



**Court of Magistrates (Malta)
As A Court of Criminal Judicature**

Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

St. Julian's District Sitting

The Police

-vs-

Bojan Spasic, holder of Maltese identity Card number 132255A

Case No.: 2294/24

Today the 20th August, 2024

The Court

Having seen that the defendant Bojan Spasic was arraigned before this court for having:

On the 15th November 2015 at about 0100hrs in St. Julians:

1. Through imprudence, carelessness, unskillfulness in his act or profession, or non-observance of regulations, caused grievous bodily harm of several persons;

Furthermore for having, on the same day, and /or previous days, weeks or months in St. Julians and/or in other places in these Islands:

2. Acted as a private guard or offered his services as such, without being duly licensed;
3. Furthermore for having smoked any tobacco product in an enclosed area.

The Court was requested to sentence the accused to the payments, wholly or in part, of the costs incurred in connection with the employment of any expert or referee as per ASrt.533 of Cap.9 of the laws of Malta.

Whereas this case was assigned to this Court as presided through the "Assignment of a Case" by His Honour The Chief Justice dated the 2nd February, 2024.

Whereas on the 26th March, 2024, this Court as presided, held its first sitting.

Having heard witnesses.

Having seen all the acts and documents exhibited.

Having heard the prosecution and defence counsel make their final submissions.

Preliminary Considerations

Whereas the Court, in evaluating the evidence brought before it, will refrain from taking into consideration statements and declarations made at the time of the Magisterial Inquiry, in so far as those statements and declarations relate to the defendant in adherence to the dictum found in Article 661 of the criminal Code which provides:

661.A confession shall not be evidence except against the person making the same, and shall not operate to the prejudice of any other person.

Hence the testimony of those individuals who stand charged with the same offences, based as they are on the same facts of this case and albeit in separate proceedings, will not be taken into account for determining the defendant's criminal responsibility.

Considers,

Whereas on the 9th December 2016 the Proces Verbal No. 852/2015, regarding the incident which occurred in Plus One establishment, Paceville, which incident lead to the injuring of various youths, was exhibited formally in these acts.¹

Whereas the prosecution declared that by virtue of Article 550 of the Criminal Code, it was not reproducing witnesses who testified in the inquiry.²

From the acts of these proceedings it results that the defendant's first appearance in these proceedings was on the 9th December 2016 when charges were read out, coupled to the fact that the punishment for the third charge is

¹ Dok.MM

² Minutes of the 14th February, 2017.

that of a fine, *multa*, between €232.94 and €1,164.69,³ that offence is not time-barred.⁴

Considers,

The prosecution exhibited a request for the initiation of proceedings against the defendant from a number of persons who suffered injuries on the fateful night of the 14th-15th November, 2015.⁵

Inspector Elton Taliana explained his involvement highlighting how, on the night in question, he was the duty officer in Paceville. Around 1:10am, as he was doing his rounds, he noticed a girl with a bloodied neck who was quick to inform him of the incident which had occurred near Plus One. He describes the devastation and havoc he witnessed upon arriving on scene and the efforts done by securities, police and medics to clear the area and treat the injured persons who were many. A magisterial inquiry was duly held and together with the court appointed expert, Dr. Martin Bajada, immediately collected all relevant cctv footages from inside the premises as well as cctv footages sited outside the establishment. From the first on-site inspection it wasn't immediately clear what had caused the incident. The police traced and spoke to a number of witnesses including those injured to try and established what had actually happened. From these intense investigations it transpired that a certain Andre Bugeja and a Zach Latif had used pepper spray during an altercation inside the club. This led the police to identify the area wherein the pepper spray was used and from footages they could ascertain how the incident evolved. On the 20th November 2015 the Inquiring Magistrate in the investigating officer's presence began taking testimonies on oath.

Kelly Lyn Brydon testified that together with her friends they had booked the VIP area where she was celebrating her 16th birthday with family and friends. All of a sudden the music stopped and she saw the bouncer, located in the said area, waving his hands and instructing them, in English, to exit the club "*nohorgu l-barra*". She was breathless and could feel her throat hurting. As they tried to exit then club her legs got entangled with other persons and in no time she felt as if she was spouted downwards, "*imbzaqna l-isfel*". She could not move and was taken to hospital. She calculates that they fella height of two storeys adding "*Niftakar id il-bouncer timbuttani biex ninzel l-isfel. Imbghad b'hekk, just li niftajar, ceda t-tarag u waqajt u nara n-nies gejgin fuqi...hassejt bhal qisu pressa niezla l-isfel...kollha ghelibna bil-prensa li konna fiha dak il-hin*".

³ Article 18 of the Tobacco (Smoking Control) Act, read together with regulation 3(1) of the Smoking in Public Places Regulations, S.L.315.04

⁴ Article 688(e) of the Criminal Code

⁵ **Dok.X**

Brydon describes the bouncer's actions in detail: *"jiena kull ma naf, li nara l-bouncer li kien mal-VIP area jghidilna nohorgu l-barra. Jigifieri qahad f'postu, just qed jghid lil kulhadd, li kona fil-VIP area biex nohorgu. Jigifieri tal-familja tieghi stess biex nohorgu barra"*. The witness makes reference to the fact that when told to exit the premises, the clientele were directed towards the main exit and not towards any other exit *"le, le, kulhadd qisu mar ghall-unika exit li nafu bih, dak, dak biss"*.

Regarding her injuries she states that the wound on her legs she suffered can only be hidden from view if she undergoes plastic surgery and she still suffers from the injuries sustained on her spine so much so, that when wearing heels she needs to sit down after a while due to back pains. Moreover she explains she suffers from panic attacks and even attempted suicide. Brydon presented medical and psychiatric reports as well as a file reproducing photos of her injuries.⁶ She confirmed that the images in Dr. Mario Scerri's report, on pages 8-10, are the injuries she sustained.

The report issued by Dr. Joseph Spiteri states that Brydon is inflicted by a number of psychological disturbances which range from anterograde and retrograde amnesia to other disorders leading to a finding that she suffered a 20% disability.

Kelly Vassallo testifies that she was in the bathroom when all of a sudden a number of girls rushed in coughing and vomiting, telling her that gas had been used, *"U morna biex nohorgu mill-club. Issa hemm hekk l-unika way out li rajt huwa l-main entrance, ghax dak li dhalt minnu. Ma kienx hemm min jghini gewwa u bdejt nohrog lejn il-main entrance. Fil-main entrance kien hemm hafna nies u rassa, u paniku. U spiccajt f' nofs it-tarag lejn in-naha tal-poggaman. Hemmhekk kien hemm il-bouncers u bdew jghidulna biex nidhlu lura l-gewwa ghax kien hemm hafna nies fuq it-tarag. Ovojament hadd ma ried imur lura, ma nafux x' gass kien, u ceda l-poggaman."* She exited from the main entrance *"ghax ma kienx hemm hadd biex jiggwidana u dak l-uniku bieb li kont rajt biex nohrog"*. She describes her injuries as still affecting her daily life because of the pain and scars suffered after losing part of her right thigh where sensation has been lost. Vassallo exhibited photographs demonstrating her injuries and a medical report by Mr Briffa and Mr Patrick Muscat.⁷ She confirms that the club's patrons were amassed at the exit. Vassallo adds *"l-unika way out li rajt huwa l-main entrance li kont gia dhalt minnha.....[there I found] hafna nies u bdew jimbuttawni u wasalt sa nofs ta' targ lejn il-poggaman u hemmhekk kien hemm il-bouncer. Bdew jghidulna biex nersqu lura. Ovojament hadd ma ried imur lura, hadd ma jaf x'inhu l-gass. U lanqas stajna mmorru lura ghax kien hemm hafna nies, ma stajtx imur lura."*

⁶ Dok.KB1-Dok.KB5

⁷ Dok.KV-Dok.KV2

Luca Brincat another patron of Plus One who was in the club's VIP area with his girlfriend Kelly Brydon, describes the panic that ensued after patrons were coughing. He goes on to say *"innutajt li kien hemm entratura wahda minn fejn dhalna, exit l-istess wiehed kien u bazikament bdejna miexjin il-barra. Nimbuttaw in-nies oovjament biex nohorgu. U wasalna f'punt fejn ma stajniex niccaqalqu izjed. Konna f' lis-stair case ezatt, fin-nofs ezatt. U in-nies waqfu jiccaqlaqu ma bdewx jinzlu izjed, ma bdewx jiccaqalqu. Konna litteralment completely trapped. Dak il-hin imbaghad nisma hafna ghajjat bdejt u ceda il-poggaman tal-hgieg u waqajna bejn wiehed u iehor sular fil-club ta' hdejh."* He was taken to hospital as blood was spurting from his foot. He underwent three operations and still suffers from cramps, pain, loss of motion and post-traumatic stress disorder. Brincat explained that the VIP area is situated at the very back of the club behind the DJ station *"ma kien hemm hadd biex jidderigina. Kulhadd hareg mill-istess exit, entratura insomma...ma kienx hemm mod iehor kif jiena Nista nohrog mill-club...everyone was trying to get to safety...niftakar kulhadd beda miexi l-barra, oovjament b'naqra tista tghid forza"*. He confirms that he felt trapped owing to the fact that the patrons were horded and crammed at the entrance/exit *"r-rassa tan-nies titrappjak."* He reiterates that he saw no one assisting or directing the crowd as how to exit the premises in a bid to circumvent the horde which ensued.

Kyle Mulvaney testified that she was at Paceville to celebrate her sixteenth birthday with four others. Since some of her friends went to Plus One, when it was time for her to get a cab to return home, she went to meet her friends at the club to which she was admitted with no difficulties as the bouncers present never asked for her identity card. Since inside there was a big crowd she remained by the entrance. She didn't enter the club as a fight broke out. *"Hekk kif rajna dan, ghidt lil habib tieghi biex nohorgu izda ltqajna ma' bouncer mal-bieb u avzana illi hemm glieda ohra barra mill-istabiliment isfel mit-tarag. Hawnehkk stennejna mat-tieni bieb ta' Plus One li huwa l-bieb iz-zghir, stennejna sakemm ma' l-glieda tghaddi kif qalilna l-bouncer u fil-pront giet tifla fuqi tghajjat u twerzaq illi hemm il-pepper spray. minn hawnehkk hargu l-folla ta' nies kollha f'daqqa mill-istabiliment u jiena minghajr ma ridt bqajt nitkaxkar magghom, mal-bqija tan-nies. ... Ma xtaqtx illi nohrog magghom f'daqqa ghaliex ma kinitx se tkun nahseb jiena xi haga tajba ghaliex jekk se titkaxkar inti m'intix se tkun tista' tikkontrolla fejn qed timxi u affarijiet hekk. Direzzjoni li kont qieghda fiha jiena kien man-naha tar-rail tat-tarag. Jiena bqajt inzomm mar-rail biex nipprova nieqaf imma oovjament bl-ghagglata tan-nies they swept me with them jigifieri. Minn hawnehkk bdejt inhosss hafna pressure u eventwalment b'xi mod inzilt fuq l-istess tarag jigifieri konna ghandna ma waqajniex. Nizzluni n-nies gewwa l-istampede..... Rajt in-nies jingemghu hdejn l-istabiliment ta' Plus One li kien Steam, rajt ukoll oovjament gemgha ta' nies faccata tal-istabiliment. Din ukoll it impeded from us getting out of the club jigifieri ghalhekk dik ir-rassa kbira. Kien hemm rassa kbira ghaliex ma stajniex nohorgu ghaliex kien hemm xi hadd qed jibblokkja l-exit u hassejtha vera frustrating at that time u minn hawnehkk stajt nara wkoll mill-hgieg nies jigbdu videos taghna f'dak l-istat ta' paniku u hassejt illi setghu jarawni minn dak il-hgieg ghaliex kont qieghda wicci mal-hgieg u ppruvajt*

minn kollox biex nipprova nghin lili nnifsi ghaliex kont se nispicca nitghaffeg sew u minn hawnhekk bazikament hassejt frustrazzjoni kbira ghaliex kif taqbad tghid, in my cry for help haddiehor beda jigbed videos for their entertainment u dik kienet a very very hard process for me to deal with mentally. Eventwalment smajt qisha cracking fil-hgieg ghaliex il-hgieg bdejt ninduna li se jcedi bl-ammont ta' nies li kien hemm u hawnhekk rajt illi din kienet l-uniku mod illi nista' nohrog minn hemmhekk u allura ppruvajt nohrog ghaliex il-hgiega kienet qieghda tinqala' bil-mod. Inqalghet l-ewwel bicca tal-hgiega u bdew johorgu ffit nies, irnexxilhom johorgu zewg min-nies. Issa hawnhekk meta hargu dawn it-tnejn minn hemmhekk spiccajna waqajna kollha fl-istabbiliment l-iehor."

By the Court's calculations, they fell a height of a more than a storey. Whilst she was trying to tend to her wounds in both legs a girl fell on top of her causing her to tumble down more stairs. She underwent six operations on her legs where plastic surgery had to be performed on her right leg. As a result of the injuries she suffered a permanent disability to her left foot and must use a walking aid for the rest of her life.

Anthony Cachia, a sixteen year old, described how he frequented Plus One pointing out that although bouncers did request to see his identity card, they nonetheless allowed him and his friends, all of the same age, to enter the Club. On the date of the incident the same happened and after seeing his identity card the bouncer allowed them to enter. **The place was overcrowded and he estimates there were between 300-400 patrons, 4-5 people per metre squared.** At a point in time people were becoming breathless and coughing and panic ensued. At that time he was by the VIP area close to the DJ stand which is at the far end of the establishment opposite the entrance, about 10-12 metres away. He adds "*Jien meta nqala' dak il-paniku kollu, nizek il-bouncer li kien qed jaghti ghal VIP u dderigiena biex nohorgu mill-bieb ta' barra, mill-main entrance. Dak il-hin l-emergency exit kienet maghluqa.*" and no one was going towards the emergency exit. The bouncer at the VIP area was directing the patrons toward the main exit. Since he had ran off towards the said main entrance, he reached it within seconds where there was already a big crowd by the stairs. As he tried to emerge from the crowd and had reached the end of the stairs, personnel who were at the entrance were stopping them from going further and he assumed to prevent them trampling on others. He suffered a broken leg after people stamped on him and after seven minutes bouncers managed to get him out and take him nearby to wait for an ambulance. He identified the defendant as the bouncer in the VIP area who instructed them to leave from the main entrance.

A copy in English of the testimonies to which reference has been made, was also presented in these acts.⁸ Nonetheless in order to embrace the actual purport

⁸ Dok.A

of the testimony, it was decided to use the Maltese version as imparted on the witness stand.

The medical reports exhibited by the various witnesses were not confirmed on oath by the medical professionals who penned them, hence precluding the Court from affording same any probative value.

Nature of the Injuries

Forensic medical expert **Dr. Mario Scerri** concludes thus in his report:⁹

“Wara li l- esponent acceda fuq il- locus fejn sehħ l- incident;

Illi wara li acceda l- isptar Mater Dei fejn hemm huwa ezamina lil persuni msemmija;

Illi wara li għamel follow-up tal- pazjenti;

Illi wara li għamel l- indagni dwar pazjenti li setgħu dahlu fic- Centri tas- Sahħa in konnesjoni ma’ dan l- incident jikkonkludi:

Illi nhar is- 17 ta’ Novembru 2015 sehħ incident fi stabiliment f’ Paceville fejn kellhom jiddahlu diversi zaghzagh l- isptar Mater Dei;

Illi kien hemm ohrajn illi attendew fic- Centri tas- Sahħa f’ Malta;

Illi dan l- incident sehħ għall- habta tas- 1:05 a.m. u rrizulta illi numru ta’ zaghzagh waqgħu fuq xulxin wara illi nkiser poggaman tat- tarag tal- hgieg;

Illi minn dawn iz- zghazagh illi ezamina l- esponent irrizulta illi dawn l- iktar li garrbu kienu incizjonijiet magħmulin minn strumenti li jaqtgħu bħalma huma bcejjec tal- hgieg li nkiser waqt l- incident, diversi fratturi rizultat ta’ trawma u f’ certu kazijiet near traumatic aspychia kagunat minn pressure eccessiv fuq is- sider għar- raguni illi jidher illi diversi zaghzagh waqgħu fuq xulxin u bil- pressa li giet ikkrejata kienet diffiċli għal dawok li kienu taht biex jiehdu n- nifs;

Illi rrizulta illi Dimiana Aymen Khalil Shehata kellha l- fratturi msemmija, l- kondizzjoni tagħha kienet kritika tant illi kellha tigi ammassa fit- taqsima tal- kura ntensiva tal- isptar Mater Dei;

Illi jirrizulta illi din kellha petechial haemorrhages fuq il- wicc, indikazzjoni illi sidirha kien suggett ta’ trawma u din kellha near traumatic asphyxia;

Illi din garrbet ukoll frattura tal- mandible;

Illi din inżammet għal zmien twil fit- taqsima tal- kura ntensiva u eventwalment giet licenzjata mill- isptar b’ partial facial nerve palsey;

⁹ **Dok MS1** a fol.1998 (Vol X).

Illi Miranda Maria Farrugia garrbet lezjonijiet in konnesjoni ma' dan il-kaz. Dawn il-lezjonijiet kienu klassifikati bhala ta' natura hafifa;

Illi Matthew Caruana kien ukoll involut f' dan l- incident u garrab lezjonijiet ta' natura hafifa;

Illi Clarissa Cauchi kienet ukoll involuta f' dan l- incident u kellha incizjonijiet li gew suturati u ma kienx hemm evidenza ta' fratturi. Dawn huma lezjonijiet ta' natura hafifa;

Illi Albert Abela kien ukoll involut f' dan l- incident fejn garrab xi abrazjonijiet u lezjonijiet ohra izda l- incizjonijiet deskritti fuq l- aspekt dorsali tal- pala tal-id il-lemnija jistghu jibqghu bhala marka permanenti u ghalhekk huma lezjonijiet ta' natura gravi;

Illi Daniela Ghirxi kienet ukoll involuta fl- incident imsemmi u kellha incizjoni estensiva. Din l- incizjoni giet suturata u ma deherx illi kien hemm komplikazzjonijiet. Din il-lezjoni hija wahda ta' natura hafifa;

Illi Cora Elizabeth Lewis kienet ukoll involuta fl- incident izda ma kellhiex lezjonijiet;

Illi Kayleigh Mulvaney kellha tiddahhal immedjatament fit- taqsima tal-kura ntensiva tal- isptar Mater Dei u resuscitation giet immedjatament ammissa fis- sala operatorja ghar- raguni illi din bdiet titef hafna demm. Din kellha soft tissue lacerations tal-irkupptejn liem lacerazzjonijiet kienu aktar fondi fuq in-naha tal-lemn. Kien hemm ukoll soft tissue lacerations fuq l- aspekt posterjuri u nefha tas- sieq tal- lemn b' evidenza ta' radio opaque soft tissue foreign bodies minghajr evidenza ta' fratturi;

Illi ftit tal- jiem wara din ilmentat minn ugigh fil- pexxun tax- xellug u ma kinitx tista' tilwi l- ghaksa, saru d- doppler studies li m' urewx illi kellha trombozi;

Illi din giet trasferita mit- taqsima tal- kura ntensiva ghas- sala fejn il- kondizzjoni taghha baqghet stabbli, intbaghtet id- dar u regghet giet ammissa l- isptar Mater Dei ghal aktar management;

Illi Kayleigh Mulvaney kienet fil- periklu li titef hajjitha;

Illi Rebecca Zammit kellha incizjonijiet fuq il- pala tas- sieq il- lemnija li huma klassifikati bhala lezjonijiet ta' natura hafifa. Dawn l- incizjonijiet saru bi strument li jaqta' u ma kienx hemm evidenza ta' fratturi;

Illi Luca Brincat garrab lezjoni ta' natura gravi ghar- raguni illi kellu cut tendon u ncizjoni fuq l- aspekt laterali tal- ghaksa u l-pala tas- sieq ix- xellugija;

Illi dan kellu jigi operat u rega ddahhal aktar tard l-isptar Mater Dei ghal plastic surgery;

Illi Damien Buhagiar garrab il- lacerazzjonijiet imsemmija li huma ta' natura hafifa fosthom lacerazzjoni fuq il- parietal region tax- xellug u fuq il- lateral malleolus tax- xellug u ma kienx hemm evidenza radjologika ta' lezjonijiet traumatici, ghalhekk dawn il- lezjonijiet jistghu jigu klassifikati bhala ta' natura hafifa;

Illi Graziella Zammit ipprezentat b' numru ta' petechiae fuq il- wicc u anke fuq l- aspett anterjuri tal- għonq indikazzjoni ta' near traumatic asphyxia. Din hija kondizzjoni ta' natura gravi għar- raguni illi din kellha c- chest wall pinned u ma setghetx tiehu nifs;

Illi kien hemm saħansitra evidenza t' abrazjonijiet u dbengil fuq ic- chest wall u anke fuq iz- zaqq;

Illi ttiehed ukoll MRI tal- brachial plexus ta' Zammit li wera li ma kienx hemm lezjonijiet trawmatici fin- nervituri;

Illi Kayleigh Caruana pprezentat b' nefha fuq in- naha tax- xellug tal- wicc u periorbital haematoma madwar l- għajn il- leminija kompatibbli ma' blunt trauma;

Illi investigazzjonijiet radjologici kkonfermaw illi ma kienx hemm evidenza ta' fratturi;

Illi dawn kienu lezjonijiet ta' natura hafifa;

Illi Kelly Vassallo pprezentat b' incizjoni estensiva fuq l- aspett anterjuri tar- rigel tal- lemin li kienet testendi 'l isfel sal- livell tal- irkoppa;

Illi s- subcutaneous tissue gie exposed u rrizulta illi wara li din giet suturata, l- lezjoni kienet infettata u ffurmat necrotising fasciatis. Din kellha tigi operata u gie nserit integra graft u għalhekk din il- lezjoni hija klassifikata bħala lezjoni ta' natura gravi. Din kellha tiddaħhal diversi drabi l- isptar għar- reconstructive surgery;

Illi Jeremy Cassar garrab frattura tal- lateral malleolus tal- għaksa x- xellugija. Din il- lezjoni hija klassifikata bħala lezjoni ta' natura gravi per durata;

Illi Anthony Cachia garrab comminuted displaced fracture tat- tibia tal- lemin fil- livell tan- nofs (middle one-third) u displaced fracture tal- parti ta' fuq (proximal end) tat- tibia tal- lemin. Dawn il- lezjonijiet huma klassifikati bħala lezjonijiet ta' natura gravi per durata;

Illi David Sammut ipprezenta b' lacerazzjonijiet fil- qurriegħa. Dawn gew suturati u huma klassifikati bħala lezjonijiet ta' natura hafifa;

Illi ma kienx hemm evidenza trawmatika radjologika;

Illi Amber Azzopardi garrbet haematoma fil- qurriegħa assocjata ma' lacerezzjoni fuq in- naha tal- lemin tal- parietal region, lacerazzjoni fuq l- irkoppa x- xellugija, ma kienx hemm evidenza radjologika trawmatika u għalhekk dawn il- lezjonijiet huma klassifikati bħala lezjonijiet ta' natura hafifa;

Illi Yentl Cutajar garrbet dbengil fuq in- naha tax- xellug tal- wicc, abrazjonijiet fuq id- dahar u dbengila fir- right lower quadrant taz- zaqq u ma kienx hemm evidenza radjologika jew evidenza fuq l- ultrasound ta' lezjonijiet trawmatici. Għalhekk dawn il- lezjonijiet huma klassifikati bħala lezjonijiet ta' natura hafifa;

Illi Jade Galdes garrbet lezjonijiet fuq l- aspekk laterali tat- tarf t' isfel (distal end) tal-qasba tas- sieg ix- xellugija u dawn huma lezjonijiet ta' natura hafifa u ma kienx hemm evidenza trawmatika radjologika;

Illi Charlton John Cassar kellu periorbital haematoma madwar l- ghajn il- leminija u ma kellux evidenza ta' lezjonijiet trawmatici, ghalhekk din hija lezjoni ta' natura hafifa;

Illi Charlton John Cassar ma kellux lezjonijiet u ma kellux evidenza ta' lezjonijiet trawmatici radjologici;

Illi Andrea Jasmine Curmi ma garrbitx lezjonijiet;

Illi Janice Azzopardi Mintoff iddahlet l- isptar Mater Dei b' effetti t' inhalation ta' gass u giet licenzjata u din kienet kondizzjoni ta' natura hafifa;

Illi Jodie Saliba ddahlet l- isptar Mater Dei b' effetti t' inalation of gas u din giet licenzjata mill- isptar b' kondizzjoni ta' natura hafifa;

Illi Davide Martini iddahlet l- isptar Mater Dei b' lacerazzjoni fuq il- calcaneum tax-xellug u ma kienx hemm evidenza ta' fratturi. Din il- lezjoni hija ta' natura hafifa;

Illi Monique Muscat iddahlet l- isptar Mater Dei b' effetti t' inhalation of gas u din giet licenzjata mill- isptar Mater Dei;

Illi Justine Delmar iddahlet l- isptar Mater Dei b' lacerazzjoni fuq l- aspekk occipitali u lacerazzjonijiet fuq il- pali tas- saqajn u ma kienx hemm evidenza radjologika trawmatika. Dawn il- lezjonijiet huma klassifikati bhala lezjonijiet ta' natura hafifa;

Illi Brittany Micallef iddahlet l- isptar Mater Dei b' inhalation of gas. Din giet licenzjata mill- isptar Mater Dei b' kondizzjoni hafifa;

Illi Miguel Grima Balzan garrab xi abrazjonijiet fuq l- aspekk laterali tal- qasba tas- sieg ix- xellugija. Dawn il- lezjonijiet huma klassifikati bhala lezjonijiet ta' natura hafifa;

Illi Chanice Muscat ilmentat minn ugigh fil- pali tas- saqajn u ma kienx hemm evidenza radjologika trawmatika u ghalekk il- kondizzjoni taghha kienet wahda ta' natura hafifa;

Illi Yasmine Ellul ma kellhiex lezjonijiet ta' natura gravi;

Illi Shauna Vassallo ddahlet l- isptar b' inhalation of gas u ma kellhiex lezjonijiet friski u giet licenzjata. Din hija kondizzjoni ta' natura hafifa;

Illi Alison Julie Davies iddahlet l- isptar Mater Dei b' diffikulta' biex tiehu n- nifs kagun t' inhalation of gas. Ittiehed ukoll X-Ray tas- sider li ma weriex lezjonijiet patologici jew trawmatici. Din kienet kondizzjoni ta' natura hafifa;

Illi Ervin Kurti ddahlet l- isptar Mater Dei b' lezjoni fuq l- aspekk posterjuri tal- ghaksa x- xellugija. Din giet suturata, ttiehdu l- X-Rays necessarji u ma wrewx lezjonijiet trawmatici. Din kienet kondizzjoni ta' natura hafifa.

Illi Neil Scicluna ddahhal l- isptar jirremetti u qtugh ta' nifs kagun t' inhalation ta' gass. Dan gie licenzjat b' kondizzjoni ta' natura hafifa;

Illi Glenn Cauchi Massa ma kellux lezjonijiet vizibbli;

Illi ma kienx hemm evidenza radjologika trawmatika f' X-Rays li ttiehdu lil Emma Lia wara li din ilmentat minn ugigh f' rasha u remettar;

Illi din kellha wkoll numru t' abrazjonijiet fuq l- aspett posterjuri tal- estremitajiet inferjuri u fuq il- lateral malleolus tal- lemin u abrazjonijiet fuq l- idejn. Dawn il- lezjonijiet huma ta' natura hafifa;

Illi Maria Christina Desira ddahlet l- isptar Mater Dei b' ugigh u dbengil fuq in- naha tal- lemin taz- zaqq. Ittiehdu l- ezamijiet radjologici inkluz l- ultrasound li ma wrewx lezjonijiet trawmatici ghalhekk dawn il- lezjonijiet huma klassifikati bhala lezjonijiet ta' natura hafifa;

Illi Mikaela Cremona ddahlet l- isptar Mater Dei b' numru t' abrazjonijiet fuq iz- zaqq, l- irkoppa x- xellugija u l- ghaksa x- xellugija. Ittiehdu l- ezamijiet radjologici u ma wrewx lezjonijiet trawmatici. Dawn il- lezjonijiet huma ta' natura hafifa u din inzammet l- isptar għall- osservazzjoni;

Illi Kerry Lynn Brydon iddahlet l- isptar Mater Dei b' ugigh fil- fond ta' daharha u b' lacerazzjoni fuq il- calcaneum tal- lemin. Ittiehdu CT Scans u MRI u ma kienx hemm evidenza radjologika trawmatika ghalhekk dawn il- lezjonijiet huma klassifikati bhala lezjonijiet ta' natura hafifa;

Illi Luca Galea ddahhal l- isptar Mater Dei b' ugigh f' ghonqu u f' dahru. Gie ezaminat u saru l- ezamijiet radjologici u ma rrizultax illi kien hemm lezjonijiet trawmatici. Ghalhekk dawn il- lezjonijiet huma klassifikati bhala lezjonijiet ta' natura hafifa;

Illi Wayne Cutajar ipprezenta l- isptar b' ugigh fil- pexxun u fl- ghaksa u dawn kienu lmenti ta' natura hafifa;

Illi barra dawn il- pazjenti kien hemm 16-il pazjent iehor li gew ezaminati c- Centru tas- Sahha tal- Mosta u 2 ohra gew referuti l- isptar Mater Dei. Dawn kienu Luca Galea detentur tal- karta tal- identita bin- numru 469998M u Maria Christina Desira detentrici tal- karta tal- identita bin- numru 602198M;

Illi 12-il pazjent gew ezaminati fil- Paola Health Centre u 3 ohra gew referuti l- isptar Mater Dei. Dawn kienu Neil Scicluna detentur tal- karta tal- identita bin- numru 111899M, Yves Sare detentur tal- karta tal- identita bin- numru 604000L u Charlton Cassar detentur tal- karta tal- identita bin- numru 200698M;

Illi 7 pazjenti ohra gew ezaminati l- Floriana Health Centre, fosthom pulizija li gie ezaminat mit- tabib izda l- isem u l- karta tal- identita tieghu kienu illegibbli;

Illi kien hemm 5 persuni ohra li gew irregistrati l- isptar Mater Dei izda dawn ma rrispondewx meta ssejhilhom isimhom. Dawn kienu Jessica Farrugia, detentrici tal-

karta tal- identita bin- numru 123601L, Kyle Desira Vella detentrici tal- karta tal- identita bin- numru 257500L, Leon Coleiro detentur tal- karta tal- identita bin- numru 195199M, Silvana Abela detentrici tal- karta tal- identita bin- numru 161690M u Yves Sare detentur tal- karta tal- identita bin- numru 604000L li wara rrizulta illi dan attenda l- poliklinika tal- Rahal Gdid fis- 2:20 a.m."

Thus, the injuries ranged from those of a slight nature to those of a grievous nature as contemplated by articles 216 and 218 of the Criminal Code.

Joseph Rivans stated that in determining whether the club reached its full capacity, around 400 patrons, there was no specific method to ascertain this, and one relied on one's own personal assessment.¹⁰ Interestingly he states that on the day of the incident there was no chance to perform an evacuation procedure.¹¹ Rivans explained that upon seeing people falling like dominoes, he entered Plus One through the fire exit which from 808 leads to the club, though at that time the club had emptied and he could see the defendant "*fin-nofs jipprova johroġ in-nies ghal gol-808... mill-Plus One biex imorru għat-taraġ għall-808 minn fejn dħalna ahna*" specifying that when he got to the club he noticed it had emptied thus concluding that people had been directed towards this exit. He clarifies that the only security inside was Spasic who was last to leave.¹² Rivans explains that the door leading to Hugo's was kept locked; the exits can be seen in **Dok.RA.**¹³ Regarding Spasic Rivans emphasises that his job was to be assigned to the VIP area.¹⁴ The door leading to Hugo's Passion was kept shut but could not say whether it was also locked whilst that leading to 808 was kept open for staff to pass through it. To the witness here were two emergency exits, one leading to 808 and the other to Steam with only the door leading to steam having emergency bars.¹⁵

Daniel Briffa , one of the DJs on the fateful night, also confirms that the club had an exit leading to 808 which he used to exit the premises, another leading to an office which in turn led to Steam and one next to the bar close to the entrance which was kept shut.¹⁶ Briffa gives additional details which go to attest that it was not just Spasic who was gesticulating with his arms urging patrons to leave the Club, as bartenders and members of staff were also instructing said patrons to leave.¹⁷

¹⁰ Fol.100

¹¹ Fol.101

¹² Fol.103-104

¹³ Fol.70

¹⁴ Fol.109

¹⁵ Fol.115-116

¹⁶ Fol.174-175

¹⁷ Fol.177

Jimmy Galea, another DJ, upon seeing the pile-up at the main door, exited through the door which had indicated on it a Fire Exit, noting that he only became aware of the said door only because he saw others going through it.¹⁸ His fellow DJ, **Samuel Ebejer**, told the Inquiring magistrate that he only knew of one emergency exit, that leading to 808.¹⁹ Whilst he was choosing what to play next, he witnessed a group of people distancing themselves from the rest of the crowd and another group heading to the toilets “*Kien hemm grupp kbir deħlin it-toilet in-naħa tat-toilets u grupp ħiereg il-barra...il-main exit*”.²⁰ He attempted to exit through the main door but he only managed to get to the first of the two doors leading to/from the main entrance when he saw that a number of people were using the exit leading to 808 and used the latter exit.

The following statement also acquires relevance in that it shows the patrons’ state of mind, needing no prompting from Spasic to lead them to the entrance as learned prosecution alleges. In fact he explains how he headed for the main door “*awtomatikament jiena mort għal bieb ta barra...awtomatikament rajt in-nies ħiergħin minn hemm u ħriġt minn hemm*” and it was only upon his returning back that he saw people doing the same and heading for the exit to 808.²¹ Asked why he opted for the main door knowing that there was the emergency exit to 808, he continues “*Ma nafx awtomatikament hemmhekk hu lejn il-bieb ta’ barra sewwa. Awtomatikament seta kien hemm il-bibein kollha jigifieri...hemm xi plakka fuq il-bieb*”. He witnessed no one giving directions as how to exit the club.²² Reproduced he could not recall whether he had attempted to access the door leading to 808 and found it locked, although he adds that at times the exit which had two doors, **the door on Plus One’s side would be opened but not the door on the side of 808.**²³

This is corroborated by the testimony of **Tysone Grech** who was working as a security a Havana and, when the incident occurred, **Rivans instructed the securities to open the door of 808** “*kien barra u qalulna morru ifthu*”.²⁴ Moreover, he confirms that on Steam’s door the emergency bar is on the side of Steam, and not on Plus One’s side clearly indicating that the emergency exit services Steam and not Plus One!²⁵ He continues that Rivans instructed the securities “*Biex imorru nifthu l-808, nifthu l-emergency doors... Biex imorru*

¹⁸ Fol.183-184

¹⁹ Fol.189

²⁰ Fol.189

²¹ Fol.193

²² Fol.194

²³ Fol.911-912

²⁴ Fol.1018

²⁵ Fol.1020

nifthu l-emergency exit minn 808 għall-Plus One."²⁶ They gained access to Plus One by opening the door on 808's side, which door was **closed** but not locked.²⁷

The defendant **Bojan Spasic**, after being duly cautioned by the Inquiring Magistrate that he has the right not to reply to any incriminating questions,²⁸ testified before the Inquiring Magistrate and began by confirming that he was employed on a part-time basis with Executive Security Services for a month before the incident.²⁹ His task was to ensure that only patrons wearing VIP tags were allowed in the Club's VIP area although *"I don't have a license as a security guard as such"*.³⁰ Spasic states that he had worked at the Club over a span of 4-5 Saturdays adding that he was familiar with the emergency exits located at the club as Mark Azzopardi, one of the Club's managers, had shown him around.³¹ Spasic states: *"More or less yes I was familiarised.... He showed me the whereabouts of the clubI know of the one [emergency exit] next to Havana Club and I am aware of the one next to the office I am not sure where it leads to however there is the staircase going down from it."*³² Questioned as to whether he was given instructions as to what to do should there be the need to evacuate the premises he truthfully replies, *"Nobody informed me of that bit I imagine it goes without saying... My job was to check whether all the patrons who go in have the appropriate bracelet."* Adding that even his blue t-shirt indicated on its back that he was tasked with "crowd control".³³

He was alerted to the fact that something had happened, when he saw girls rushing to the toilet covering their faces with their t-shirts, so he left his position behind the steps leading to the VIP area and asked them what happened and they informed him that gas had been used inside the club. This led him to approach the opening which had formed in the crowd to inspect what had happened and noticed *"other people, they were all coughing and crying and suffocating... they were struggling for breath. Then I turned to the DJ and I told him to switch off the music and I started to move people towards the exit. I ordered them .. to leave"*.³⁴ He confirmed that it was his decision to send everybody about and did not ask the DJ to make any announcement.³⁵ He proceeded to the toilets to see if anyone was inside *"I directed towards the main exit downstairs.... I saw a couple of people there [in the toilets] and I told them to move out"* and communicated with the other securities via radio informing them that someone had sprayed

²⁶ Fol.1021

²⁷ Fol.1022

²⁸ Fol.66-67

²⁹ Fol.251

³⁰ Fol.252

³¹ Fol.253-254

³² Fol.254-255

³³ Fol.255-257

³⁴ Fol. 258-260

³⁵ Fol.261

gas in the club.³⁶ Other securities working at Havana came into the Plus One club from the door leading to Havana.³⁷

The defendant did not experience the gas's effects himself but he made the decision to order people out of the Club after seeing people with the same symptoms and acting similarly to the girls he had first noticed coughing entering the toilets.³⁸ He explains his actions, *"First I contacted them [the other securities] ... telling them to let the people out of the main exit and then I went down myself downstairs... I walked towards the exit but of course it was impossible to go anywhere because there were many people going towards the exit.... Then I saw a girl who is extremely pale and she was feeling very sick and she was coughing and crying [defendant indicates that the girl was found to the left of the bar next to the first door leading to the main door] ... then I saw the exit towards Havana was open and I helped her go through that exit because there was no chance of her passing through the main door... I accompanied the girl through Havana and I went out and then I realised what happened, there was a lot of blood outside"*, going on to state that at that time the railing had already given way.³⁹

The following declarations assume importance in the Court's deliberations on the defendant's criminal responsibility since it indicates his state of mind when he was directing people towards the exit. Spasic states that although he saw a crowd by the main door *"I saw that it was crowded but they weren't moving but I didn't realise why, I don't know why"* and he failed to communicate with the other securities since he was tending to the girl *"because she looked in a bad way"*. At this time the Club was practically empty.⁴⁰ Questioned why he opted to direct patrons towards the main door and not the emergency exit the defendant explains: *"[the manager] did show me the exits like I described before but he did not show me where the exit leads to one that is adjacent to the office. I saw that there is like a door and I am not sure if it is anti-fire we call it emergency... the [door] adjacent to the office. I know where it is the one next to the office but I don't know where it leads to ... the second door leads to Havana ... [the manager] just showed it to me saying this is the exit to Havana, this is where the DJ is."*⁴¹ Spasic adds that he directed patrons to the main door as *"My reasoning was that door downstairs is bigger so it would be easier to exit and secondly the Havana door was closed ... When the incident happened the Havana door was closed"* admitting that he did not check whether it was simply closed or locked having

³⁶ Fol.261-262

³⁷ Fol.264

³⁸ Fol.265-266

³⁹ Fol.267-268

⁴⁰ Fol.269

⁴¹ Fol.271

only seen it being used that night on one occasion by the doorman.⁴² Spasic finished off his testimony by stating that he never used that door himself.⁴³

Considers further,

The First Offence: Involuntary Bodily Harm

The Court of Criminal Appeal in **Il-Pulizija vs Dorianne Camilleri**, which saw the defendant in those proceedings facing charges of involuntary homicide, outlined the substantive elements of *culpa*:⁴⁴

“In succinct fuq skorta ta' awturi u giurisprudenza, t-treped tal-kolpa gie definit bhalha:

1. *la volontarieta dell'atto*;
2. *la mancata previsione dell'effetto nocivo*; u
3. *la possibilita di prevedere*.

Bhalha konkluzzjoni tad-definizzjoni li din il-Qorti trid taghti lit-terminologija culpa, ghalhekk jibqa' dejjem li l-element taghha huwa volontarjeta' tal-att, in-nuqqas ta' previzjoni tal-effetti dannuzi ta' dak l-att u l-possibilita' ta' previzjoni ta' dawk l-effetti dannuzi. Jekk l-effetti dannuzi ma kienux prevedibbli, hliet b'diligenza straordinarja li l-ligi ma tesigix u li semmai tista' ggib culpa levissima li ma hiex inkriminabbli, ma hemmx htija. (vide **Il-Pulizija vs John Vella** deciza nhar il-15 ta' Dicembru 1958 mill-Qorti ta' l-Appelli Kriminali).⁴⁵

Din is-sentenza tistrieħ fuq l-insenjament ta' zewg guristi tad-dritt penali fejn il-gurist **Francesco Carrara** jghid hekk dwar il-*culpa*, “... *il tripode sul quale si aside la colpa sara` sempre questo - 1° volontarieta` dell'atto - 2° mancata previsione dell'effetto nocivo - 3° possibilita` di prevedere*.”

Bl-istess mod, il-**Professur Anthony J. Mamo**, fin-noti tieghu, jghid hekk: “*In these definitions the essence of negligence is made to consist in the “possibility of foreseeing” the event which has not been foreseen. The agent who caused the event complained of, did not intend or desire it, but could have foreseen it as a consequence of his act if he only had minded: so his negligence lies in his failure to foresee that which is foreseeable*”.

L-**Antolisei**, izda jimxi pass 'il quddiem mill-insenjament tal-Carrara u t-tejorija tal-prevedibbilita ta'l-azzjoni meta iqies illi tirrizulta il-kolpa meta jkun hemm in-nuqqas ta'l-osservanza tar-regoli tal-komportament, anki jekk l-event dannuz ma kienx wiehed prevedibbli u dan billi l-osservanza ta' dawn ir-regoli iwassal sabiex l-event dannuz ma isehhx:

*“Si tratta di regole di condotta volte a prevenire determinati accadimenti; tali regole possono essere sociali (negligenza imprudenza o imperizia) oppure giuridiche (regolamenti, ordini discipline).
Quindi occorrono due requisiti:*

⁴² Fol.272

⁴³ Fol.273

⁴⁴ Per Mdme. Justice Edwina Grima, Dec. 28.02.2018; Appeal No..89/2017

⁴⁵ **Il-Pulizija v Leonard Grech** decided by the Court of Criminal Appeal on the 5th September, 1990

- a) la violazione di una regola;
b) che l'evento provocato sia esattamente quello che la norma voleva evitare.
In definitiva il giudizio di rimprovero è un rimprovero per leggerezza, perché il soggetto non è stato cauto e diligente come doveva.”

Awturi ohra bhal **Mantovani** u **il-Padovani** jabbinaw din ir-regola ta'l-Antolisei mar-regoli tal-prevedibbilita u l-inevitabbilita' biex b'hekk il-*culpa* fil-fehma taghhom tinkwadra ruhha ferba elementi:

1. un requisito oggettivo consistente nella violazione di una regola di condotta;
2. un requisito soggettivo, cioè la capacità di osservare tale regola;
3. l'evitabilità dell'evento mediante l'osservanza di tale regola;
4. la prevedibilità ed evitabilità, cioè che il soggetto avesse la capacità o la possibilità di tenere un comportamento diverso.⁴⁶

Consequently the Court must assess whether the defendant, in acting in the way he did, failed to foresee that which is foreseeable but not only, as the Court is duty bound also to determine whether, had the defendant acted differently, could the resulting calamity have been averted.

It is thus necessary to consider the learned experts' findings as well as to reconsider what witnesses on the scene observed and what caused them to react in the way they did when they made a run for the main exit/entrance.

Profs. Alfred Vella, in his report, had the following observations to make:⁴⁷

“(c) Fattur ieħor li iggrava s-sitwazzjoni: rotot ta' uxxiti ta' emergenza mill-klabb

L-esponent innota illi fil-klabb kien hemm effettivament post wieħed minn fejn setgħu joħorġu n-nies għaliex żewġ bibien immarkati “Fire Exits” preżenti fil-ġnub tal-kamra li kienet isservi bħala l-area prinċipali tal-klabb kienu fil-fatt jaġġtu għall-postijiet oħra adjacents mal-bini tal-Plus One li kienu min-naħa, il-klabb Hugo Passion u minn naħa l-oħra, il-post numru 187. Uxxita oħra mhux immarkata bħala “exit” kienet tramite ufficju fuq wara tal-klabb li tagħti għal klabb ieħor taħt il-Plus One, bl-isem “Steam”.

L-esponent ma kienx jaf jekk dawn is-suppost Fire Exits kienux maqfulin illokjati jew le fil-hin tal-incident.

L-esponent jiddeskrivi l-Fire Exits in dizamina bħala “suppost Fire Exits” għaliex il-manjiera ta' kif kienu kostruwiti jew iddizinjati ma kinitx tikkorrispondi b'ebda mod ma' standards internazzjonali rikjesti minn tali rotot ta' hruġ f'każ ta' emergenza.

Hekk, l-esponent jirreferi għal standard Amerikan (tal-Occupational Safety and Health Agency), li għalkemm hu stabbilit għall-użu fuq postijiet tax-xogħol, fl-opinjoni tal-esponent, għandu relevanza għal dan il-każ, anke għaliex fl-intern tal-klabb ikun hemm, minbarra għall-klijenti, impjegati tal-istabbiliment li għalihom il-klabb hu l-“workplace”. Hekk, emergency exit route trid tkun “a continuous and unobstructed path of exit travel

⁴⁶ <http://www.altalex.com/documents/altalexpedia/2016/02/17/colpa>

⁴⁷ **Dok AV1** a fol.2457 (Vol XII).

from any point within a workplace to a place of safety". "Exit route" tikkonsisti fi tlett partijiet, li huma l-"exit access", dik il-parti tar-rotta li tagħti għall-ħruġ, l-"exit", il-parti li trid tkun isseparata mill-area li minnha wieħed ikun irid joħroġ li trid tkun sigura u protetta u tagħti direttament għall-parti li jsservi bhala "exit discharge". Din l-exit discharge trid tiżbokka barra t-triq jew fuq walkway jew area ta' rifuġju jew spazju miftuħ li jagħti aċċess għal barra.

Ċarament, bieb li jieħu minn post magħluq mimli nies għall-ieħor li hu normalment mistenni li jkun ukoll bin-nies ma jistgħax jiġi konċepit la bhala "exit" u wisq inqas bhala "exit discharge".

Għalhekk, l-esponent iħoss illi l-klabb Plus One kellu biss ħruġ effettiv ta' emergenza uniku li kien il-bieb ta' quddiem tal-klabb u li dan kien fattur prinċipali li wassal għall-ħsara li sofrew il-persuni fl-attentat tagħhom sabiex joħroġu mill-post. Li kieku n-nies setgħu jitaqassmu u joħroġu minn iktar minn exit wieħed, il-probabilita' kienet tkun kbira li l-ħsara fuq il-persuni kienet tkun inqas."

John Gera's report highlights the various shortcomings in the design of the Club. These shortcomings cannot be overlooked in determining the defendant's criminal responsibility in his directing patrons to leave the club via the main door:

- i. The main door should not have been wider than 1.05m when in fact it was 1.60m in width. **This breadth enticed patrons to charge towards this exit instead of finding alternate exits.**⁴⁸

This undoubtedly weighed in also on Spasic's spontaneous reaction to instruct patrons to leave via the main entrance!

- ii. The club was **void of any markings or signage indicating other exits:**

"fl-imsemmi post ma hemm xejn li jindikaw li kien hemm bibien ulterjuri tal-emergenza u dan għaliex gewwa l-istabbiliment imsemmi ma hemm l-ebda bieb ieħor li jindikaw li huwa bieb tal-emergenza, jiġifieri la tabelli illuminati li jindikaw li dawn huma fire exits, iżjed u iżjed peress li dawn il-bibien huma ta' għamla komuni li jissakkru b'ċavetta.... Barra minn hekk Fire Exit Door għandu jkollu push bar li jkun li jkun jista jinfetaħ minn kwalunkwe persuna li ssib ruħha f'diffikulta biex toħroġ mill-post u għaldaqstant ma jkollhiex bżonn lil xi hadd jiftaħ għall-aċċess biex toħroġ minnu.

Wieħed qatt ma jista jikkunsidra li jkollu Fire Exit Door li jagħti għal go stabbiliment ieħor.... F'dan il-każ il-bieb li hemm viċin il-bar li fuqu hemm indikazzjoni ta' fire exit bil-vleġġa fuqu tindika ħruġ minn go fih, imma lejn il-bieb prinċipali, qatt ma kien ippajant li jintuza bhala Fire Exit... iżjed u

⁴⁸ Fol.2549

izjed meta wiehed iqis li ladarba wiehed jidhol minn go dan il-bieb isib ruhu f'kamra zghira b'apparat li jista' jostakola l-fluss tal-persuni.

This goes to show that the defendant was correct in acting in the way he did, averting any further calamity from befalling patrons on that tragic night! The report continues:

Meta wiehed jigi ghat-tieni bieb li f'dan il-każ jaghti għall-istabbiliment Havana 808 wiehed isib li dan il-bieb jiftaħ għal fuq in-nies....dan il-post mhuxwix post liberu fejn wiehed ikun jista faċilment johroġ imma hemm possibilità kbira li dan il-bieb jigi ostakolat bin-nies u dan dejjem jekk dan il-bieb ma jkunx imsakkar biċ-ċavetta.

Bieb ieħor li jinsab fuq in-naħa ta' ġewwa quddiem l-istand tad-DJ fuq il-lemin int u diehel ma għandu ebda sinjal li jindika l-użu ta' dan il-bieb. L-esponent iżid jgħid li ladarba wiehed jidhol minn go dan il-bieb isib ruhu f'kuritur zghir ostakolat b'mannekin kbir u l-bieb li jaghti għal għol-istabbiliment Steam huwa magħluq u jinfetaħ biss minn naħa tal-istabbiliment Steam.

*Bieb ieħor li jinsab viċin il-bar it-tondma għandu l-ebda indikazzjoni li tgħid li huwa Fire Exit, iżjed u iżjed meta wiehed jara r-ritratti [Vol.XI]...li juru biċ-ċar li l-push bar qiegħda fuq in-naħa ta' ġewwa tal-istabbiliment Hugo Passion. Barra minn hekk dan il-bieb jissakkar b'żewġ ċwievet."*⁴⁹

- iii. The manner in which one calculated the number of patrons were in the Club at any point in time thereby allowing them to allow more to enter or to refuse entry, as the case may be, was determined solely subjectively: *"kollha qalu li l-kalkolu kien jittiehed fuq għajnehom u meta jidrilhom li jkun hemm spazju vojta dawn kienu jdaħħlu iżjed persuni. Meta [l-impjegati] ġew mistqosija ukoll kienux attrezzati b'xi apparat numeriku biex jigi kalkolat l-għadd ta' persuni heġin u deħlin, dawn dejjem wiegħbu fin-negattiv"*.⁵⁰
- iv. *"L-għadd ta' Emergency Exit Doors irid ikun ta' tnejn (2) mingħajr ma wiehed jgħodd il-bieb principali tal-istabbiliment, għalkemm il-bieb principali tal-istabbiliment jista jigi użat bħala emergency exit.....**jekk ikun hemm aktar minn 60 persuna fi stabbiliment, irid ikun hemm 2 bibien ta' emeregenza.** Dan f'każ ta' xi incident fil-bieb principali tal-istess stabbiliment fejn nies ma jkunux jistgħu jagħmlu użu minnu għal xi raġuni."*⁵¹

⁴⁹ Fol.2550-2551

⁵⁰ Ibid.

⁵¹ Fol.2553

The court-expert goes on to point out that whilst the defendant directed the patrons towards the principal entrance, the fact that there was no signage indicating alternative exits caused the said patrons to head to the main door.⁵²

- v. A further detail emerging from Gera's report is that the patrons ended up trampling over each other owing to the fact that the steps on the outside were not of the same height and colour: "*Dawk li kienu minn tal-ewwel li laħqu t-taraġ, fi triqthom għal barra sabu l-folla ħierġa warajhom f'paniku fejn seta' jidher ukoll minn xi filmati kien hemm imbuttar. Dan ġara minħabba li peress l-aħħar tarġa li tagħti għal barra ma kinietx tal-istess kulur u tal-istess għoli tgerbu mal-art b'konsegwenza li n-nies bdew tielgħin fuqhom.*"⁵³

These deficiencies and shortcomings certainly contributed in no small manner not only to the ensuing calamity which befell the Club's patrons, but also weighed in on the defendant's actions when on the spur of the moment he was faced with such dramatic situation which led to the reaction described above when he initially chose to direct patrons towards the amin exit.

The court used the word "initially" purposely as witnesses confirm that at a point in time he was escorting out patrons and directing others towards the exit leading to 808. Although untrained for evacuation procedures, he selflessly remained the last man standing ensuring that no patrons remained in the Club, checking bathrooms before escorting the mass of persons who had been allowed into the Club, in excess of the club's capacity; a major contributory factor which in itself militates against an outright finding of the defendant's liability. Indeed Spasic, the only security to be inside the club and witness first-hand the chaos and mayhem which ensued, was put on the spot and instantaneously placed in the unenviable position of having to deal with the evacuation of a crowd alone, which crowd in the first place, should have never been allowed to reach such numbers! Anthony Cachia's words come to mind when he testified that the Club was **overcrowded, estimating that there were between 300-400 patrons, 4-5 people per metre squared.**

Undoubtedly Spasic's precarious situation was compounded to no end by the club's shortcomings so eloquently highlighted by the Experts, most notable by John Gera and Alfred Vella. In truth the Court deems that his actions, in those circumstances, with all the failings to which reference has been made above, demand commendation not censure!

Indeed the following excerpts also bring to bear on the issue as to whether, the defendant should bear any responsibility for acting in the way he did. In truth,

⁵² Fol.2555

⁵³ Fol.2556

given that the door leading to 808 was initially closed from the club's side, would have rendered futile and superfluous any actions by Spasic to use that exit, which as experts state could never be considered as an emergency exit in the first place:

- **Kelly Vassallo:** *“U morna biex nohorgu mill-club. Issa hemm hekk l-unika way out li rajt huwa l-main entrance, ghax dak li dhalt minnu.“l-unika way out li rajt huwa l-main entrance li kont gia dhalt minnha.....”;*
- **Luca Brincat** states that at the exit there was no-one directing them as how to exit the club in a bid to circumvent the horde which ensued, thus the Court surely cannot attribute this shortcoming to Spasic who, at the time, was still on the inside of the Club. Brincat goes on to say: *“Kulhadd hareg mill-istess exit, entratura insomma...ma kienx hemm mod iehor kif jiena Nista nohrog mill-club....everyone was trying to get to safety...niftakar kulhadd beda miexi l-barra, ovojament b’naqra tista tghid forza”;*
- **Joseph Rivans:** *“fil-każ tal-incident ma kellniex çans, ma kienx hemm çans [issir evacuation procedure]”⁵⁴, adding that he saw Spasic “rajtu fin-nofs jipprova johrog in-nies ghal gol-808...”⁵⁵ and remarks that the door leading to Hugo’s Passion “dak ikun maghluq”;⁵⁶*
- **Jimmy Galea**, a DJ who was no stranger to the Club, only realised that he could exit from the door leading to 808, not because he knew about its existence but *“nghidlek id-dritt rajt in-nies johorgu minn hemm.... U ghidt ha nohrog minn hawn ghax hemmhekk hemm blukkagni fejn kien hemm il-main entrance⁵⁷ awtomatikament jiena mort ghal bieb ta barra....awtomatikament rajt in-nies hiergin minn hemm u hright minn hemm⁵⁸ Ma nafx awtomatikament hemmhekk hu lejn il-bieb ta’ barra sewwa. Awtomatikament seta kien hemm il-bibein kollha jigifieri...hemm xi plakka fuq il-bieb”⁵⁹*
- **Daniel Briffa** makes mention of the fact that bartenders and staff were also directing people towards the main entrance and thus it was not solely Spasic to take the same action albeit initially. Later he confirmed that the door on Plus One’s side would be opened but not the door on the side of 808;⁶⁰

⁵⁴ Fol.101

⁵⁵ Fol.103

⁵⁶ Fol.107

⁵⁷ Fol.183

⁵⁸ Fol.193

⁵⁹ Fol.194

⁶⁰ Fol.911-912

- **Tysone Grech's** testimony leaves no room for misinterpretation since it confirms that when the incident happened the door had been closed, thus rendering superfluous any action by Spasic to lead people through 808. Spasic acted correctly when he escorted the crowd towards the main entrance being unable to do otherwise. So much so, according to Grech that it was Rivans who instructed securities to open the door leading to 808: *"kien barra u qalulna morru ifthu⁶¹ Biex imorru nifthu l-808, nifthu l-emergency doors... Biex imorru nifthu l-emergency exit minn 808 ghall-Plus One."*⁶²
- Finally mention must be made of Spasic's own declaration when explaining what led him to initially direct patrons towards the main entrance, which declaration is corroborated by Grech's own testimony: *"My reasoning was that door downstairs is bigger so it would be easier to exit and secondly the Havana door was closed ... When the incident happened the Havana door was closed"*.⁶³

Considers further,

In view of these findings and taking into account jurisprudence relating to what is tantamount to *culpa*, the Court deems that there were a multitude of factors which no reasonable man could have foreseen. The odds were all stacked against the defendant who nonetheless, the Court considers did his utmost to escort to safety the Club's clientele, thinking little of his own wellbeing in the process.

For these reasons the Court finds that the defendant cannot be found guilty of having negligently through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations caused bodily harm to several persons as charged.

The Second Charge: Acting as a private guard without being duly licenced

Bernard Zarb, in representation of Jobsplus, exhibited the employment history of Spasic from where it transpires that the defendant was never employed to act as a private guard but only as a welder with General Repairs Limited since May 2015 until January 2016.⁶⁴

Whereas Article 3 provides:

⁶¹ Fol.1018

⁶² Fol.1021

⁶³ Fol.272

⁶⁴ **Dok.BZ**. Vide also **Dok.Y** exhibited by J. Saliba on the 3.10.2018

3.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.

Article 6 goes on to state that:

6.(1) Any person desiring to be licensed as a private guard agency or as a private guard shall make an application in writing to the Commissioner.

Article 2 of the Act provides that the Commissioner means the Commissioner of Police. As rightly pointed out by learned defence counsel, no representative of the Commissioner of Police was called to testify as to whether the defendant possessed such a licence.

Nonetheless the Court has before it the defendant's own confession when, on oath, before the Inquiring Magistrate he stated: "*I don't have a license as a security guard as such*".⁶⁵

Thus this charge has been satisfactorily proven by the prosecution.

The Third Charge: Smoking a Tobacco Product in an Enclosed Area

Having seen the footage exhibited in Dr. Martin Bajada's report, the Court finds this offence proven.

Punishment

In its considerations on punishment the court took note of the nature of the offences of which the defendant is being found guilty, the fact that these proceedings relate to an incident which occurred in 2015 where the delay in determining this case cannot be attributed solely to the defendant, and to the circumstances of the case.

Salient amongst these is the fact that the defendant had been acting as a private guard for only a month having received no training as to how to conduct himself in an establishment the structure of which defied health and safety requirements.

⁶⁵ Fol.252

Decide

For these reasons, the Court, whilst acquitting the defendant from the first offence, after seeing articles 17 and 31 of the Criminal Code, article 18 of the Tobacco (Smoking Control) Act, Chapter 315 of the Laws of Malta and regulation 3(1) of the Smoking in Public Places Regulations, S.L. 315.04, and articles 3 and 25(b) of the Private Guards and Community Officers Act, Chapter 389 of the Laws of Malta, finds the defendant guilty of the second and third offence and condemns him to the payment of a fine, *multa*, of **one thousand two hundred Euros (€1,200)** payable over one (1) year in monthly instalments commencing on the 1st September, 2024.

Dr. Donatella M. Frendo Dimech
Magistrate