having regard to all the circumstances, to be stirred up;

3. For having during the same period, place and circumstances, aided, abetted or instigated any offence under articles 82A to 82C, both inclusive.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 7th of February 2023, wherein the same Court, after having seen Articles 17, 31, 82A and 82D of Chapter 9 and Article 49(c) of Chapter 399 of the Laws of Malta, found and declared the accused Michael Leonard Paul Hammond guilty as charged and condemned him to a term of imprisonment of six (6) months, which will however remain suspended for a period of three (3) years in terms of Article 28A of Chapter 9 of the Laws of Malta and to the payment of a fine in the sum of three thousand Euro (€3,000).

Having seen the appeal application filed by appellant Michael Leonard Paul Hammond on the 28th of February 2023, wherein he requests this Court to revoke the sentence handed down by the First Honourable Court whereby he was found guilty as charged and to rule that he is not guilty of such charges. Alternatively, in the event of such grievances not being acceded to in merit, to reform the appealed sentence with regards to the penalty inflicted and alternatively impose a penalty which is more just in lieu of the circumstances of the case.

Having seen the grievances put forward by appellant.

Having seen the reply of the Attorney General filed on the 28th of April 2023, whereby this Court was requested to dismiss the appeal application and to confirm the judgment of the Court of Magistrates in its entirety.

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 heard submissions by the parties.

**Considers:**

The sole grievance put forward by appellant relates to the merits of the case and the evaluation of the evidence carried out by the First Court. Appellant criticizes the appellate judgment in that it failed to consider the evidence brought before it and specifically that:

- i) During the period of time in which he is accused of committing the crime appellant was not making use of his Facebook account;
- ii) The Facebook post in question is not dated;
- iii) The Prosecution failed to prove its case beyond a reasonable doubt.

That as has been oft decided, this Court may revoke a judgment delivered by the First Court when it deems that the same judgment is unsafe and unsatisfactory, and this in the light of the evidence found in the acts. The Court, thus, has re-examined the acts of the proceedings and this to be in a position to determine whether the assessment of the evidence made by the First Court was valid<sup>1</sup> at law in the light of the facts of the case.

Appellant's main grievance lies in the fact that the post at the heart of the charges brought against him is not dated, the charge indicating a specific date when the comment was allegedly uploaded by him being that of the 29th of August 2022.

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<sup>1</sup> See amongst others, the Criminal Appeals (Superior Jurisdiction): *Ir-Repubblika ta' Malta v. Rida Salem Suleiman Shoaib*, 15 ta' Jannar 2009; *Ir-Repubblika ta' Malta v. Paul Hili*, 19 ta' Gunju 2008; *Ir-Repubblika ta' Malta v. Etienne Carter*, 14 ta' Dicembru 2004; *Ir-Repubblika ta' Malta v. Domenic Briffa*, 16 ta' Ottubru 2003; *Ir-Repubblika ta' Malta v. Godfrey Lopez u r-Repubblika ta' Malta v. Eleno sive Lino Bezzina* 24 ta' April 2003, *Ir-Repubblika ta' Malta v. Lawrence Ascjak sive Axiak* 23 ta' Jannar 2003, *Ir-Repubblika ta' Malta v. Mustafa Ali Larbed*, 5 ta' Lulju 2002; *Ir-Repubblika ta' Malta v. Thomas sive Tommy Baldacchino*, 7 ta' Marzu 2000, *Ir-Repubblika ta' Malta v. Ivan Gatt*, 1 ta' Dicembru 1994; u *Ir-Repubblika ta' Malta v. George Azzopardi*, 14 ta' Frar 1989; and the Criminal Appeals (Inferior Jurisdiction): *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.

Now appellant is correct in pointing out that the Facebook post exhibited by the Prosecution, at folio 16 of the acts, lacks any indication of the date on which it was written, although there is an indication that it was uploaded ten minutes prior to the time indicated on the same document exhibited, being 15:29. Additionally, from the PIRS report exhibited, it results that Eman Borg on behalf of the organisation LGBTI+Gozo filed his report on the 29th of August 2022, after placing an advert on Facebook regarding a Gozo Pride activity that was being organised, when within ten minutes appellant uploaded his comment to this post. Furthermore, in his testimony before the Court, Borg affirms that as soon as he saw the comment allegedly written by appellant, he immediately went to the Police to file a report - **“file a report couple of minutes, after the reported at the victoria police station”**. This in fact tallies with the report time indicated on the PIRS Report, that is 16:00. Thus, this Court is morally convinced that the comment in question was in fact written/typed on the 29th of August 2022, as is correctly indicated in the summons at hand.

Appellant is being charged with the crime enshrined in Article 82A of the Criminal Code which reads as follows: -

**“Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or hatred against another person or group of persons on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, age, disability, religion or belief or political or other opinion or whereby such violence or hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six (6) to eighteen (18) months.”**

That, the comment allegedly written by Michael Hammond was made in response to a Facebook post entitled **“Why March for Gozo Pride?”** and reads **“Should bomb u all u freaks”**. Appellant alleges that at the time indicated in the charge sheet his Facebook account had been hacked, and he had not accessed his account in quite some time. Now this remains an allegation from appellant’s part since he does not in any way substantiate the same by some form of evidence at least indicating on a

balance of probabilities that what he is alleging is the truth. This Court is in fact morally convinced that it was appellant who wrote this reprehensible comment with regard to the LGBTI community, and this through his Facebook profile.

That, this Court considers these words written by the appellant abusive and insulting towards the LGBTI community and although it cannot be proven that the same actually incited hatred or violence towards the same, however, for appellant it had to be evident that such a comment would tend to lead to such sentiments which are sanctioned by law.

**“...[T]olerance and respect for the equal dignity of all human beings constitute foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance ..., provided that any .. ‘restrictions’... imposed are proportionate to the legitimate aim pursued.”**  
*Erbakan v Turkey (2006)*

In another judgment delivered by the ECtHR in the case *Vejdeland and Others vs Sweden, 1813/07*<sup>2</sup>, no violation of article 10 of the Convention was found to have taken place with regard to leaflets distributed condemning homosexuality.

54. .... The Court observes that, according to the leaflets, homosexuality was “a deviant sexual proclivity” that had “a morally destructive effect on the substance of society.” The leaflets also alleged that homosexuality was one of the main reasons why HIV and AIDS had gained a foothold and that the “homosexual lobby” tried to play down paedophilia. In the Court’s opinion, although these statements did not directly recommend individuals to commit hateful acts, they are serious and prejudicial allegations.

55: Moreover, the Court reiterates that inciting to hatred does not necessarily entail a call for an act of violence, or other criminal acts. Attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating racist speech in the face of freedom of expression exercised in an irresponsible manner<sup>3</sup>. In this regard, the Court stresses that

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<sup>2</sup> 09/02/2012

<sup>3</sup> Emphasis by the Court

**discrimination based on sexual orientation is as serious as discrimination based on "race, origin or colour."**

Thus, the Court concludes that the comment posted by appellant falls under the sanction of the law as enshrined under Article 82A of the Criminal Code and thus the First Court was legally correct in finding appellant guilty of the same.

That in the light of the above considerations it follows that the First Court could both legally and factually find appellant guilty also of the second and third charges brought against him and thus his grievances are hereby being dismissed as unfounded.

**Considers further:**

Now although in his appeal application, appellant does not adduce any grievance which deals with the penalty imposed by the First Court, yet in his final pleas, he requests that this Court impose a more lenient punishment. Appellant, however, does not put forward any justifiable reason of fact or at law which could lead this Court to vary the punishment imposed upon him by the Court at first instance. Thus, once the punishment inflicted is within the parameters stipulated by law, and in its minimum, the Court cannot find any reason which could justify a variation as requested by appellant in his final plea.

**Consequently, for the above-mentioned reasons, the Court dismisses the appeal filed by appellant and confirms the appellate judgment in its entirety.**

**Edwina Grima.**

**Judge**