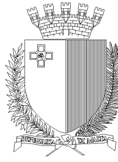

Qorti tal-Appell Kriminali

Onor. Imħallef Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appell Nru: 264/2023/1

Il-Pulizja

Vs

Ilhan Irem Yuce

Illum 17 ta' Novembru 2023

Il-Qorti,

Rat l-akkuzi dedotti kontra l-appellant, Ilhan Irem Yuce detentur tal-karta tal-identita' Maltija **0487820L**, imwieled it-Turkija nhar l-4 ta' April 1990, residenti 26, Drewmie, Fl 5, Triq it-Torri, Msida. Akkuzat quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli nhar is-27 ta' Dicembru 2022 ghal-habta ta' 22:18hrs gewwa 96, Silver, Fl 2, Triq id-Dugh, Marsaskala, u gewwa dawn il-gzejjer Maltin:

1. Hebb sabiex ingurja, dejjaq jew ghamel hsara lil **Leanne Fenech Yuce**, jew lil haddiehor, kemm-il darba l-fatt ma jkunx jaqa' taht xi dispozizzjoni ohra ta' dan il-kodici;
2. Ghamel ingurji jew theddid mhux imsemmija band'ohra fil-kodici kriminali jew, jekk kien ipprovokat, ingurja b'mod li hareg barra mill-limiti tal-provokazzjoni ghad-detriment ta' **Leanne Fenech Yuce**.

Il-Qorti kienet mitluba wkoll f'kaz ta' htija, sabiex tipprovdi ghall-persuni ta' Leanne Fenech Yuce jew sabiex tinzamm il-bon ordni pubbliku flimkien mal-piena applikabbli ghar-rest, turbot lil Ilhan Irem Yuce b'obbligazzjoni tieghu nnifsu taht penali ta' somma ta' flus li tigi iffissata mill-Qorti billi tapplika l-Artikoli 382(a) u 383 et seq. tal-Kap 9 tal-Ligijiet ta' Malta, ghal zmien li thoss xieraq.

Having seen that on the 10th May 2023 the Court ordered that proceedigns are to be held in the English language since the accused dos not speak or understand the Maltese language (fol. 5)

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature of the 21st of June 2023, where the Court, found the accused guilty of the charge as proferred against him and consequently by virtue of Article 383 of Chapter 9 of the Laws of Malta, in order to retain the public peace and the peace between the parties and to provide for the safety and security of Leanne Fenech Yuce, bound the accused Ilhan Irem Yuce to enter into his own recognizance for a period of twelve months and this under penalty in the sum of €800 in default of observance of such conditions.

The Court explained the meaning of this judgment to the guilty party in a language which he understood and who confirmed that he understood same.

Having seen the appeal application presented in the reġistrar of this Court by Ilhan Irem Yuce on the 10th of July 2023, where he humbly requests this Honoruable Court to accept this appeal and cancel and revoke the appealed judgment, and consequently acquit the appellant by finding him not guilty of all the charges proferred against him, and subordinately, and strictly without prejudice to the greviences brought forward in the appeal, should this Honourable Court confirm guilty in one or both charges, appellant humbly requested this Honourable Court to modify the judgment with regards to punishment, imposing a punishment which is more lenient and just

according to the circumstances of the case, and cancelling or modifying the restraining order issued in terms of article 382A of the Criminal Code.

That the appellant felt aggrevied by the decision above indicated and he is therefore, presenting this humble appeal from such decision.

That the greviances are the following:

1. That first of all the appellant was notified with the charges only in the Maltese language and was never given a translated copy of the charges in a language he understands, and consequently both the proceedings held infront of the Court of Magistrates and the judgement itself are null.
2. That secondly and strictly without prejudice to the first greviance both charges preferred against the accused are time-barred, and this is so, both if strictly without prejudice to the first grievance one considers the notification of the charges in the Maltese language, and more so, if one accepts the fart that the appellant has not yet, up till today been notified with the charges in a language he understands.
3. That thirdly, and once again strictly without prejudice to the above greviances, given the particular date and time indicated in the charge sheet, the prosecution has not managed to prove the charges as indicated in the charge sheet.
4. That fourthly, on the merits, the appellant cannot be found guilty of the contraventions proferred against him since the elements of the crimes do not exist. This especially since the words used "*you will see*" cannot be deemed to constitute insults or threats.
5. And lastly, the applicant humbly submits as well that as regards punishment, whilst the appellant declares that he has no intention of molesting Leanne Yuce and never did so, however same restraining order under Article 382A and the order under article 383 of the Criminal Code that have been imposed on the appellant failed to consider other important factors which exist and which needed to be addressed as well in the same restraining order.

1) The appellant has not been notified with the charges In a language he understands

The appellant is a Turkish national who doesn't speak nor understands the Maltese language, and during the first hearing of the proceedings the Court took note and accepted this fact, and infact ordered that the proceedings take place in the English language.

The charges however were still in the Maltese language language, and the First Court failed to order that the charges be translated to the English lanaguge and that the appellant be notified with the charges in the English language.

Morever, the accused at no point in time did he waive his right to have a wrtitten translation of the charges against him. The absence of a written translation of the charges, in itself constitutes two Major problems in the proceedings.

Firstly, the fact that the accused/appellant was never given a translated copy of the charges, constitutes a breach of the provisions of article 534AD of the Criminal Code and the relative provisions of the Judicial Proceedings (Use of English Language) Act, Chapter 189 of the Laws of Malta, and constitutes a breach of the right enshrined in article 39(5) of the Maltese Constitution and article 6(3)(e) of the European convention of Human Rights.

And secondly, and as a result of the claims in the preceeding paragraphs, the Court could not go on and pronounce judgment. Consequently, both the proceedings and the judgement are null.

Article 534AD of the Criminal Code states that:

> *"(1) Where the suspect or the accused does not understand the language of the criminal proceedings concerned, he shall, within a reasonable period of time, be provided with a written translation of all documents which are essential to ensure that he is able to exercise their right of defence and to safeguard the fairness of the proceedings.*

(2) The decision determining what constitutes an essential document shall be taken by the Executive Police or by the Court, as the case may be, and the suspect or the accused or his legal counsel may submit a reasoned request to that effect:

Provided that essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment:"

That on the application of article 6 (3) of the European Convention on Human Rights, we find that:

> *"558. Article 6 § 3 (e) guarantees the right to the free assistance of an interpreter for translation or interpretation of all documents or statements in the proceedings which it is necessary for the accused to understand or to have rendered into the court's language in order to have the benefit of afair trial (Luedicke, Belkacem and Kog v. Germany, 1978, § 48; Ucak v. the United Kingdom (dec.), 2002; Hermi v. Italy [GC], 2006, § 69; Lagerblom v. Sweden, 2003, § 61).*
>
> *559. Article 6 § 3 (e) applies not only to oral statements made at the trial hearing but also to documentary material and the pre-trial proceedings (Kamasinski v. Austria, 1989, § 74; Hermi v. Italy [GC], 2006, § 70; Baytar v. Turkey, 2014, § 49)".*

It is also understood that:

> *"The ability to comprehend the proceedings in a criminal trial, guaranteed in Art. 6, para. 3(e), may be seen as another aspect of the importance for an accused to participate effectively in the proceedings. For the right to be effective, the obligation of the authorities is not limited to the provision of an interpreter, but may also extend to a degree of control over the adequacy of the interpretation provided. Issues as to the standard of the interpretation could arise if it could be established as damaging to the accused's effective participation in the proceedings. Although a failure to complain at the time may be fatal to claims*

before the Court as generally domestic courts must be given an opportunity to remedy any inadequacy, the onus is nonetheless on the trial judge to treat an accused's interest with 'scrupulous care' and take steps to ensure his ability to participate where problems are drawn to his attention, the applicant requires interpretation assistance, it is unlikely that informal and unprofessional assistance will be sufficient. Article 6, para. 3(e) has been held to cover documentary material and pre -trail matters, but it does not extend to requiring translations of all documents in the proceedings. It is sufficient if the applicant is assisted by interpreters, translations and the help of his lawyers so that once it is apparent that he has knowledge of the case which enables him to defend himself, in particular by being able to put forward his version of events.

Finally reference is made to ruling delivered by the Court of Appeal in the proceedings **II-Pulizija vs Tanya Carmen Chetcuti,** (appeal 115 /2016) given on the 17th of June 20196 . In this case, notwithstanding that the accused did not understand the Maltese language but was English speaking, and had not been notified with the charges in the English language, the court had pronounced judgment in the Maltese language but in light of the above-indicated legal provisions, the Court of Appeal declared the proceedings and the judgement by the First court null and ordered that the accused be notified with the charges in the English language.

Consequently, given that whilst the First Court has accepted the fact that the appellant did not understand or speak the Maltese language, the First Court did not order that the appellant/accused be notified with a written translation of the charges in the English language, and in fact the appellant has to date not yet been notified with the charges in the English language, the appellant humbly submits that the proceedings held infront of the Court of Magistrates and the relative judgement delivered by the First Court are null.

2) Both charges preferred against the accused are time-barred

The charges preferred against the accused are both of a contraventional nature and therefore, time barred by the lapse of 3 months in terms of article 688(f) of the Criminal Code. Consequently, the appellant humbly declares that in line with the greviance raised in the preceeding paragraph, given that it is being argued that the appellant has not yet legally been notified with the charges, the criminal action in this case is time barred since from the date of when the alleged contraventions took place till today, more than 3 months have already passed.

Moreover, strictly without prejudice to the first greviance, even if one had to accept the notification of the charges in the Maltese language as a valid notification, the criminal action would still be time barred.

According to the charge sheet, the alleged contraventions took place on the 27th of December 2022 and it transpires from the stamp on the same charge sheet that the charges were definitely not issued by the police before the 15th of February 2023.

From the acts it does not transpire when the accused/appellant was notified with the charges against him (albeit in the Maltese language).

It transpires from the acts however, that the injured party Leanne Fenech Yuce was notified with the proceedings during the week of the 27th of April 2023 and therefore, after the lapse of 3 months from the date of when the alleged contraventions took place.

It also transpires from the acts that the first time that the appellant was present in Court in relation to these proceedings was on the 10th of May 2023 and therefore, once again after the lapse of 3 months from the date of when the alleged contraventions took place.

Consequently, given that the prosecution did not present the summons to show when the appellant was notified with the charges (albeit in the Maltese language), in line with the jurisprudence which states that in the absence of the summons in the acts,

the Court is to take the first appearance of the accused for the proceedings as the date when he was notified with the charges. In this case the date when the accused appeared for the first sitting of the case was more than 4 months after the date of when the alleged contravention took place and therefore it is being humlby submitted that the criminal action is to be declared as time barred in this case.

3) Given the particular date and time indicated in the charge sheet, the prosecution has not managed to prove the charges as indicated In the charge sheet

It transpires from the charge sheet that the prosecution has opted to charge the appellant with two particular contraventions and restrict those 2 contraventions to a particular date and time, i.e. the 27th of December 2022 at 22.18hrs.

It has transpired from the evidence that two separate incidents happened on the 27th of December: the first one at 7.30pm when there was the encounter between the parte civile and the appellant in the presence of Francesco Caloguiri, and where the words "you will see" were utterred by the appellant; and the second one which took place at 22.18hrs, which consisted only of messages sent by the appellant to the parte civile and which the Court did not deem as constituting any threats.

Having said this, the incident which the prosection, the injured party and the First Court deemed to be in breach of the contraventions indicated in the charge sheet allegedly took place at around 7.30pm and not 22.18hrs.

The First Court infact delved into what happened at 22.18hrs and declared that the wording used by the accused at that time does not constitute threats and infact was not even perceived as threatening by the parte civile, and went on to declare that it was the incident which took place at 7.30pm wherein the words "you will see" which was in breach of the contraventions proferred against the accused.

Notwithstanding the above, the First Court however whilst noticing that the words which were perceived as threats were uttered on the 27th of December 2022 in

Marsascala but at 07.30pm and not 22.18hrs, still found the accused guilty as charged. The First Court in arriving at this conclusion declared that this discrepancy does not lead to the nullity of the citation proferred against the accused and that this variance did not change the elements of the charges or prejudice the accused.

The appellant however humbly submits that the First Court's reasoning is wrong in that given the particular circumstances of the case, the proseucution has not proved its case as indicated in the charges.

That the appellant is not arguing that the mistake in the time indicated in the charge sheet leads to the nullity of the charge sheet.

The appellant is in fact aware of a number of judgments which state that the charge sheet is only an "*avviso di comparire*", however in this case, the prosecution has defined and restricted the charges to a particular date and time, thus exluding other dates and times, and the shortcoming relates to the time of the alleged offence. Consequently, this error leads to the case not being adequately proved.

In the case **<u>The Police vs Jesmond Seguna</u>**, decided by the Court of Appeal on the 11th of May 2023 (app no. 59/2023), the Court of Appeal, after referring to a number of judgments which relate to the charge sheet, declared that:

> *"Illi ghalkemm l-iskop tac-citazzjoni huwa dak ta' awiz sabiex l-imputat jidher quddiem il-Qorti, din il-Qorti hija tal-fehma li gialadarba l-Prosekuzzioni ahazlet li takkuza lill- appellant b'data u Hem partikolari, kellha tiprova 7 hinn minn kail dubbju dettat mir-raguni illi l-allegat spoll sar nhar id-191 t'April, 2020 jew fil-jiem ta' qabel."*

Relevant to this case is the fact that jurisprudence has established that in case the charge sheet referes to a particular date and time "*din il-lokuzzjoni għandha tingħata t-tifsira ordinarja skont il-kalendarju*".

In the case **il-Pulizija vs Jefrin Grech,** decided by the Court of Appeal per Judge Dr. A Bugeja it was held that:

> *"51. Apparti minn hekk anke l-lokuzzjoni wiesa li tinkludi jiem u xhur, ghalkemm hija lokuzzjoni li hija aċċettata minn dawn il-Qrati xorta waħda trid tiġi użata b' ċerta attenzjoni. Fil-fehma ta' din il-Qorti din il-lokuzzjoni ghandha tinghata t-tifsira ordinarja skont il-kalendarju. B' hekk il-kalendarju ghandu kliem li jirriflettu kunċetti termporali spedfid. Erba' u ghoxrin siegha jaghmlu jum. Tmienja u ghoxrin jum jew disa' u ghoxrin jum jistghu jaghmlu x-xahar ta' Frar skont fliema sena dak ix-xahar jahbat; daqs kemm tletin jew wiehed u tletin jum isawru l-kumplament tax-xhur skont il-kalendarju. Mill-banda l-oħra sebat ijiem jagħmlu ġimgħa daqskemm erba' jew ħames ġimgħat, skont kif jaħbtu, jagħmlu wkoll xahar. Iżda bla dubju tnax il-xaharjaghmel sena.*
>
> *52. Mistqarr dan kollu b' hekk meta din il-Qorti tiġi konfrontata b'lokuzzjoni akkużatorja li tghid "f'Lulju 2006, jew jiem jew xhur wara" Qorti ta' Gustizzja Kriminali ghandha tinterpreta din il-lokuzzjoni temporali bhala li tirreferi ghax-xahar ta' Lulju kollu, inkluż fil-jiem u xhur ta' wara. Din il-frażi filwaqt li tinkludi *xhur", ma ssemmix "snin". Minn din il-konkluzzjoni tat-tieni imputazzjoni Qorti tista' tinferixxi li l-intenzjoni tal-Prosekutur kienet li jixli lill-imputat bir -reat de quo kif allegatament minnu kommess bejn ix-xahar ta' Lulju 2006 u x-xhur ta' wara li pero ma jinkludix ukoll snin ta' wara, in kwantu li kieku dik kienet l-intenzjoni tal-Prosekutur huwa kien ikun aktar car u speċifiku lijindika l-kelma "snin", Verament li ghadd kbir ta' xhur jista' wkoll jikkostitwixxi snin. Iżda l-Liġi kriminali ma tistax tiġi interpretata b'dan il-mod daqshekk laxk u wiesa. Ir-referenza ghal xhur ghandha tkun ristretta ghal ammont ta' xhur f'kalendarju li ma jaghmlux flimkien aktar minn sena. Ghalhekk il-kelma "xhur" ghandha tinftiehem li tinkludi sa massimu ta' total ta' tnax il-xahar inkluż ix-xahar li ghalih tkun qed issir ir-riferenza fl-att akkuzatorju."*

A similar situation was dealt with in the case **il-Pulizija vs Pauline Fenech,** decided by the Court of Magistrates on the 11 of January 2022 wherein the Court declared that:

> *"Kif inghad, l-imputata ġiet mixlija illi kkommettiet ir-reati Ikoll addebitati lilha fit-Ċitazzjoni "f'Mejju 2012 u fix-xhur ta' qabel". Isegwi ghalhekk illi kif impostata, l-imputazzjonijiet jirreferu neċessarjament ghal fatti li graw f'Mejju 2012 jew f'xhur anteċedenti dik id-data. Filwaqt li bl-użu tal-plural fil-kelma "xhur" l-ispazju temporali tal-fatti li ghalihom jirreferu l-imputazzjonijiet jista' jitqies li gie estii ghal diversi xhur qabel Mejju 2012, il-Qorti pero' tqis illi l-parametri tal-kelma "xhur", b'mod generali, ghandhom ifissru dawk il-ftit xhur qabel id-data spedfikata u ma jistghu qatt jiggebbdu biex jinkludu fihom fatti li jkunu sehhew sitta, seba' jew tmien xhur jew iktar, qabel. Wisq anqas ma jistghu jidhlu fl -iskop tal-kliem *'fix-xhur ta' qabel", dawk ix-xhur tas-sena ta' qabel id -data espressament msemmija fl-imputazzjoni, f'dan il-kaz Mejju 2012 ghaliex iż-żmien indikat fl -akkuża jirreferi ghal "xhur ta' qabel" Mejju 2012 u mhux "is-snin ta' qabel" Mejju 2012.*
>
> *Konsegwentement, il-Qorti tqis illi ghall-fini tar-reati addebitati lill-imputata fit-Ċitazzjoni, tista' tinsab ħtija biss jekk ikun jirriżulta li dawn ir -reati ġew kommessi mill-1 ta' Jannar 2012 'il quddiem iżda mhux qabel din id-data."*

Consequently, applied the same principles to the case in question, the use of the words "at around 22.18hrs" denotes a time around that period, and cannot be deemed to cover as well something which allegedly occured 4 hours before.

A similar situation to the case in point was dealt with in the case **il- Pulizija vs Ramon Mifsud Grech**, decided by the Court of Magistrates on the 23rd of April 2012, wherein the Court acquitted the accused since whilst the time indicated in the charge sheet read "at around eleven in the evening", it transpired from the evidence that the events occured at around 03.30am:

llli s-subartikolu (2) ta' l-artikolu 360 tal-Kapitolu 9 tal-Ligijiet ta' Malta jipprovdi li:

Ic-citazzjoni ghandha ssemmi car il-persuna mharrka, u ghandu jkunfiha, fil-qosor, il-fatti ta' l-akkuza, bil-partikularitajiet ta' zmien u ta' lok li jkunu jinhtiegu jew li jkunu jistghu jinghataw. Ghandu jkun fiha wkoll it-twissija li, jekk il-persuna mharrka tonqos li tidher, hija tigi arrestata b'mandat tal-Qorti u mressqa quddiem l-istess Qorti fil-jum li jkun imsemmi fil-mandat."

llli fis-sentenza mghotija fit-18 ta' Ottubru 2005 mill-Qorti ta' I-Appell Kriminali fil-kawza fl-ismijiet 'Pulizija vs John Mary Briffa', fejn l-appellant f'dik il-kawza gie akkuzat b'reati li allegatament sehhew "ghall-habta tas-7.30p.m." mentri l-provi kienu jirrigwardaw incident li sehh "ghall-habta tas-7.30 a.m, intqalli:

*"L-imputazzjoni ghalhekk kif impostata qed tirreferi ghal xi haga li allegatament grat tnax-il siegha wara u l-ewwel Qorti hekk sabet lill-appellant hati. Mill-provi ma jirrizultax li gara xi incident fil-hin indikat fl-imputazzjoni u ghalhekk l-appellant ma setax jinstab hati kif fil -fatt instab. Il-frazi *ghall-habta ta' * tindika hin approssimattiv u tinkludi hin vicin dak imsemmi fl-imputazzjoni izda zgur mhux tnax-il siegha wara. II-prosekuzzjoni qalet li huwa ovju li dan kien zball dattilografu. Jekk inhuwa hekk, il-prosekuzzjoni kellha tiehu hsieb taghmel jew titlob il-korrezzjoni opportuna tempestivament".*

*llli dan l-istess principju gie riaffermat mill-istess Qorti ta' l-Appell Kriminali f'diversi kawzi ohra inkluz dawk fl -ismijiet **Pulizija vs Warren Piscopo** u **Pulizija vs Rita Thuema**, it-tnejn deċiżi fid-19 ta' Ottubru 2011.*

llli b'applikazzjoni ta' dawn il-principji ghall-kaz in ezami huwa car li l-imputati odjerni ma jistghux jinstabu hatja ta' l-imputazzjonijiet lilhom addebietati ghaliex dawn jirreferu ghalfatti li suppost sehhew fid-29 ta' Ottubru 2009 fil-hdax ta' filghaxija meta il-provi li ngiebu quddiem din il-

Qorti jirreferu ghal-fatti li sehhew fid-29 ta' Ottubru 2009 fit-tlieta u nofs ta' fil-ghodu.

Ghal dawn il-motivi ma ssibx lill-imputati hatja ta' l-imputazzjonijiet kif dedotti u tilliberahom minnhom."

This reasoning has been adopted regulary by our Courts wherein it was declared more than once that time and date in the charge sheet need to be adequately proved, and if not adeuqtely proved this will lead to an acquittal.

Other jurisprudence which dealt with this subject is:

• **Il-Pulizija vs John Mary Briffa**, decided by the Court of Criminal Appeal on the 18th of October 2005;

• **Il-Pulizija vs Rita Zammit** , decided by the Court of Appeal on theh 14th of April 2005;

• **Il-Pulizija vs Nicolai Magrin** , decided by the Court of Criminal Appeal on the 17th of March 2008;

- **Il-Pulizija vs Warren Piscopo** u **l-Pulizija vs Rita Thuema**, decided on the 19th of October 2011 by the Court of Criminal Appeal.
- **Il-Pulizija vs Raymond Xerri et** , decided by the Court of Criminal Appeal on the 26th of January 2017;
- **Il-Pulizija vs Charles Sciberras**, decided by the Court of Magistrates on the 30th of November 2016;
- **The Police vs Mohammed Hussein Abdi**, decided by the Court of Appeal on the 18th of December 2017
- **Il-Pulizja vs John Paul Azzopardi**, decided on the 30th of November 2017 by the Court of Appeal;
- **Il-Pulizija vs John Tanti**, decided on the 31st of July 2019 by the Court of Appeal;
- **Il-Pulizija vs Andre Falzon** decided by the Court of Appeal on the 19th of November 2016;

- **Il-Pulizija vs Kurt Falzon**, decided by the Court of Appeal on the 30th of September 2021.

Hence, in line with the above-quoted jurisprudence, appellant is arguing that given that the prosecution has chosen to charge the appellant with 2 contraventions allegedly committed at a particular date and time, it is up to prosecution to prove that charge sheet as drafted, and to prove this up to the level of beyond a reasonable doubt.

Therefore, given that even the First Court declared that no contravention was committed at the date and time indicated in the charge, but that any alleged contraventions occured before the time indicated in the charge sheet, the appellant ought to have been acquitted on grounds that the charges as proferred against him were not adequately proved.

4) The appellant cannot be found guilty of the contraventions proferred against him since the elements of the crimes do not exist

The First Court found the appellant guilty since the version of the witnesses of the prosecution was found to be more credible and since it was concluded that the words "*you will see*" constituted a threat.

The appellant however humbly submits that with regards to the first charge, whilst unfortunately there is only an audio-recording of the incident with no visual footage, however, the First Court chose to ignore its own comments when it commented on the appellant's tone of voice. This fact, in the appellant's humble opinion is detrimental to the case. In fact, if in the Court's own words "the tone of the accused was not calm or composed about the situation, but **neither was he shouting or yelling insults at Leanne**", this is incompatible with the allegation that he attempted to use force against Leanne, and is instead more in line with the accused's testimony that he

pulled Leanne aside to speak to her about the situation away from the children and her new partner.

With regards to the second charge, the appellant humbly submits that first of all the phrase "you will see" is a phrase which he uses regularly and the parte civile cannot have felt threatened with the use of this phrase especially given that she was his partner for a number of years and knows which phrases are common in the appellant's speech.

Apart from that it transpires even from the judgment that words "you will see" were uttered when the accused referred to the court proceedings about the house[1] and said that he was not going to be patient and civil anymore in the proceedings about the house, and when Leanne asked him what he was going to do, he replied "you will see". This declaration however, does not necesarily mean that he was going to do anything unjust or illegal, and more importantly towards her, since his declaration was aimed at the civil proceedings regarding the house.

That with regards to the definition of "threat" this must consist of a *"prospettazione di un male futuro e ingiusto"*[2] and in this case, given the context of the conversation and the circumstances of the case, there is no reference whatsoever to some kind of unjust harm.

That a case which dealt with this identical phrase in Maltese "*issa nurik x'nagħmillek*" was the case in the names **Il-Pulizija v. Joseph Gauci**, decided on the 12th of June 2003, by the Court of Appeal where the Court declared that the use of such phrase did not constitute a threat:

> *"Anke li kieku l-konversazzjoni djalogata bejn dawn izzewg girien sehhet ezatt kif tiddeskrivi Zammit, din il-Qorti ma tirravvizax fil-kliem ta' Gauci xi theddid ossia minacca. Biex ikun hemm tali theddid is-suggett attiv irid ikun qed jipprospetta – bil-kliem, gesti jew b'mod iehor – xi forma ta' hsara ingusta fil-futur (anke jekk fil-futur immedjat) lissuggett passiv. Huwa veru li ma hemmx ghalfejn li l-hsara prospettata tkun determinata fis-sens li jigi indikat b'xi grad ta' precizjoni l-interess, guridikament relevanti, tassuggett*

[1] Regards which documentation was also presented in the acts of the proceedings
[2] Codice Penale, Commentato e Aggiornato in Dejure, Giuffre' Editore, 2016, page 2073

*passiv li jkun qed jigi minaccat; u f'dan is-sens huwa korrett Antolisei meta jghid: "…e` sufficiente che la minaccia sia tale da turbare la tranquillita` della persona a cui e` rivolta, come nel caso che taluno dica ad un altro: 'ti faro` vedere di che cosa sono capace'" . Pero` dan it-turbament dejjem irid ikollu xi bazi oggettiva. Zammit ex admissis tghid li hi ma bezghetx minn dak li qalilha Gauci; u effettivament fid-diskors ta' Gauci din il-Qorti ma tirravizax necessarjament xi prospettiva ta' hsara ingusta, izda pjuttost twissija dwar il-konsegwenzi (**li jistghu ikunu anke perfettament legali, bhal, per ezempju, li wiehed jaghmel rapport lill-pulizija**) jekk hija tkompli taghmel dak li kienet qed taghmel.*

Ghall-motivi premessi, tilqa' l-appell, thassar u tirrevoka ssentenza appellata, u tillibera lill-appellant minn kull imputazzjoni, htija w piena."

Consequently, the appellant humbly submits that without prejudice to the above greviances, on the merits he should not have been found guilty of the charges proferred against him since the elements of the contraventions have not been adequately proved.

5. Grievance regarding the punishment

The appellant humbly submits that strictly without prejudice to the other previous greviances and the merits on the case, whilst he has no intention of molesting the parte civile, the restraining order in terms of Article 382A of the Criminal Code has failed to address other important factors which needed to be taken into consideration, such as the fact that the appellant and the parte civile have 2 minor kids in common and given that the appellant has access rights with regards to the children a line of communication, albeit regulated, is definitely needed. The First Court however did not make any provision for this situation and other situations which can eventually arise in practice, and basically prohibited the appellant from contacting Leanne Fenech Yuce without any qualifications.

Apart from that the appellant humbly submits that as it transpires from the acts of the proceedings, the parte civile is insisting on the restraining not because she is really afraid of the appellant but because she intends to use this restraining order in the civil

proceedings, more precisely infront of the Family Court whereby the parte civile intends to cut off the appellant from the children's lives.

Therefore, the appellant humbly submits that strictly without prejudice on the merits, given the particular circusmtances of the case, the restraining order should not have been imposed, and should this Honourable Court find guilt on one or both of the charges proferred against the appellant, and deems fit to impose a restraining order, it is being humbly submitted that same order need to take into consideration all factors in this particlar case.

Having seen the reply of the Attourney General presented in the actss of these proceedings on the 17th September 2023 (fol. 133) whereby that she stated nothing of substance related to the appeal application or rather to the aggrevations therein mentioned.

Having heard the parties make their oral submissions in relation to the appeal application during the sitting of the 31st October 2023 and the Attorney General remit herself to the acts of the proceedings.

Having seen the conviction sheet of the accused.

Considers further.

In this case the appellant in his first aggravation states that the judgment should be revoked as it is null since the accused was never notified with the charges in the English language despite the fact that the First Court had ordered that the proceedings are held in English. He claims therefore, that his rights were in breach of Article 534AD of the Crminal Code as well as the relevant sections emanating from the Judicial Proceedings (Use of English language) Act, and Article 39(5) of the Consitution of Malta.

The Court examined in detail the acts of this case and it transpires that the prosecution had issued the charges proferred against the accused appellant in the Maltese language on the 15th Februry 2023. Consequently, during the first appointed court sitting the accused appeared unassisted. The Court during this sitting dated 10th May 2023 ordered that proceedigns are held in the English language and also went on to appoint a legal aid lawyer to assist the accused. From then on the proceedigns were held in the Engllish language but at no point in time did the Court order that the charges be translated in English and neither did it order that the accused is notified with the charges in the English langauge. It does not appear either at any stage that the acccused gave up his fundamental right to be notified with the charges in English.

It further tranpisres from the acts of the proccedigns that there was an issue between the lawyer appointed by the Court to assist the accused and the accused and thus, the accused decided to defend himelf against the chargs brought forward. It transpires that the affidavit of PC 683 Jean Paul Malia was also written in the Maltese language as evidenced on page 15 of the acts and at no stage was this translated into English and no cross examination of it was subsequeltly made either. It transpires also that the application written by the Legal Aid Lawyer was written in the Maltese language despite the proceedigns being held in English.

There is no doubt that the accused who is a foreign national is entitled to be notified of the proceedings in the English language since he does not understand the Maltese language and more so once the courts of Magistrates had ordered that proccedigns are to be held in English. His right to be notified with the charges in the English language results from the law particularly from **section 3 (1) of the Judicial Proceedings Act** which provides the following :-

> In a court of criminal jurisdiction –
>
> (a) *where all the persons charged are English-speaking, the court shall order that the proceedings be conducted in the English language;*

Likewise from the **Constitution of Malta** wherein **article 39 (6)** provides the following:-

> *39 (6) Every person who is charged with a criminal offence - (a) shall be informed in writing, in a language which he understands and in detail, of the nature of the offence charged.*

Also from the **European Convention** which provides in **article 6 (3)** the following:_

> 3. *Everyone charged with a criminal offence has the following minimum rights:*
>
> *(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him*;

Likewise from the Criminal code in **article 534AD** which provides the following:-

> *534AD. (1) Where the suspect or the accused does not understand the language of the criminal proceedings concerned, he shall, within a reasonable period of time, be provided with a written translation of all documents which are essential to ensure that he is able to exercise their right of defence and to safeguard the fairness of the proceedings.*

Thus such right is undisputed.

Article 516 (1) of the Criminal code as ammeded by Act IV of 1999 provides that the Maltese language shall be the language of the Courts and, subject to the provisions of the Judicial Proceedings (Use of English Language) Act, all the proceedings shall be conducted in that language. However, sub-section (2) of this section provides that:-

> *"Where any person charged does not understand the language in which the proceedings are conducted or any evidence isadduced, such proceedings or evidence shall be interpreted to himeither by the court or by a sworn interpreter."*

However, it does not result from the acts of the proceedings that the chargs were ever translated to him either by a Court appointed interpreter in terms of the law.

Therefore, the accused/appellant was never notified with the proceedings in the English language and thus, the First Court could never go on and pronounce judgement since no judgment can be given in the absence of the accused being notified with the charges in a language that he understands.

Thus, **this Court is of the opinion that the judgment delivered by the First Court with regards to the appellant is null and therefore, orders that the charges are notified to the appellant in the English language before being able to proceed with the merits of the case and entertaining the other aggravations put forward by the appellant.**

The Court is thus upholding the appeal of the appellant and is declaring the judgment delivered by the Courts of Magistrates as null on the ground of public policy that the appellant was not duly notified with the charges.

The Court will be sending these acts before the Courts of Magistrates as a Court of Criminal Judicature so that he may be notified with the charges in the English language and then the prosecution will be able to put forward its evidence in the English language including the evidence of PC 683 Jean Paul Mallia which also has to be given in the English language and thus the accused will not be deprived from his right of having his case examined twice.

Dr Consuelo Scerri Herrera

Hoourable Madame Justice