



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

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

**Case No.: 7/2023**

**THE POLICE  
(Inspector Audrey Micallef)**

**-Vs-**

**MILOS MARKOVIC**

**Today, 25th April 2024**

**The Court,**

Having seen the charges brought against **MILOS MARKOVIC** aged 34 years, son of Zoran Markovic and Miriana nee' Bukvic, born in Ljubljana, Slovenia, on the 1<sup>st</sup> July 1988, residing at 312, St. Paul's Street, Valletta and holder of ID, 0316487A, who was charged with having on the 25<sup>th</sup> December 2022 between 05:00am and 06:00 am at 312, St. Paul's Street, Valletta:-

1. Without intent to kill or put the life of his ex-partner Ilaria Manzotti in manifest jeopardy, voluntarily caused bodily harm or ill health causing an offence of

grievous nature and this after certified by Dr Stephanie Palmier (med. reg. 3974) of Floriana Health Center

2. Attempted to use force with intent to insult, annoy or hurt his ex-partner Ilaria Manzotti.

And further accused that on the 29<sup>th</sup> December 2022 between 03:30hrs and 04:00hrs:

3. Uttered insults and threats not otherwise provided for in the Criminal Code to the detriment of his ex-partner Ilaria Manzotti, or if provoked, went beyond the limit warranted by the provocation

The Court was requested to issue a protection order, during court proceedings against Milos Markovic to the benefit of Ilaria Manzotti and her family as per Article 412C of Chapter 9 of the Laws of Malta;

The Court was also requested to provide for the safety of Ilaria Manzotti and her family or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, requires that Milos Markovic to enter into his own recognizance in a sum of money fixed by the Court as per article 383 et seq. of Chapter 9 of the Laws of Malta.

Having heard the accused during the examination plead not guilty;

Having seen that the Attorney General by means of a note dated 23rd August 2023, sent the accused for trial before this Court in respect of the offences under the following articles of law:-

1. Articles 17, 214, 216, 218, 222(1)(a), 202(h)(v)(vi) and 533 of Chapter 9 of the Laws of Malta;
2. Articles 17, 339(1)(d) and 533 of Chapter 9 of the Laws of Malta;
3. Articles 17, 339(1)(e) and 533 Chapter 9 of the Laws of Malta

Having heard the defendant declare on the 18<sup>th</sup> September 2023 that he has no objection to having the case tried summarily and decided by this Court;

Having heard all the witnesses and seen all the evidence;

Have seen all documents and other acts of the proceedings;

Having heard the final oral submissions made by the Prosecution and the defence during the hearing scheduled for that purpose;

Having seen that the case was adjourned for today for delivery of judgement;

Having considered;

That the defendant is charged with voluntarily inflicting injuries of a grievous nature on Ilaria Manzotti during the early hours of Christmas morning when he returned from work to his apartment at 312, St. Paul's Street, Valletta, where for the previous three days, the said Ilaria Manzotti, who he had only just met during that same week, had been staying.

From the facts that emerge from the evidence, it would result that the Police officers who called at the defendant's residence on the 25<sup>th</sup> December 2022 at around 10.15 a.m. after receiving an anonymous call regarding an argument taking place in the said residence, testified that they could hear shouting and arguing coming from inside. Defendant Milos Markovic opened the door and asked them to get Ilaria Manzotti out of his residence. From her end, Ilaria Manzotti, who was crying at the time, informed them that he had punched her in the face but she could not remember what happened and could not understand why he had behaved in that way towards her. All Police officers who called on site testified that Ilaria Manzotti was very drunk and had a "*really bad smell of alcohol*". Neither of them noted any physical signs of injuries on

her face or any visible injuries<sup>1</sup> though they all agreed that she complained of a heavy pain in her jaw and refused at that point in time to file a formal report against the defendant or be taken to be medically examined at the Health Centre. She was taken to her residence in Valletta on her own request.

Ilenia Manzotti formally reported the alleged assault to the Domestic Violence Unit on the 28th December 2022 at around 1.00 a.m. where she stated that on Christmas morning at around 5.00 a.m. Milos Markovic arrived at his apartment drunk and began to play loud music and when she tried to stop him he became aggressive and began to punch her and beat her, causing her slight injuries.

These injuries were observed by PC 683 Jean Paul Mallia<sup>2</sup> certified by Dr. Stephanie Palmier at the Floriana Health Centre on the 27th December 2022 at 9.08 p.m. as consisting in multiple bruises over her whole body, including the upper lip, the left earlobe and the left eyelid, as well as over both arms and hands<sup>3</sup>. Dr. Stephanie Palmier testified<sup>4</sup> that Ilenia Manzotti had bruises over both lower limbs and superficial abrasions over the left elbow and the top part of her left foot and that patient complained of pain in this foot and difficulty walking. She also confirmed that the bruises that presented on the patient were compatible with injuries suffered two days before.

**Ilenia Manzotti**, in her testimony before the Court, stated that on the 25<sup>th</sup> December 2022 she had a huge argument with Milos Markovic, the person she was dating, who she had met a few days before. She knew he was nervous as he had not managed to sleep the night before, partly due to her fault, but they had agreed that she would wait for him at his apartment to return from work. Although he had to return around 3am, it was around 5am when he returned. She stated that he was really drunk and they kept on drinking together and she also admitted to have consumed cannabis. At first,

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<sup>1</sup> PC 1201 testified that did not see any visible marks on her face either. "No physical signs", as confirmed by PC 1492 Christian Debono, and "no physical visible injuries" according to Charlo Caruana.

<sup>2</sup> Testimony of the 9th February 2023.

<sup>3</sup> Medical certificate Dok. AM4 on page 15 of the record of the proceedings.

<sup>4</sup> 9<sup>th</sup> February 2023.

they were talking normally, they played music and were trying to enjoy the night, but she wanted him to understand that she was upset, but that was not the reason why they started arguing. She declared that she does not even know the reason except that at one point, everything became very bad and she decided to leave however he began to hit her with his hand all over her body, punched her in her jaw and neck and also kicked her. She stated that he hit her so hard that she fell down, hit her head on the wall and distorted her ankle. In fact she could not walk except with crutches for three weeks after that<sup>5</sup> and could not eat for three days. She denied however that he kicked her in her leg. He also threw a metal grinder at her and bit her on her left arm.

When asked whether the argument escalated because the defendant wanted her out of his house, she stated that she wanted to leave but could not as she was drunk and very tired and could not go out as it was already daytime. However, she admitted that he threw her shoes, some clothes and her bag out of the window, which is also when she became angry and nervous. She also agreed that she left the apartment however she still had his keys and some other belonging inside so she entered the apartment again in order to collect them. She claimed she was not scared to re-enter the apartment as it was only when she returned to collect her things that defendant became really aggressive and began to punch her, as previously he had not assaulted her but had only thrown her things out of the apartment. She testified that at that point, she was crying and shouting and there was a whole commotion and suddenly, the Police turned up “*around lunch time*”, picked her up and took her home. Ilaria Manzotti confirmed that this argument took place over the span of one or two hours and denied that this occurred at 5 a.m. when the defendant returned home, but later towards the end when the Police turned up.

Asked by the Court if the argument was still going on when the Police arrived at the scene, Ilaria Manzotti replied: “*Yes, actually we opened the door, of course in front of them we didn't keep fighting, they just told me to pick up my stuff and go.*”

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<sup>5</sup> The Court notes that only 17 days had elapsed between the date of the incident and the date of Ilaria Manzotti's testimony.

She denied further knowledge of what happened during the argument or what she might have done, as she claimed she was under shock, but stated that she was not even going to report the defendant as she was expecting him to apologise or check on her but instead of that, he went to her prospective employer and told him that she bruised herself. She claimed that while it is true that she had some bruises on her legs as she was playing with the defendant's dog, she was not responsible for the other bruises she had on her body.

**Milos Markovic, the defendant,** testified that he had met Ilaria Manzotti three days prior to the incident and she never left his place, she just squatted there and he did not know how to get her out. On Christmas Eve he was working late and did not want to return home as he knew Ilaria was there and he did not feel safe as events had taken place before concerning her drug use. He had given her a warning not to use drugs at his place as he has two dogs and he was worried that if any drugs were to fall on the floor his dogs would die. She promised not to.

That morning when he returned home she was very drunk. She was also going to the bathroom, and he could hear the lighter so he figured that she was smoking crack.

When he confronted her and started banging on the door telling her to come out as he knew what she was doing, all hell broke loose, she started screaming, smashing things around his flat, she became aggressive and started shouting and throwing chairs, and she also broke his TV. He wanted to get her out of the apartment and tried to get her out by pushing her and pulling her by the hands, but he denied that he ever hit her, not even once. He spent an hour trying to get her out of the flat and when he managed to get her out, he grabbed her purse and threw it and her shoes out of the window onto the street but after a few minutes he heard the key in the door of the apartment and Ilaria came back in as she had taken his key. He had never given her a key to the flat. When she came back in, he barricaded himself in his bedroom and placed a dog kennel against the door so that she does not come close to him or his dogs.

When she left his apartment she had no injuries at all. A few minutes later the Police arrived and knocked on the door. He removed the dog kennel and opened the door, where he saw that Ilaria was completely calm like nothing happened. He told the Police that he cannot get her out of his flat and asked them to take her away. She was like possessed by the devil, screaming like she was having a manic episode.

The next day he heard that Matteo was showing pictures to his boss of Ilaria's bruises and he went to the Police station in Valletta to see if there was a report against him, but till that time no report had been lodged. He had noticed that Ilaria had bruises on her arm and back when he met her three days prior and he had asked her about them but they had had some drinks, he had brought her to his house and did not think much about it. He did not see the bruises shown on photos marked 1 till 13 that were shown to him, and confirmed that Ilaria was not bruised that way. He denied that when pushing her out of his apartment he had punched her, but insisted that she had resisted and refused to leave the apartment.

Milos Markovic testified that this was the worst incident in his life. He explained further how that day, Ilaria had hit him when he was asleep and woke him up as she was hungry and he had ordered her food. He then took a shower and found her looking for money and when he noticed what was going on and that she was smoking crack, he wanted to send her out of his apartment. She was swearing and resisted by throwing herself over the chairs, and when he started throwing some of her things out of the window, she started pulling him and the dogs were getting upset so he had to lock them in the kennel.

He denied being drunk when he had arrived home that day, but he did bring a bottle of wine home. At that point Ilaria was already drunk and under the influence of crack. He had been working very long shifts and was not happy as she was at his place uninvited. He never made an official Police report even though Ilaria had hit him.

**In his statement to the Police** the defendant had declared that Ilaria could have never bruised from his punches as he never hit a girl in his life. Although he admitted that there was a commotion when he was trying to get her out of his flat, she still could have never bruised in that way. The rest of his statement is by and large compatible with the version given during his testimony before the Court, where he insisted that he had told Ilaria not to smoke crack in his apartment and he did not want her to stay in his apartment any longer. He also stated that because she was hysterical and breaking down in tears many times, “*switching on and off in tears*”, shouting and not letting him sleep, he had agreed to let her stay until Christmas day. However, she was acting erratically, one moment being sweet and the next shouting and then she started going to the bathroom too often, every ten minutes, at which point he realised that she was smoking crack because this also showed from her eyes. It was too much for him so he told her that it was time to leave but she refused, and he spent about half an hour asking her to leave, to no avail. The more he asked her to leave, the more aggressive she became, and his dogs began to become upset with her behaviour and he had to lock them up. He put all her belongings near the front door and asked her to leave, but she replied that she was not leaving and was going to stay there, at which point he decided to send her out of the flat. He also threw her stuff out of the window and she began to scream and shout, pulling and pushing him and he also tried to push her outside. She also started hitting him but he managed to close her out. He then threw the rest of her stuff out of the window but at that point, Ilaria came back in and when he tried to push her out again, the Police arrived.

Having considered;

That the Court must begin by pointing out that although the defendant was charged with having voluntarily caused grievous injuries to Ilaria Mazzotti on the 25<sup>th</sup> December 2022 between 5.00 a.m. and 6.00 a.m., the evidence adduced irrefutably shows that the incident during which Ilaria Manzotti allegedly suffered the injuries that were subsequently certified by Dr. Stephanie Palmier, took place many hours later.



This discrepancy in the time of the alleged commission of the crime results from Ilaria Manzotti's own testimony before the Court where she confirmed that the argument where Milos had been throwing her belongings out of the apartment, had been going on for an hour or two until the Police suddenly arrived at the scene, "*around lunch time*". She denied that this incident occurred at 5 a.m. when the defendant returned home, but later towards the end when the Police turned up.

**While it is established from the evidence that the Police arrived at the scene during the argument sometime after 10.15 a.m., meaning that the indication of "*lunch time*" is erroneous, Ilaria Manzotti expressly denied that the incident where she was allegedly assaulted by the defendant took place at 5 a.m. when the defendant returned home, but much later on, when the Police turned up at the apartment and took her to her place of residence. In fact, in her testimony, she specified that the defendant only began to assault her when she tried to re-enter the apartment after he threw her belongings out: "*... from that actually start all the bad things, because before he was just aggressive ... he just start to throw things (out) ... That is the moment that started the mess, that he started to punch me and everything...*"<sup>6</sup>.**

This is in line with defendant's own version, both in his testimony and during his interrogation, where the lapse of time between the time he arrived at his apartment and the physical argument that took place where he tried to push Ilaria Manzotti out of his residence, is evident. In his testimony and in the statement that he released during his interrogation, the defendant stated that when he arrived home, they opened a bottle of wine and were drinking slowly and Ilaria Manzotti was acting nicely. He also took a shower. He then noticed that she started going to the bathroom too often, at which point he realised that she was smoking crack and he therefore asked her to leave his apartment. At this point, she became hysterical and was breaking down in tears many times, "*switching on and off in tears*", shouting and not letting him sleep, so he had

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<sup>6</sup> Testimony, page 56 of the record of the proceedings.

agreed to let her stay until Christmas day. He explained that when he was asleep she hit him in order to wake him up as she was hungry and he ordered her food. He tried to send her out of the apartment, but after half an hour he had not yet managed to get her to leave, at which point he proceeded to throw her belongings out of the apartment.

This testimony leads the Court to understand that the argument during which Ilaria Manzotti claims to have been assaulted, began many hours after the defendant had arrived home at circa 5.00 a.m., a fact that was affirmed conclusively by Ilaria Manzotti herself during her own testimony before the Court.

**This conclusion is additionally sustained by the fact that that the Police received an anonymous phone call about an argument taking place in St. Paul's Street, Valletta at around 10.15 a.m.<sup>7</sup> and they identified the place where the argument was taking place from the shouting and arguing that could be heard from outside.** In fact, the Police officers testified that when the defendant opened the door of the apartment, *"they were arguing between each other (sic!) ... and he didn't want her to stay at this home"*<sup>8</sup> and he asked them to tell Ilaria Manzotti to leave his residence because he had caught her smoking crack in his bathroom. Ilaria Manzotti was taken by the Police immediately to her residence, also in Valletta and indeed, Matteo Bertozzi testified that Ilaria arrived at his apartment, where she was living at the time, accompanied by the Police, at around 9 am or 10 am while he was still asleep.

Article 360(2) of the Criminal Code stipulates:-

*"The summons shall contain a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to time and place as it may be necessary or practicable to give. ...."*

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<sup>7</sup> Testimony of PS 2250 Amanda Bunce.

<sup>8</sup> Testimony of PC 1201 Christopher Formosa. Also: *"They were shouting and the female person came out ... Panicked and shouting as well, at Milos."* – Testimony of PC 1492 Christian Debono.

In the judgement delivered on the 18th October 2005 by the Court of Criminal Appeal in the names **Il-Pulizija vs John Mary Briffa**, where the appellant had been charged with crimes allegedly committed “ghall-habta tas-7.30 p.m.” while the evidence adduced showed that the incident had occurred “ghall-habta tas-7.30 a.m.”, it was held:-

*“L-imputazzjoni ghalhekk kif impostata qed tirreferi ghal xi haga li allegatament grat tmax-il siegha wara u l-ewwel Qorti hekk sabet lill-appellant hati. Mill-provi ma jirrizultax li gara xi incident fil-hin indikat f’l-imputazzjoni u ghalhekk l-appellant ma setax jinsab hati kif fil-fatt insab. Il-frazi “ghall-habta ta’ tindika hin approssimattiv u tinkludi hin vicin dak imsemmi fl-imputazzjoni izda zgur mhux tmax-il siegha wara.”<sup>9</sup>*

This same principle was reaffirmed by the Court of Criminal Appeal in various other judgements, amongst which the judgement in the names **Il-Pulizija vs Warren Piscopo** and **Il-Pulizija vs Rita Thuema**, both decided on the 19 ta’ Ottubru 2011.

In the judgement in the names **Il-Pulizija vs Raymond Xerri**<sup>10</sup>, the Court of Criminal Appeal held:-

*“Stabbiliti dawn l-elementi ta’ dritt u ta’ fatt, ghandu jirrizulta allura illi d-data jew iz-zmien li kellha/kellu j/tigi indikat/a fl-akkuza kellu/ha tkun dik meta l-awtur tar-reat ikun irceva l-oggett misruq. Issa mill-atti jirrizulta indubitat illi l-Prosekuzzjoni kienet mill-bidunett a konoxxenza ta’ dak li kien qed jigi allegat mill-appellanti ghar-rigward tad-data tar-ricettazzjoni tal-oggett allegatament misruq, u dan sahsitra mill-interrogazzjoni ta’l-appellanti li sehhet fil-25 ta’ Jannar 2010. Kwindi huwa inspjegabbli kif id-data ta’l-akkuza tirreferi ghall-‘24 ta Jannar 2010 u il-jiem ta’*

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<sup>9</sup> Ara wkoll in propositu **Il-Pulizija (Spettur Nadia Lanzon) vs Rita Zammit**, deciza mill-Qorti tal-Appell Kriminali fl-14 ta’ April 2005; **Il-Pulizija (Spettur Pierre Micallef Grimaud) vs Christopher Ryan et**, deciza mill-Qorti tal-Appell Kriminali fl-10 ta’ April 2014.

<sup>10</sup> 26th January 2017.

*qabel' meta jirrizulta illi din kienet biss id-data meta id-derubat ghamel ir-rapport lil pulizija illi kien lemah il-kaxxa tat-trukk tiegħu fuq vann ieħor...*

... ..

*Kwinda d-data indikata fic-citazzjoni qatt ma kellha tigi indikata bhala l-'24 ta' Jannar 2010 u l-jiem ta' qabel' billi dan ifisser illi l-appellanti kien qed jigi akkuzat illi ikkometta r-reat addebitat lilu f'dik il-gurnata jew f'xi granet qabel dik id-data u mhux fix-xhur ta' qabel. Illi il-bidu ta' Novembru 2009 certament ma jistax jaqa' fil-kwalifika tal-kliem "il-jiem ta' qabel" billi dan jirreferi ghax-xahrejn u nofs li ipprecedew iz-zmien indikat. Il-Qorti allura ser tieqaf hawn u tistqarr minnufih illi l-appellanti ghandu ragun fl-ewwel aggravvju minnu intentat. Dan ghaliex huwa qatt ma jista' jigi misjub hati li ikkometta r-reat lilu addbitat fid-data indikata fic-citazzjoni billi kellu jirrizulta ampjament mill-atti illi semmai dan ir-reat sehh ghal habta tal-bidu ta' Novembru 2009 jew ghal ta' l-inqas fix-xhur bejn Frar 2009 u Jannar 2010 u mhux certament fiz-zmien indikat fl-akkuza"*

Moreover, in a recent judgement, **Il-Pulizija vs. Michael Camilleri et**<sup>11</sup>, the same Court acceded to the appellant's grievance that the first Court had declared them guilty of a crime that in the summons indicated had been committed in a particular road in a locality, while the evidence showed that the crime had taken place in a different road, albeit in the same locality. The Court of Criminal Appeal made the following considerations regarding the nature and function of the summons:-

*"Illi hawnhekk huwa tajjeb li wiehed jara x' inhi n-natura, funzjoni, sinjifikat u l-effetti legali tac-citazzjoni. Ic-citazzjoni hi semplicement 'avviso a comparire', u cioe' ordni sabiex l-imputati jidhru quddiem il-Qorti, u biex ikunu jafu fuq x' hiex qeghdin jigu akkuzati. Tajjeb li wiehed jaccenna ghall-fatt li kemm il-ligi u kif ukoll il-Qrati Maltin riedu, kemm jista' jkun, ikunu pratici fl-applikazzjoni tal-artiklu sucitat u ma riedux jintilfu fuq kwistjonijiet, formalizmi u problem teknici u procedurali, a skapitu li ssir gustizzja. Ghal dan il-ghan tajjeb li wiehed jirrimarka li fis-sistema procedurali Maltija, il-process penali huwa wiehed li jistrieħ fuq ix-xhieda viva voce, fil-prezenza*

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<sup>11</sup> Deciża mill-Qorti tal-Appell Kriminali nhar is-26 t'April 2018.

*tal-imputati, u mhux konfinat, ristrett u cirkoskritt minn proceduri li jsiru bil-forma miktuba a skapitu tal-espressivita' tal-proċess kondott viva voce fil-prezenza tal-imputati u ta' dawk li jridu jiggudikaw fuq il-fatti. Dan il-principju gie ribadit f' diversi sentenzi fejn inghad li c-citazzjoni m' hemmx ghalfejn issir skont xi formula sagramentali bil-precizjoni kollha."*

It was also held:-

*"Ghandu johrog minn qari tac-citazzjoni illi x-xogholijiet mertu tal-kaz allegatament kienu qed isiru gewwa il-fond maghruf bhala St. Dominics Priory, Triq San Duminku kantuniera ma' Triq il-Merkanti gewwa l-Belt Valletta. ...*

*... ..*

*huwa evidenti mill-atti illi l-lok indikat fic-citazzjoni fejn allegatament kienu qed isehhu l-infrazzjonijiet tal-ligi huwa zbaljat.*

*... ..*

*... il-Qorti qatt ma tista' issib htija dwar il-kummissjoni ta' xi reat li ikun sehh mhux biss fi zmien iehor, izda ukoll f'xi post iehor mhux dak indikat fl-akkuza, cirkostanza li hija tant materjali u sostanzjali fil-kaz imressaq 'il quddiem mill-Prosekuzzjoni. Dan ghaliex l-artikolu 360 stess ifisser kif ghandha tigi redatta ic-citazzjoni u liema huma dawk l-indikazzjonijiet mehtiega sabiex il-persuna imharrka tkun tista' theggi id-difiza taghha tajjeb u dan bil-fatti kif indikati lilha f'dik ic-citazzjoni. Issa jekk dawk il-fatti ikunu gew indikati hazin, allura il-binarji ta'l-azzjoni ma ikunux gew definiti jew ikunu gew definiti hazin."*<sup>12</sup> (enfasi ta' din il-Qorti)

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<sup>12</sup> It is true that in the case in the names **Il-Pulizija v. Emmanuele Azzopardi**, the Court of Criminal Appeal, differently presided, in a judgement delivered in the 15th April 2019, did not accede to appellant's grievance that the discrepancy in the name of the particular street in which the incident had occurred as indicated in the summons, and the name of the street that resulted from the testimony, should have led to an acquittal. The Court held:

*"Kien ikun aktar professjonali kieku l-Prosekuzzjoni talbet il-korrezzjoni taċ-ċitazzjoni biex tiġi tirrifletti dak li l-Prosekuzzjoni kellha fil-file tagħha bhala provi – li kjarament kienu juru li l-incident seħħ fi Triq il-Labour, in-Naxxar u mhux fi Vjal il-21 ta' Settembru, In-Naxxar. Iżda ladarba l-provi tal-Prosekuzzjoni kienu jindikaw il-post u ċ-ċirkostanzi korretti u kienu jaqblu mal-verita' storika, kif ukoll konfermata mill-appellant innifsu, din il-Qorti ma tistax tilqa' l-aggravju tal-appellant."*

Applying these principles to the facts of the case at hand, it would result that while the Prosecution charged the defendant with committing these crimes between 5.00 a.m. and 6.00 a.m., it is conclusively established from the testimony of all the witnesses who testified, that the alleged assault could not have taken place within that time-frame, but several hours later. **The defendant was not charged with having assaulted Ilaria Manzotti and caused her injuries and with having attempted to use force against her, between 5.00 a.m. and 6.00 a.m. “or during the following hours” but instead, the Prosecution limited itself to charging him with having committed the crimes during one specific hour, by restricting the time of the commission of the offences to the aforementioned time-frame which however, is excluded from the testimony heard by the Court, as being the time within which the crimes could have been committed.** Even if Ilaria Manzotti’s calculation that the argument took place over a span of one or two hours, as opposed to the defendant’s calculation of half an hour, is taken to be correct, the alleged assault could not have taken place before 8.00 a.m. at the very earliest.

In such a case, it was incumbent on the Prosecution to request a correction of the erroneous indication of the material particular in the summons in which case the defendant, if he so requested, shall have been afforded the opportunity to regulate his defence accordingly in view of the resultant legal position. It is the Court’s view that once the Prosecution has brought forward criminal charges, it is charged with the responsibility to ensure that the particulars of the charges are correct and precise, such that if it results that the summons contain inaccurate or erroneous particulars, while this would not have any effect on the validity of otherwise of the summons or of the eventual judgement, it is mandatory on the Prosecuting Officer to ensure that these

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The reasoning in this judgement contrasts directly with that of the same Court in the aforementioned judgement in the names **Il-Pulizija v. Michael Camilleri et**, which follows the widely-accepted interpretation of article 360(2) of the Criminal Code that the wrong indication in the summons of one of the material particulars of the crime, including the time of commission of the crime, must lead to an acquittal if no correction was requested in order that the charge reflects the outcome of the evidence.

inaccuracies or errors are corrected. This is indeed possible, as affirmed by recent case-law on the matter<sup>13</sup>.

In the Court's view, this discrepancy between the time of commission of the crimes indicated in respect of the first two charges in the summons, and the time that emerges from the testimony heard by the Court, is substantial. However, although this discrepancy was evident even from Ilaria Manzotti's testimony alone, the Prosecution failed to request a correction of the time indicated in the summons in respect of the commission of the first two charges, in order that these reflect the time that clearly emerged from the evidence adduced during the hearing of the cause.

The Court of Criminal Appeal in the judgement in the names **Il-Pulizija v. Francesco sive Godwin Scerri**<sup>14</sup>, had observed:

*“Issa, l-appellat gie akkuzat permezz ta' citazzjoni fejn gie ndikat li l-allegat stupru gie kommess fuq Leonard Camilleri “fis-sajf tal-1992 fil-Marfa”. Leonard Camilleri, fix-xieghda tieghu tul il-kompilazzjoni tal-provi, xehed li sehh stupru fl-Istitut ta' San Guzepp. ...*

*... ..*

*“Jekk tul il-kumpilazzjoni Leonard Camilleri qal li kien sehh stupru fl-Istitut ta' San Guzepp, il-prosekuzzjoni setghet taghmel dak li solitament isir, u cioe` li tintalab korrezzjoni fic-citazzjoni. Meta l-Avukat Generali rrinviya l-atti ghall-gudizzju minghajr ma talab li ssir korrezzjoni fit-tieni imputazzjoni, kien qieghed jintrabat “mal-fatti” kif espressi fl-imputazzjonijiet originali. Il-provi li ressqet il-prosekuzzjoni kienu dwar allegat stupru li sehh fl-Istitut ta' San Guzepp. L-appellat gie akkuzat li kkommetta stupru fil-Marfa. Dawn huma postijiet f'inhawi ghal kollox differenti f'Malta.”*

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<sup>13</sup> Ara **Il-Pulizija v. Glen Debattista** deciza fit-23 ta' Dicembru 2003 mill-Qorti tal-Appell Kriminali u **Il-Pulizija v. Francesco sive Godwin Scerri**, deciza mill-istess Qorti fit-18 ta' April 2012.

<sup>14</sup> Deciza 18 ta' April 2012.

Consequently, in the circumstances of this case the Court deems that the Prosecution remained bound by the charges as brought forward in the summons which, as already established, refer to an assault that was committed and injuries that were inflicted between 5.00 a.m. and 6.00 a.m. only, without any indication that the relevant facts might have taken place also or alternatively at a different time, or in the following hours, while, as already pointed out, the testimony of the main witnesses excludes that these crimes were committed during that specified time.

This material inaccuracy renders the action uncertain in so far as the time of the commission of the offences charged in the first two paragraphs of the summons, and as a result of this ambiguity, these charges are not sustainable and cannot be said to have been satisfactorily proven beyond a reasonable doubt.

Consequently, the defendant is being acquitted from the first two charges in the summons in respect of the crimes mentioned in articles 216, 218 and 339(1)(d) of the Criminal Code.

Having considered;

That the defendant is charged with having uttered threats and insults to the detriment of Ilaria Manzotti on the 29th December 2022 between 03:30hrs and 04:00hrs.

Ilaria Manzotti in her testimony before the Court declared that Milos Markovic sent her two messages on her phone number 79011933 but she could not recall the precise date when she received these messages or even the phone number from which these were sent.

She testified that one message, sent on WhatsApp, contained the threat that he would throw an atomic bomb on her or Matteo, that she was nothing and that nobody cares about her. She explained that she felt threatened “*because he was telling me like I will*



*see that is going to happen, so basically I don't know.*"<sup>15</sup> She exhibited a screenshot of this message (Dok. IM1).

Defendant in his testimony before the Court did not mention any of the messages that he is alleged to have sent to Ilaria Manzotti, and was not asked about them, but from the statement that he released to the Police during interrogation, it would result that the threatening messages which Ilaria Manzotti appears to have reported to the Police on the 30th December 2022, were read out to him during the interrogation. Defendant's sole reply to the question why he had to threaten Ilaria, was that "*That was one single message*". He declared to have blocked Ilaria and her ex-boyfriend because the latter had sent him a threatening message and also showed up at his place of work.

The Court would observe that no reference to the content or wording of the messages read out to defendant, was made at any point during the statement, so the Court cannot be certain that the messages exhibited by Ilaria Manzotti (Dok. IM1) are indeed the messages read out to defendant. Moreover, no reference to such messages was made in the testimony of the Police officers who were present for the interrogation.

Furthermore, it would result that the screenshots of the messages exhibited by Ilaria Manzotti only indicate the time but not the date on which the messages are alleged to have been received by the victim. Nor does the screenshot of these messages indicate the phone number from which these were sent: the only indication is the name "Milo". Therefore, the exhibited messages cannot be taken to compensate for Ilaria Manzotti's uncertainty as to the date of receipt of such messages and the telephone number from which they were sent to her. Furthermore, the Court cannot fail to observe that although it would result from the Police report Dok. AM6 that Ilaria Manzotti reported receiving messages on the 29th December 2022 from the mobile phone of Milos Markovic with number '9010788', this report was not confirmed on oath by the Police officer who received it, namely PC 683 Jean Paul Mallia. Although

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<sup>15</sup> Page 53 of the record of the proceedings.

said PC 683 did indeed testify before the Court on the 9th February 2023, he did not make any reference to the report filed on the 30th December 2023 in connection with the threatening messages, but only testified regarding the report filed on the 28th December 2023 (Dok. JM1). Moreover, the Prosecution failed to bring forward as witnesses, representatives of the services providers in order to confirm the mobile phone number registered in defendant's name in order to prove that the number reported by Ilaria Manzotti is indeed connected to the defendant.

From the above it is evident that the Prosecution failed to bring forward sufficient evidence to convince the Court that the message exhibited by Ilaria Manzotti (Dok. IM1) was indeed sent by the defendant, and moreover, that it was sent on the date and at the time mentioned in the charge sheet.

Consequently it is not necessary for the Court to examine whether or not the message exhibited is insulting or threatening to Ilaria Manzotti in terms of article 339(1)(e) of the Criminal Code and the defendant must therefore be acquitted also of the third charge relating to the contravention in the said article of law.

**For these reasons the Court finds the defendant, MILOS MARKOVIC, not guilty of all charges brought against him in terms of the articles of law mentioned in the Attorney General's note of the 23rd August 2023, and orders his acquittal.**

**DR. RACHEL MONTEBELLO**  
**MAGISTRATE.**