



## COURT OF CRIMINAL APPEAL

**Hon. Mr. Justice Dr. Neville Camilleri**  
**B.A., M.A. (Fin. Serv.), LL.D., Dip. Trib. Eccles. Melit.**

**Appeal Number 31/2022/1**  
**Appeal Number 32/2022/1**  
**Appeal Number 33/2022/1**

**The Police**

**vs.**

**Yermakov Mykhailo**  
**Stepan Stankov**  
**Dorde Dudic**

Today 7<sup>th</sup>. of November 2023

The Court,

Having seen the charges brought against the appellants **Yermakov Mykhailo**, holder of Identity Card Number 157995(A), **Stepan Stankov**, holder of Bulgarian Identity Card Number 195249802, and **Dorde Dudic**, holder of Identity Card Number 194500(A), charged in front of the Court of Magistrates (Malta) with having

on the 16<sup>th</sup>. of February 2020 at around five o'clock in the morning (05:00hrs) whilst in Kavetta Street at St. Paul's Bay (Malta) opposite of Babylon Club and/or on these Islands for having:

1. Caused grievous injuries to the person of Temitope Akinribomu Olakunie, as certified by Dr. Winston Bartow [recte: Bartolo] (Med. No. 3558) and on Henry Onweabuchi as certified by Dr. Carina Debattista (Med. No. 3464) as in breach of Articles 217 and 218 of Chapter 9 of the Laws of Malta;
2. Attempted to use force against Temitope Akinribomu Olakunie and on Henry Onweabuchi.
3. The Prosecution requested a guarantee in favour of Temitope Akinribomu and in favour of Henry Onweabuchi in terms of Articles 383, 384 and 385 of Chapter 9 of the Laws of Malta.
4. The Court was also requested to apply the provisions of Article 412C of Chapter 9 of the Laws of Malta in favour of Temitope Akinribomu Olakunie and Henry Onweabuchi;
5. The Prosecution also charged Yermakov Mykhailo and Stepan Stankov that on the same date, place, time and circumstances, they worked as a private guard on behalf of an agency or as a private guard or so offered their services, provided that they did not have a licence from the Commissioner of Police.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 24<sup>th</sup>. of January 2022 (*a fol. 346 et seq.*) wherein the Court, whilst acquitting all the accused from the second charge,

- as regards Stepan Stankov, after having seen Articles 17, 31, 214, 217, 218(1)(b)(2), 221 and 237 of Chapter 9 of the Laws of Malta and Articles 3 and 25(b) of Chapter 389 of the Laws of

Malta, found the accused guilty of the first charge but only with regards to Temitope Akinribomu Olakunie and found him also guilty of the last charge (no. 5) and condemned him to a term of imprisonment of five (5) years and four (4) months;

- as regards Yermakov Mykhailo, after having seen Articles 17, 31, 214, 221 and 237 of Chapter 9 of the Laws of Malta and Articles 3 and 25(b) of Chapter 389 of the Laws of Malta, found the accused guilty of the first charge but only with regards to Temitope Akinribomu Olakunie and only of slight bodily harm, and found him also guilty of the last charge (no. 5), and condemned him to imprisonment for a term of one (1) year and to a fine (*multa*) of two thousand and five hundred Euros (€2,500);
- as regards Dorde Dudic, after having seen Articles 17, 31, 214, 221 and 237 of Chapter 9 of the Laws of Malta, found the accused guilty of the first charge but only with regards to Temitope Akinribomu Olakunie and only of slight bodily harm and condemned him to imprisonment for a term of eighteen (18) months.

In terms of Article 533 of Chapter 9 of the Laws of Malta, the Court condemned the accused to the payment of five hundred and ninety Euros and one cent (€590.01) each representing costs incurred in the employment in the proceedings of any expert or referee, including such experts as would have been appointed in the examination of the Process Verbal of the inquiry.

In terms of Article 382A of Chapter 9 of the Laws of Malta, the Court issued a restraining order against the accused in favour of Temitope Akinribomu Olakunie and Henry Onweabuchi for a period of three (3) years.

In terms of Article 15A of Chapter 9 of the Laws of Malta, the Court ordered the accused Stepan Stankov to the payment of five thousand Euros (€5,000) to Temitope Akinribomu Olakunie as compensation for injuries suffered which order should constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.

The First Court ordered the Commissioner of Police to continue with their investigations in a bid to identify any third party, who could be liable to prosecution for the injuries sustained by Temitope Akinribomu Olakunie and Henry Onweabuchi. To this end, the Court ordered that a copy of the judgment and a copy of the footage (Doc. "JS" - a fol. 156) be sent to the Commissioner of Police. The Court also ordered that a copy of the judgment and the testimony of Inspector Sarah Magri be sent to Jobsplus so that they may investigate any third party who could be liable to prosecution for offences under Chapter 594 of the Laws of Malta. Finally, the Court recommended that once the accused have served their sentence, the Principal Immigration Officer exercises the powers vested in him *inter alia* by Articles 14 and 22 of Chapter 217 of the Laws of Malta.

Having seen the appeal filed by the appellant Stepan Stankov on the 9<sup>th</sup>. of February 2022 (*a fol. 401 et seq.*) by which he requested this Court: *"to VARY the appealed judgment whereby whilst AFFIRMING that part of the judgement where applicant was not found guilty of the 1<sup>st</sup>. charge in that part which refers to the grievous injuries caused to Henry Onweabuchi, of the second (2<sup>nd</sup>.), third (3<sup>rd</sup>.), and fourth (4<sup>th</sup>.) charge brought against him, REVERSES the finding of guilt in that part of the judgment where it found him guilty of the first (1) charge, in that part where he was declared guilty of causing grievous injuries to Temitope Akinribomu Olankunie and of the fifth charge brought against him, and consequently AQUITS him of them and DECLARES appellant not guilty of the charges brought against him; alternatively varies the appealed judgement as regards to the punishment inflicted and instead apply a lesser and more appropriate punishment."*

Having seen the appeal filed by the appellant Mykhailo Yermakov on the 8<sup>th</sup>. of February 2022 (*a fol. 419 et seq.*) by which he requested this Court: *“to accede to his request a) to consider and evaluate this Appeal application that he is duly presenting, b) to revoke and cancel, the first instance judgment that has been pronounced by the Court of Magistrates, acting as a Court of Criminal Judicature, on the 24<sup>th</sup>. of January 2022 in the names of ‘The Police (Inspector Clayton Camilleri) vs. Yermakov Mykhailo et’ wherein same Mykhailo Yermakov was found guilty upon the provisions of Articles 214, 221 and 237 of our Criminal Code relating to slight bodily harm to the person of Temitope Akinribomu Olankunie in relation to the first charge and in relation to the fifth charge for working as a private guard without the necessary licence issued by the relevant authorities, and c) to change and reform such judgement in appeal, by either liberating same Mykhailo Yermakov from all charges, or if the Honourable Court of Appeal, still deems fit and proper to consider him guilty of any or the said charges, to mitigate as much as possible the punishment so that such, should be proportionate and not excessive in the true circumstances of what has happened and to what he should be really punished for, on the exact grounds upon which he should be found guilty. Moreover, this Honourable Court is being asked to change all the orders and recommendations that have been imposed on Mykhailo Yermakov or on other authorities with respect to him in the light of Article 533 of the Criminal Code, Article 382A of Chapter IX of the Laws of Malta, and Articles 14 and 22 of the Immigration Act, Chapter 217 of the Laws of Malta.”*

Having seen the appeal filed by the appellant Dorde Dudic on the 8<sup>th</sup>. of February 2022 (*a fol. 451 et seq.*) by which he requested this Court: *“to reform the First Honourable Court’s judgement delivered on the 24<sup>th</sup>. January 2022 by the Court of Magistrates (Malta) as a Court of Criminal Judicature in the names ‘The Police vs. Dorde Dudic et’ by virtue of which the appellant was acquitted of charges two (2) to five (5) and found guilty of the first (1<sup>st</sup>.) charge and only with regard to Temitope Akinribomu Olakunie and only of slight bodily harm and was condemned to eighteen (18) months imprisonment in terms of Article 221 of Chap. 9 (as detailed on pg. 42 of the judgment) of the Laws of*

*Malta, by: a) confirming that part by means of which the appellant Dorde Dudic was acquitted; and b) revoking and annulling that part of the judgment by means of which the appellant was found guilty of the first charge (1<sup>st</sup>.) charge but only with regards to Temitope Akinribomu Olankunie and only of slight bodily harm and was condemned to imprisonment for a term of eighteen (18) months and instead varying the said judgement by acquitting the appellant; or c) if this Honourable Court confirms the verdict of guilt, by reforming the judgment by applying a more equitable and suitable punishment for the specific circumstances of this case inter alia in terms of sub-Article (3)(b) of Article 221."*

Having seen all the acts and documents.

Having seen that these appeals had been assigned to this Court as currently presided by the Hon. Chief Justice Mark Chetcuti on the 9<sup>th</sup>. of January 2023.

Having seen the updated conviction sheets of the appellants exhibited by the Prosecution as ordered by the Court.

Having heard the final oral submissions.

### **Considers**

That the facts around this case are as follows: During the night between the 15<sup>th</sup>. of February 2020 and the 16<sup>th</sup>. of February 2020 there was a brawl in front of a bar with the name "Babylon Bar" at St. Paul's Bay. Allegedly this brawl involved three security officers from one part against two Africans on the other part.

That the version given by the victim Temitope Akinribomu Olakunie (Temitope) differs from the version given by the appellants in particular Temitope says that he went to this bar and that he noticed that his girlfriend was not next to him. After looking around to spot her he saw her being harassed by a Serbian

guy. This led to a dispute between the parties. The victim says that he spoke to the person in charge and in response he was told to leave the bar. During his testimony the victim identifies the appellant Stepan Stankov as the person who was carrying a knife. Once they were outside the bar the confrontation allegedly increased in tone and it resulted in an aggression of Temitope where he was held by the neck by another appellant and was repeatedly hit by all three. Following this accident, the victim went to hospital where he was treated for his injuries which included a laceration on his face and a hematoma. The nature of these injuries was classified by the doctor who examined the victim Temitope as being grievous.

That the version given by the second victim Henry Onweabuchi (Henry) somewhat confirms the version given by Temitope though with certain important differences. Henry stated that he did not know the other African victim and that he was at the bar chilling by himself when he received a phone call and went outside to reply. He states that he saw four persons beating Temitope. He said that Temitope was already full of blood when he was accompanied outside of the bar by the security. Henry declared that he tried to diffuse the situation and that he helped the other victim. Henry also admits that he had thrown stones at the alleged aggressors. During his testimony he also states the appellant Yermakov Mykhailo was the one wielding the pen knife.

That the version of the appellants is somewhat different. They say that the group of Africans were behaving in a drunken manner and were arguing with a group of Serbians. In order to avoid an escalation of the argument, Yermakov Mykhailo asked the Africans to move out of the shop while keeping the Serbians in the shop, so as to divide the parties. At first the Africans complied peacefully as they were accompanied out of the bar, however once out the situation escalated as the Africans tried forcefully to re-enter the bar. The situation degenerated so much that bricks were being thrown at the bar by the Africans and one of the stones hit a

patron who was going into the shop. All the appellants reject the accusation that they used some form of arm either proper or improper.

That the three appellants have filed three separate appeals and this Court will address all of them in this judgment. However before entering into the merits of this case this Courts reminds that it is a Court of revision and it does not replace the discretion of the First Court where it transpires that from the evidence presented the First Court could reach the conclusion it reached. In this respect, reference is made to the judgment delivered on the 25<sup>th</sup>. of November 2022 in the names **Il-Pulizija vs. Joseph Tabone** (Numru 421/2013), where the Court of Criminal Appeal stated that:

“Illi huwa spiss affermat fil-ġurisprudenza illi mhuwiex normali illi din il-Qorti ta’ revizjoni tiddisturba l-apprezzament dwar il-provi magħmul mill-Ewwel Qorti jekk tasal għall-konkluzjoni li dik il-Qorti setgħet raġonevolment u legalment tasal għall-konkluzjoni li tkun waslet għaliha. Il-Qorti għalhekk eżaminat mill-ġdid l-atti proċesswali, inkluż id-dokumenti kollha eżebiti u t-testimonjanzi tax-xhieda li ddeponew quddiem l-Ewwel Qorti, biex b’hekk tkun f’posizzjoni aħjar tevalwa jekk dan l-apprezzament hekk magħmula mill-Ewwel Qorti kienx wiehed raġonevolment u legalment validu.<sup>1</sup>”

---

<sup>1</sup> “Ara, fost oħrajn, 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’ Ġunju 2008; **Ir-Repubblika ta’ Malta v. Etienne Carter**, 14 ta’ Diċembru 2004; **Ir-Repubblika ta’ Malta v. Domenic Briffa**, 16 ta’ Ottubru 2003; **Ir-Repubblika ta’ Malta v. Godfrey Lopez** u **Ir-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’ Diċembru 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



That as far as contrasting evidence is concerned, this Court notes in the judgment in the names **Il-Pulizija vs. Graham Charles Ducker** this Court as diversely presided said the following:

“It is true that conflicting evidence per se does not necessarily mean that whoever has to judge may not come to a conclusion of guilt. Whoever has to judge may, after consideration of all circumstances of the case, dismiss one version and accept as true the opposing one”.

That this Court also makes reference to the judgment **Il-Pulizija vs. Jonathan Micallef** (Number 436/2009) delivered on the 2<sup>nd</sup>. of February 2012, where this Court as diversely presided said:

“Huwa minnu illi jista’ jkollok sitwazzjoni fejn numru ta’ xhieda qeghdin jagħtu verżjoni differenti minn oħrajn illi xehdu qabel. B’daqshekk ma jfissirx illi għax hemm xhieda differenti bil-fors hemm kunflitt li għandha twassal għal liberatorja. Fil-kawża **Pulizija vs. Joseph Thorn** deċiża mill-Qorti ta’ l-Appell Kriminali fid-9 ta’ Lulju 2003, il-Qorti qalet:

“... mhux kull kunflitt fil-provi għandu awtomatikament iwassal għal liberazzjoni tal-persuna akkuzata. Imma l-Qorti f’każ ta’ kunflitt ta’ provi, trid tevalwa il-provi skond il-kriterji annunċjati fl-Artikolu 637 tal-Kap. 9 u tasal għal konkluzjoni dwar lil min trid temmen u f’hiex trid temmen jew ma temminx” (ara wkoll **Repubblika ta’ Malta vs. Dennis Pandolfino** 19 t’ Ottubru 2006).”

---

1996; **Il-Pulizija v. Carmel sive Chalmer Pace**, 31 ta’ Mejju 1991; **Il-Pulizija v. Anthony Zammit**, 31 ta’ Mejju 1991.”

## **Considers**

### **Considerations Regarding the Grievances Of The Appellant Stepan Stankov**

That by means of his appeal the appellant Stepan Stankov lodges two grievances with a number of arguments supporting them.

#### **First grievance of Stepan Stankov**

That by means of his first grievance the appellant Stankov complains that the First Court made an incorrect application of the facts and the evidence produced. In particular, Stankov complains that given that there are conflicting versions this conflict should work in favour of him and that he should be acquitted given that it is the obligation of the Prosecution to prove the case beyond reasonable doubt. In this respect, he stresses out that the case of the Prosecution is based on the versions given by the injured parties that are conflicting both between themselves as well as the version given by him. In this respect, he points out that the version given by the injured party states that he has been hit by the appellant with his pen knife which accidentally has never been found.

That in view of this, he argues that it is apparent that the First Court has ignored objective facts that happened. He complains that these facts prove that the brawl had been triggered by the injured parties and their friends. Furthermore, he states that the Court failed to consider the fact that he has not made use of any arms both proper and improper. Hence in terms of Article 218(1)(b)(2) of Chapter 9 of the Laws of Malta, he should not have been found guilty accordingly.

That the appellant refers to the version of the happenings given by the injured party Temitope and the instances in which he changed part of the evidence in particular the place where he had been stabbed. He further complains that from the cross-examination

what transpires is the fact that Temitope entered the club drunk. Secondly his girlfriend was not brought forward to confirm the version given by Temitope namely the fact that she was being touched by the appellants.

That the appellant also refers to the testimony given by Henry Onweabuchi (Henry) and points out that Henry stated that the pen knife was used by Mykhailo unlike Temitope who stated that it was used by the appellant. The same witness also states that Dorde Dudic was not there during the fight.

That reference is also made to the testimony given by Ryan Genovese who explained how he and Mykhailo went to speak to a group of Africans who were arguing with a group of Serbians and that how the situation degenerated because of the behaviour of the Africans. However according to the witness, despite all this, the Africans were calmly escorted out of the bar by the security. Furthermore, he contests that the object that caused the injury was not found and that there is a serious doubt as to whether such knives were used. He says that what is seen from the stills is that whilst escorting the Africans out of the bar, third parties hit the Africans with bottles and pieces of bricks.

That he complains that the accident could easily be assimilated as an accidental affray cause without any logic of sense on the basis that the Africans were so intoxicated that they were not reasoning. He also refers to the report prepared by Dr. Scerri and that from said report the Magistrate could not conclude that such an injury had been caused by the appellant. In this respect he criticises the judgment delivered by the First Court where it delved only limitedly on this matter. The appellant also complains that there were no knives used, found, or exhibited. He also complains about the fact that the First Court disbelieved the fact that the injured parties were intoxicated and how this state of intoxication can become a danger and has eventually paved the way for the brawl to occur.

That the appellant complains that independently from the fact that the First Court recognised that the injured parties were attacked by third parties it nonetheless found the appellants guilty of this. The appellant complains that the First Court was judicially oriented towards their guilt.

That this Court has taken note of the version given by all parties and has attentively reviewed the cctv footage. In respect to this complaint, this Court notes that the injuries sustained by Temitope have been classified as grievous by Dr. Winston Bartolo (Doc. "TO" - *a fol. 86 et seq.*). In particular the injuries identified are the following:

- supraorbital region laceration approximately 3cm large;
- frontal and suborbital scalp haematoma.

That by means of a report filed by Dr. Mario Scerri (Doc. "MS" - *a fol. 123 et seq.*) he concludes that the laceration side had sharp margins and was not deep and has been classified as a laceration caused by a sharp object (*a fol. 132*). In his report, Dr. Scerri concludes that the incision described can result in a permanent scar that is visible on the forehead (*a fol. 133*).

That Article 218(1) of Chapter 9 of the Laws of Malta establishes the following:

"A grievous bodily harm is punishable with imprisonment for a term from five to ten years -

- (a) if it causes any permanent debility of the health or any permanent functional debility of any organ of the body, or any permanent defect in any part of the physical structure of the body, or any permanent mental infirmity;

- (b) if it causes any serious and permanent disfigurement of the face, neck, or either of the hands of the person injured;
- (c) if, being committed on a woman with child, it causes miscarriage.”

That in respect to this article, this Court refers to the judgment delivered on the 27<sup>th</sup>. of October 2016 in the names **Il-Pulizja vs. Alfred Caruana** (Number 220/2014) where this Court differently presided explained that:

“9. Fis-sistema legali tagħna, l-offiża fuq il-persuna tista’ tkun waħda hafifa u ta’ importanza żgħira, gravi jew gravissima. Issa, kif tajjeb imfisser fis-sentenza ta’ din il-Qorti fl-ismijiet **Il-Pulizija vs. Fortunato Sultana** tal-5 ta’ Frar 1998, fost diversi oħrajn, il-ligi ma tirrikjedix li l-isfregju jipperdura għal xi żmien partikolari. Sfregju fil-wiċċ, fil-għonq jew f’waħda mill-idejn anke jekk ta’ ffit granet jibqa’ sfregju għall-finijiet ta’ l-imsemmija dispożizzjoni. Il-permanenza ta’ l-isfregju hi relevanti biss meta, abbinata mal-gravita’, tagħti lok għalhekk imsejha “offiża gravissima” skont l-Artikolu 218(1)(b) tal-Kodiċi Kriminali. Għal espożizzjoni aktar profonda tal-kwistjoni in tema, tajjeb li ssir referenza ukoll għas-sentenza ta’ din il-Qorti deciza fil-15 ta’ Frar 2011 fl-ismijiet **Il-Pulizija vs. Jonathan Farrugia** fejn oltre s-sentenza citata saret referenza għal diversi sentenzi oħra fosthom dik **Il-Pulizija vs. Antonio sive Anthony Randich** tat-2 ta’ Settembru 1999 kien ritenut hekk:

“Kif din il-Qorti kellha l-opportunita’ li tirrimarka f’okkażjonijiet oħra, l-isfregju (*disfigurement*) fil-wiċċ (jew fl-għonq jew fl-id) kontemplat fl-Artikolu 216(1)(b) tal-Kodiċi Kriminali jista’ jkun anke ta’ natura

temporanea, bħal per eżempju, sakemm il-ferita tfiq. Huwa biss fil-każ tal-hekk imsemmija ‘offiża gravissima’ fl-Artikolu 218(1)(b) li l-liġi tirrikjedi l-permanenza (oltre l-gravita’) ta’ l-isfregju. Mir-ritratti esibiti din il-Qorti tara li l-ewwel Qorti setgħet legalment u raġonevolment tikkwalifika l-offiża f’wiċċ Sultana bħala sfregju (għalkemm mhux gravi u anqas permanenti) peress li dik l-offiża kienet tiddisturba l-armonija tal-lineamenti tal-wiċċ u kienet tidher minn distanza normali”.

That the fact that the laceration on the left part of the forehead of Temitope resulted in a permanent scar means that such an injury falls within the parameters of Article 218 of Chapter 9 of the Laws of Malta. Hence this Court considers that the determination of who actually inflicted the laceration is of paramount importance.

That the First Court based its decision on the testimony given by the victim Temitope who during the sitting of the 26<sup>th</sup>. of February 2020 identified the appellant as being the person who carried the small knife. Ultimately Article 638 of Chapter 9 of the Laws of Malta establishes that one witness if believed by the Court suffices as proof. In this respect this Court refers to the judgment delivered on the 3<sup>rd</sup>. of September 2021 in the names **Il-Pulizija vs. Anthony Debono** (Number 50/2015) where this Court held that:

“Artikolu 638 tal-Kodiċi Kriminali jagħmilha ċara li huwa fid-dover tal-Prosekuzzjoni li ġgib il-provi kollha u l-aħjar prova possibbli sabiex il-grad tal-prova tal-Prosekuzzjoni jintlaħaq b’suċċess. Jekk dawk il-provi jkunu jikkonsistu prinċipalment fil-verżjoni ta’ xhud waħdieni, il-Qorti xorta waħda tista’ tasal sal-grad ta’ prova rikjest fi proċedimenti kriminali, jekk dak ix-xhud ikun ġie emnut; u dan peress li f’din l-eventwalita’, din

ix-xiehda ssir biżżejjed biex tagħmel prova shiħa u kompluta minn kollox, daqs kemm kieku l-fatt ġie ppruvat minn żewġ xhieda jew aktar. Fil-fatt l-Artikolu 638(2) tal-Kodiċi Kriminali jgħid li xhud wiehed waħdu, jekk emnut, huwa suffiċjenti sabiex fuq ix-xiehda tiegħu l-Qorti tkun tista' ssib ħtija. Dan il-prinċipju ġie kkonfermat f'diversi każijiet li dawn il-Qrati kellhom quddiemhom fil-passat.<sup>2</sup> Jigifieri huwa legalment korrett u permissibbli li Qorti ta' Ġustizzja Kriminali tasal li ssib ħtija f'persuna akkużata fuq ix-xiehda ta' xhud wiehed biss.

In oltre kif ġie ritenut mill-Qorti fl-Appell Kriminali fis-sentenza fl-ismijiet **Il-Pulizija vs. Joseph Thorne**,<sup>3</sup> mhux kull konflitt fil-provi għandu awtomatikament iwassal għal-liberazzjoni tal-persuna akkużata. Imma l-Qorti, f'każ ta' konflitt fil-provi, trid tevalwa l-provi u tasal għall-konkluzjoni tagħha."

That this Court notes that during his testimony tendered on the 20<sup>th</sup>. of July 2020, Henry Onweabuchi (*a fol. 190 et seq.*), identified the appellant Yermakov Mykhailo as the person with the pen knife. This perplexed considerably this Court since a conflict in such an essential element of the testimony puts an even heavier burden on this Court to determine the correctness of these statements. In this respect this Court reviewed the footage of the cctv (Doc. "JSR" - *a fol. 141 et seq.*). From the cctv footage and from the stills provided in the report prepared by John Sacco, this Court could not determine who has caused the injury in question.

---

<sup>2</sup> "Ara fost oħrajn l-appelli kriminali sede inferjuri fl-ismijiet **Il-Pulizija vs. Joseph Bonavia** ippreseduta mill-Imħallef Joseph Galea Debono u datata s-6 ta' Novembru 2002; **Il-Pulizija vs. Antoine Cutajar** ippreseduta mill-Imħallef Patrick Vella u deciza fis-16 ta' Marzu 2001; **Il-Pulizija vs. Carmel Spiteri** ippreseduta mill-Imħallef David Scicluna u deciza fid-9 ta' Novembru 2011; Ara wkoll **Ir-Repubblika ta' Malta vs. Martin Dimech** deciza mill-Qorti tal-Appell Sede Superjuri u ippreseduta mill-Imħallfin Joseph Filletti, David Scicluna u Joseph R. Micallef u datata 24 ta' Settembru 2004."

<sup>3</sup> "Deciza fid-9 ta' Lulju 2003 mill-Qorti tal-Appell Kriminali Sede Inferjuri ippreseduta mill-Imħallef Joseph Galea Debono."

In addition, this Court concurs with the First Court when it criticised the Prosecution for not reviewing the footage in detail with the consequence that it failed to identify and prosecute who the First Court referred to as “H” in its judgment. This Court has reviewed in detail the cctv footage and the stills provided. This Court arrived at the conclusion that the injury on the forehead happened between 5.59.32am and 5.59.55.am. This is demonstrated by the following pictures which this Court extracted from the cctv footage.







That in the second still, the face of the injured party is seen with blood for the first time and not as stated by the First Court that he was covered with blood already as he was exiting the bar. In the lapse of time that took place between these stills there was a sudden surge in violence in which the guy with the helmet which the First Court identified with “H” participated. When “H” moved forward, he was holding something in his hand that reflected in the light of the bar.



That as the First Court correctly identified, “H” collects what seems to be a bottle from the landing. However, even though from the above still, “H” does not seem to hold a bottle, from camera 11, three (3) seconds later he is seen clearly holding a bottle and hitting the victim. This Court deems that the time lapse is too short for “H” to hit with a knife, drop it and use the bottle to hit Temitope Akinribomu Olakunie again. Hence this Court in agreement with the First Court considers that the item in “H”’s hand is necessarily a bottle. Given that the bottle is a blunt object and the injury in question is caused by a sharp object necessarily this Court deems that “H” did not cause the injury to Temitope Akinribomu Olakunie.



That, this leaves us with the appellant as main suspect in respect to who caused the laceration to the victim. Nonetheless, it is not clear from the cctv footage who caused the laceration to the victim Temitope Akinribomu Olakunie. Hence what remains is the testimony of the same victim who identifies the appellant as the holder of the pen knife. Unfortunately, this Court is concerned as to the condition of the injured party given that he had been knocked out repeatedly and given the fact that he was drunk. Furthermore, this Court is even more perplexed when Henry identifies another appellant as holder of the pen knife.

That given the state of Temitope Akinribomu Olakunie and given the conflict in versions, this Court does not deem that the Prosecution managed to prove to the level necessary who was the person who inflicted the laceration to Temitope Akinribomu Olakunie. This does not mean however that the appellant is not guilty of causing slight bodily harm to Temitope. However, this Court deems that there is not sufficient proof to determine that the appellant is guilty of grievous bodily harm as established under Article 218 of Chapter 9 of the Laws of Malta.

That as stated by the First Court it is evident that Temitope was hit by all the appellants and their behaviour clearly defeats their arguments as to how they tried to restrain the victims. Whilst it is true that the victims kept on coming forward, it is also true that in respect to Temitope he could have been restrained without using the degree of violence used. The victim has been punched repeatedly by the appellants and has also been kicked. Furthermore, the bite he inflicted to one of the appellants was clearly inflicted in self-defence. In this respect reference is made to the report by Dr. David Mifsud (Doc. "DMZ" - *a fol. 231 et seq.*).

That the argument brought forward by the appellant regarding the absence from these proceedings of the girlfriend of the injured party is inconsequential. It is up to the Court to decide upon the merits of the case whether the Prosecution managed to prove its case to the level requested by law. In this respect this Court refers to the judgment delivered on the 27<sup>th</sup>. of October 2022 in the names **Il-Pulizija vs. Roderick Gerada** (Number 237/2020) where this Court maintained that:

“38. Ir-regola proċedurali bażi hija dik li l-Prosekuzzjoni trid iġġib il-quddiem l-iktar prova sħiħa u b’saħħitha nonche’ l-aqwa prova. Izda jekk l-imputat ikun jidhirli li l-Prosekuzzjoni kellha gġib xi prova u din il-prova ma tkunx giet prodotta mill-Prosekuzzjoni, dan ma jkunx ifisser li minhabba f’hekk il-każ tal-Prosekuzzjoni jkun difettuż. Fl-evalwazzjoni tal-każ li jkollha quddiemha il-Qorti trid tħares lejn il-kwadru probatorju kollu u mhux lejn biċċiet ta’ evidenza meqjusa singolarment u b’mod spezzettat. Jekk il-Prosekuzzjoni jkun jidhrilha li bil-provi li tkun ressqet, hija tkun diġà pruvat il-każ tagħha lil hinn minn kull dubju dettat mir-raġuni, il-Prosekuzzjoni tista’ tieqaf hemm. Imbagħad jispetta lill-ġudikant li jagħmel eżercizzju ta’ apprezzament ta’ dawk il-provi u jqis jekk kinux tassew jissodisfaw dak il-livell ta’ suffiċjenza probatorja biex jirnexxu b’suċċess l-

imputazzjonijiet miġjuba kontra l-imputat. Kif ġie mistqarr fl-appell kriminali **Il-Pulizija vs. Richard Calleja** deċiż nhar it-2 ta' Ottubru 2014, l-Artikolu 638(1) tal-Kodiċi Kriminali, juża' d-diċitura 'bħala regola' u għalhekk:

“Dan ifisser, kwindi, illi jekk il-Prosekuzzjoni għal xi raġuni tħalli barra xi xhud ma jfissirx illi b'daqshekk il-każ tagħha jkun kompromess, kollox jiddependi mill-assjem tal-provi miġbura u kemm dawn iwasslu sa dak il-konvinċiment morali f'moħħ il-ġudikant illi l-imputat għandu jkun responsabbli għall-akkużi addebitati lilu. F'dan il-każ, il-Prosekuzzjoni iddeċidiet illi lil Carmelo Caruana ma ttelgħux bħala xhud f'din il-kawża. Kienet fid-diskrezzjoni tal-Prosekuzzjoni ttellgħux jew le din id-deċiżjoni żgur li m'għandhiex taffetwa l-kumplament tal-provi prodotti illi fuqhom il-Qorti għandha tibbaża d-deċiżjoni tagħha. U hekk għamlet l-Ewwel Qorti.””

That nonetheless this Court considers that in this case the cctv footage does a pretty good job in proving the conduct of the appellant.

That this Court does not agree with the appellant where he argues that this case could have been assimilated in the crime established under Article 237 of Chapter 9 of the Laws of Malta. In particular, this Court deems that the most serious crime is that established under Article 221 of Chapter 9 of the Laws of Malta hence his argument is being rejected. In addition to this the appellant has been found guilty of breaching Chapter 389 of the Laws of Malta with particular reference to Articles 3 and 25(b) of said Chapter.

That in particular Article 3 of Chapter 389 of the Laws of Malta establishes that:

“No person shall operate as a private guard agency or act as a private guard or offer his services as such, unless such person is licensed in accordance with the provisions of this Act.”

That during his testimony given on the 10<sup>th</sup>. of June 2021 (*a fol. 288 et seq.*) Stepan Stankov confirms that he is a barman and not a security. Given that he was not employed as a security guard, this Court deems that the First Court could not have found him guilty of such a breach since Article 25 of Chapter 389 of the Laws of Malta specifically requests that such person is to act or be employed as a security guard.

That, for the above-mentioned reasons, the first grievance of the appellant Stankov will be partially upheld in relation to gravity of the injury caused to Temitope as well as to the fifth charge brought against him.

### **Second grievance of Stepan Stankov**

That by his second grievance the appellant complains about the harshness and extremity of the punishment meted out by the First Court. In particular the appellant refers to the findings of the Court. He also refers to the fact that the punishment is to have a rehabilitative effect and also mentions that he is a first-time offender and that the punishment meted out is disproportionate and does not provide for the balance required.

That in view of the fact that this Court deems that the Prosecution did not prove to the level requested by law who caused the grievous injury to Temitope and in view of the fact that he will be acquitted from the fifth charge, hence this Court shall review the punishment meted by the First Court, keeping in mind, amongst other, his clean conviction sheet.

## Considers

### Considerations Regarding the Grievances Of The Appellant Yermakov Mykhailo

That the appellant refers to the testimony made by Temitope and to the changes he made in his versions. In this respect this appeal is similar to that made by the previous appellant as it identifies certain incongruencies in the version given by the injured parties. The appellant also states that he has sustained slight injuries during the fight as he was hit by a bottle. He refers also to the testimony given by Dorde Dudic and that given by Stepan Stankov as well as that of Ryan Genovese.

#### First grievance of Yermakov Mykhailo

That the appellant Mykhailo complains that the First Court failed to apply and to give importance to several pertinent facts that not only resulted in the brawl but that also exonerate him. He refers to the evidence brought forward by the Prosecution which in his words were limited to the victims involved in the brawl and the medical expert. He refers to the fact that despite the confirmation by the medical witness that the injuries suffered by the victim were caused by a sharp object, the same arm was never found and produced in Court. The appellant complains that there are serious doubts as to whether any knife or knives were used on the scene. He argues that given the peaceful manner the victims have been escorted out of the club, there was no way to believe that such arms were used.

That the appellant complains that one cannot just look at the injuries and deduce based on the statement made by the victims that such fact occurred without there being any objective proof consolidating such testimony. With reference to the stills extracted from the cctv the appellant states that if an assumption is to be made such assumption should be made in his favour.

That in respect to the reference by the First Court that there was heavy blood shed when the Africans were beaten, the appellant points out that blood has not appeared before the Africans were escorted outside and before they started to try to re-enter the club. Secondly the group of African nationals were heavily drunk and their behaviour was aggressive. Thirdly the injuries sustained by the victims were the direct result of other third parties.

The appellant states that he was acting in defence of the patrons of the club and the club owner interest. The appellant complains that they cannot be described as acting savagely when they had asked repeatedly the group of Africans to go home because they were not acting in a civilised manner. He states that the brawl could easily be assimilated as an accidental affray on the basis that the group of Africans were intoxicated. He also complains that from the cctv footage one could identify the real perpetrators of the crime, but these were not investigated and not brought to justice.

That the arguments brought forward by the appellant Mykhailo Yermakov are similar to those presented by Stepan Stankov hence in order to avoid repetition this Court refers to the considerations made in respect of the appellant Stepan Stankov and applies them to the appeal raised by Mykhailo Yermakov.

That whilst it is true that the victims have been escorted outside from the bar in a relatively peaceful manner and this Court could not see blood on the victims whilst they were being escorted outside, it is also true that the appellants when faced with minimal aggression from the victim Temitope they punched him repeatedly and kicked him violently. Such a conduct with an unarmed person who can barely stand on his feet is far from professional. The Court notes that Henry who is by far larger than Temitope has been kept in a locked position for a considerable amount of time. This Court asks: couldn't this approach have been used also on the appellant Temitope instead of attacking him and knocking him out repeatedly?



That with regards to the complaint that from the cctv footage this Court could arrive to the real perpetrators of the crime, this Court agrees with the appellant in that despite the fact that the appellant may have not caused the grievous injury, he was still guilty of causing slight bodily harm on Temitope.

That in addition to causing slight bodily harm to Temitope, the First Court found the appellant guilty of breaching Articles 3 and 25(b) of Chapter 389 of the Laws of Malta.

That whereas reference is made to Article 3 of Chapter 389 of the Laws of Malta which has been quoted above, this Court notes that during his testimony given on the 13<sup>th</sup>. of May 2021 (*a fol. 276 et seq.*) Yermakov confirms that he did not have a license to work as security (*a fol. 281*). Hence this Court deems that the fifth charge had been adequately proved.

That, in view of the above, the First Court could reasonably reach the conclusion it reached and consequently the first grievance of appellant Yermakov Mykhailo is being rejected.

### **Second grievance of Yermakov Mykhailo**

That by means of the second grievance the appellant Yermakov Mykhailo complains about the punishment meted out by the First Court. In this respect he refers to the fact that their behaviour was intended to protect the patrons who were inside the club. He complains that the part of the punishment provides a clear injustice in the way they have been assessed. He also complains that there were no knives used, found or exhibited. In addition, he states that their guilt was the result of the fact that the victims have been believed in their testimonies. He also says that there were a number of mitigating circumstances and that he is of good character. He also indicates that he has never fallen victim of provocation and since the incident he stopped working at the club in question. In this respect he refers to the fact that the punishment should balance out various factors.

That this Court notes that it does not disturb the discretion of the First Court if the punishment meted out by the First Court is within the parameters established by law. That in respect to this grievance, this Court starts by referring to the judgment delivered on the 20<sup>th</sup>. of December 2022 in the names **Il-Pulizija vs. Wajdi Lazhir Benhamed** (Number 386/2022) where this Court as diversely presided stated the following:

“10. Issa, għal dak li jirrigwarda appelli minn piena, huwa paċifiku li sabiex Qorti tal-Appell tibdel il-piena li tkun erogata l-Ewwel Qorti, irid jirriżultalha li tali piena tkun żbaljata fil-prinċipju jew manifestament eċċessiva. [...]

11. Mill-banda l-oħra din il-Qorti trid tagħmel l-evalwazzjoni tagħha dwar jekk il-Qorti tal-Maġistrati (Malta) applikatx piena li kienet manifestament eċċessiva meta wieħed jieħu kont ukoll tal-aspetti retributtivi u preventivi tas-sentenza emessa minnha.”

That this Court notes that the punishment meted out by the First Court in respect of Yermakov Mykhailo is within the parameters of the law for the charges he was found guilty of. This Court has noted the arguments brought forward by the appellant Mykhailo regarding his good character and the lack of preceding offence. Yet, considering the circumstances surrounding this case and considering that this Court believes that the punishment meted out by the First Court in his respect was not excessive and was within the parameters of the law, hence the grievance under examination is also being rejected.

## **Considers**

### **Considerations Regarding the Grievances Of The Appellant Dorde Dudic**

### **First grievance of Dorde Dudic**

That by means of his first grievance the appellant Dudic complains about the fact that the First Court gave complete credibility to the victims despite their inconsistencies. If one were to give Temitope credence, then weight is to be given to his mistaken belief that the appellant was flirting with his girlfriend. He continues that in the light of this, the victim kept attacking the appellant and even bit him twice, hence one is to take into consideration this dynamic when calibrating the necessity of self-defence. He adds that during the accident he did not demonstrate the *animus* described by the First Court nor was the victim just a meek victim when one considers his attack on him.

That this Court refers to what was stated above in the considerations regarding the grievances brought forward by the other two appellants and applies same considerations here. This Court further notes that the appellant has repeatedly lied during his testimony. In particular, while reviewing the cctv footage it is evident that the appellant knew "H" as has been also stated by the First Court. Furthermore, the appellant says that he was outside to check that his bike was not damaged however from the cctv footage he has not checked any bike and has always kept himself involved in the brawl. Even the bite that he suffered was the result of a self defence action of the victim Temitope. Hence the argument pertaining to self-defence brought forward by the appellant is dismissed since his conduct cannot be in any way linked to self-defence. This Court states this because the appellant had no place at the door of the bar given that he was not even employed there. It is clear to this Court that the appellant was itching to participate in the brawl.

That given all the above this Court deems that the First Court could have reasonably determined that the appellant was guilty in respect to the first charge brought against him with regards only to Temitope and only of slight bodily harm. Hence the first grievance under examination is being rejected.

### **Second grievance of Dorde Dudic**

That by means of his second grievance the appellant Dudic complains about the severity of the punishment. In this respect he states that the First Court should have taken Article 237 of the Chapter 9 of the Laws of Malta into consideration. He complains that he has not caused any injuries and no proof was brought by the Prosecution in respect to the effects on Temitope. He states that Article 221(3)(b) of Chapter 9 of the Laws of Malta had to be applied and thus the punishment for contravention should have been meted. He points out that since he has been residing in Malta, he has been law-abiding and has a pristine criminal record.

That this Court does not agree with the appellant in respect to the assimilation of this crime to that under Article 237 of Chapter 9 of the Laws of Malta given the fact that the most serious offence is vested in Article 221 of Chapter 9 of the Laws of Malta. Hence, the argument of the appellant in this respect is being rejected.

That as regards the applicability of Article 221(3)(b) of Chapter 9 of the Laws of Malta, the Court notes that for its application the injury is of little or no consequence to the injured party. However, in this case the injured party Temitope during his testimony delivered on the 26<sup>th</sup>. of February 2020 (*a fol. 51 et seq.*) states that he was still feeling dizzy (*a fol. 59*). Hence one cannot conclude that the injuries were of little consequence. Consequently, the article applicable is not that indicated by the appellant. Given that the punishment meted out by the First Court is in line with the parameters established by law and given the lies and the role of the appellant, this Court sees no reason why the punishment meted out to him should be varied. Hence even the second grievance is being rejected.

### **Considers**

That this Court is completely in agreement with the First Court when in its judgment it stated the following (*a fol. 346 et seq.*):

“The accused demonstrated that they cannot exercise self-control, have no respect for others especially the frail and the weak, and thus have no place in the community which is governed by laws designed to protect its members from the peril such individuals pose. Through their actions the accused demonstrated that they constitute a real threat to society. Society has no place for such individuals. Not until they have proven themselves to be well and truly rehabilitated. [...]

It is for the Courts to voice society’s abhorrence to the violence through the sentence it is now called to pass.

The Court could not disregard the fact that throughout these proceedings and notwithstanding the clarity of the accuseds’ actions captured on the footage, the said accused never showed any remorse for their actions, nor compassion for the victim. The uncontrolled savagery of their actions demands that these men are taken out of circulation until society is assured of their rehabilitation.”

## **Decide**

Consequently, for all the above-mentioned reasons:

- as regards the appeals filed by appellants Yermakov Mykhailo and Dorde Dudic, this Court rejects their appeals and confirms the judgment delivered by the First Court in their regards in its entirety;
- as regards the appeal filed by Stepan Stankov, this Court accedes to his appeal limitedly and hence varies the appealed judgment by reforming the judgment delivered by the First Court in the sense that:

- finds him guilty of the first charge limitedly to slight bodily harm with regards to Temitope Akinribomu Olakunie;
  - revokes that part of the appealed judgment where he was found guilty of the last charge (no. 5) and instead acquits him from the said charge;
  - revokes also that part of the judgment where he was condemned to a term of five (5) years and four (4) months imprisonment and instead condemns him to a term of one (1) year imprisonment;
  - revokes the order of the First Court whereby he (Stankov) was ordered to pay the injured party Temitope Akinribomu Olakunie the sum of five thousand Euro (€5,000) given that it is not clear that he had caused the grievous bodily harm to the said injured party;
- otherwise, the appealed judgment is being confirmed.

---

**Dr. Neville Camilleri**  
**Hon. Mr. Justice**

---

**Alexia Attard**  
**Deputy Registrar**