



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

**MAGISTRATE DR. SIMONE GRECH B.A., LL.D.,**

**Qormi Sitting**

**The Police**

**vs**

**Elena Cachia**

**Today, the 28<sup>th</sup> day of October, 2024**

The Court,

Having taken into consideration the charges brought against Elena Cachia, 40 years old, holder of identity card number 28910A, whereby she was accused of the following:

*“Talli f’11.01.2020 għall-habta ta’ bejn 18.00hrs u 18.45 hrs gewwa Triq Hal-Luqa Hal-Qormi*

- 1) *Waqt li kienet qed titmexxa vettura inzilt tlajt jew iddendilt mal-vettura KTH112 tal-ghamla BMW jew gibt ruhhek b’mod iehor li stajt tikkawza perikolu jew biza lilek innifsek jew lil haddiehor*
- 2) *Għad illi kont xurban, għidt fil-pubbliku xi kliem oxxen jew indeċenti, jew għamilt atti jew gesti oxxeni, jew b’xi mod iehor li mhux provdut f’dan il-Kodiċi, offendejt il-morali, l-imġieba xierqa jew id-deċenza pubblika*

3) *f'lok pubbliku jew f'post miftuħ għall-pubbliku, kont fi sakra b'mod li ma' kontx tista' tieħu ħsieb tiegħek innifsek*

4) *b'xi mod ieħor mhux imsemmi band'oħra f'dan il-Kodiċi, jikser volontarjament il-bon-ordni jew il-kwiet tal-pubbliku*

5) *inqast li tobdi l-ordnijiet legittimi mogħtija lilek minn PC142 u PC971, uffiċjal pubbliku waqt li kien qed jaqdi d-doveri tiegħu jew ma ħallejtx jew fixkilt jew indħalt ll imsemmi uffiċjal waqt il-qadi ta' dmirijietu*

6) *ingurjajt jew heddidt lil PC142 u PC971, persuna inkarigata skont il-liġi minn servizz pubbliku, waqt li kien qed jagħmel jew minħabba li kien qed jagħmel dan is-servizz jew bil-ħsieb li tbeżżaw jew li tinfluwixxi fuqu kontra il-liġi waqt l-eżekuzzjoni ta' dan is-servizz.*

7) *Attakajt jew ghamilt rezistenza bi vjolenza jew b'hebb ta' xorta oħra li ma titqiesx vjolenza pubblika kontra PC 142 u PC971 persuna inkarigata mis-servizz pubbliku fil-waqt li tkun tagixxi għal-esekuzzjoni tal-Ligi jew ta' ordni mogħtija skond il-Ligi mill-awtorita kompetentiż*

8) *U aktar fl-istess data għal-hinijiet ta' 19.00 u 19.15hrs gewwa Triq il-kbira Hal-Qormi inqast li tobdi l-ordnijiet legittimi mogħtija lilek minn PS274 u WPC189, uffiċjal pubbliku waqt li kien qed jaqdi d-doveri tiegħu jew ma ħallejtx jew fixkilt jew indħalt lil imsemmi uffiċjal waqt il-qadi ta' dmirijietu*

9) *Insulentajt u heddit u ngurjajkat lil PS274, PC142 u PC479 u PC971 bil-kliem jew b'xi mod ieħor*

10) *'xi mod ieħor mhux imsemmi band'oħra f'dan il-Kodiċi, jikser volontarjament il-bon-ordni jew il-kwiet tal-pubbliku*

*Il-Qorti hija mitluba li f'kaz ta' htija tapplika L-Art 412c tal-Kap 9"*

Having taken note of the documents exhibited;

Having heard the testimony of the witnesses produced;

Having heard final oral submissions;

Having seen that the case was adjourned for judgement;

**Considers:**

The Court notes that the first, second, third, fourth, fifth, eighth, ninth and tenth charges are prescribed as outlined by the Official Prosecutor on the 18<sup>th</sup> February, 2022.

The Accused is thus being accused in terms of Article 95 and 96 of the Criminal Code.

Article 95 of the Criminal Code stipulates that:

*Whosoever, in any other case not included in the last preceding two articles, shall revile, or threaten, or cause a bodily harm to any person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty, shall, on conviction, be liable to the punishment established for the vilification, threat, or bodily harm, when not accompanied with the circumstances mentioned in this article, increased by two degrees and to a fine (multa) of not less than eight hundred euro (€800) and not more than five thousand euro(€5,000).*

Article 96 of the Criminal Code states that:

*Whosoever shall assault or resist by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority, shall, on conviction, be liable –*

- (a) *where the assault or resistance is committed by one or two persons, to imprisonment for a term from six months to two years and to a fine (multa) of not less than four thousand euro (€4,000) and not more than ten thousand euro (€10,000);*
- (b) *where the assault or resistance is committed by three or more persons, to imprisonment for a term from nine months to three years and to a fine (multa) of not less than five thousand euro (€5,000) and not more than fifteen thousand euro (€15,000)*

In the judgement given by the Court of Criminal Appeal, in the names of **Il-Pulizja Spettur Johann J. Fenech vs Daniel Mizzi**, on 17<sup>th</sup> June, 2019, the following was outlined with regards to Article 95 of the Criminal Code:

*“Fil-kaz Il-Pulizija v Emanuel Pace (Qorti ta’ l-Appell Kriminali (CA) – 30 ta’ April, 1993 (App. Nru. 217/91)), il-Qorti ta’ l-Appell Kriminali qalet illi sabiex jissusisti d-delitt ta’ oltragg hemm bzonn li l-kliem denunzjat bhala ingurjuz, jkun inghad lil wiehed li ghandu kwalifika ta’ ufficjal pubbliku u li jkun filwaqt ta’ dan ikun fl-att tas-servizz “officio durante ad contemplazione officii”.*

*Fil-fatt, jekk persuna li tkun pulizija tinzerta f’post u tigi ingurjata jekk ma tkunx hemm fuq xi ordni specifiku izda b’semplici kumbinazzjoni, allura dan id-delitt ma jesiztix.*

*Fis-sentenza fl-ismijiet Il-Pulizija v Carmel Farrugia (Qorti ta’ l-Appell Kriminali (VDG) – 16 ta’ Frar, 1998 (App. Nru. 194/96) il-Qorti tal-Appell Kriminali qalet li “jekk l-kliem li jintqal mill-agent lejn ufficjal pubbliku, jintqal b’sens ta’ kritika, l-kritika sakemm ma tiddegenerax f’ingurja ma tista b’ebda mod tigi penalizzata, anke jekk dik il-kritika tiehu l-forma ta’ rimarka ironika jew addirittura sarkastika. F’dak il-kaz ir-reat in desamina ma jirrizultax.*

*Fis-sentenza fl-ismijiet Il-Pulizija v Emanuele Cassar (Qorti ta’ l-Appell Kriminali – 12 ta’ Dicembru, 1936 (Vol. XXIX/iv/593) il-Qorti tal-Appell Kriminali ddecidiet li biex ikun hemm d-delitt ta’ oltragg, hemm bzonn li l-kliem ingurjuz jinghad lil wiehed li ghandu l-kwalita ta’ ufficjal pubbliku u fil-waqt li dan ikun fl-att tasservizz tieghu, l-att ingurjuz ta’*

*l-oltragg jirrikjedi l-element morali, jigifieri l-intenzjoni li l-hati joffendi lil ufficjal li jkun, u ghalhekk meta ma hemmx dik l-intenzjoni ma hemmx l-oltragg, imma jista jkun hemm kontravvenzjoni ohra."*

The Court of Criminal Appeal continued to explain the constitutive elements of the offence, outlined in Article 96 of the Criminal Code:

*".....l-artikolu 96 ghandu ukoll bhala vittma, l-ufficjal pubbliku, filwaqt li jikkontempla tlett elementi essenzjali ghal kostituzzjoni ta' dan ir-reat: Fl-ewwel lok, irid ikun hemm l-attakk jew ir-resistenza. Illi jkun hemm biss disubbidjenza tal-ligi jew ta' ordni moghtija minn xi awtorita` ghalhekk mhux sufficjenti ghal kummissjoni ta' dan ir-reat. Il-Professur Mamo ikompli jghid hekk:*

*"It is only when the insubordination or defiance goes so far as to obstruct the execution of the law or of lawful orders of the competent authority that the crime of attack or resistance can arise.*

*The purpose of the agent in this crime, therefore, must be precisely that of obstructing or frustrating the execution of the law or the lawful orders of the competent authority, by opposing the action of those charged therewith".*

*Fin-nuqqas ta' dan jista' jissussiti biss ir-reat ikkontemplat fl-Artikolu 95. Inoltre l-attakk jew resistenza trid tkun necessarjament akkompjanta bl-uzu tal-forza, vjolenza jew bil-hebb. Ghalhekk insulti jew theddid qatt ma jistghu jwasslu ghal htija taht din iddisposizzjoni tal-ligi.*

*Fit-tieni lok ir-reat l-akkuzat appellant gie akkuzat bir-reat ta' resistenza jew attak fuq ufficjal pubbliku skond l-artikolu 96 tal-kap 9 tal-ligijiet ta' Malta. Dan ir-reat irid jigi kommess fil-konfront ta' ufficjal pubbliku jew kif tghid testwalment il-ligi "persuna inkarigata skond il-ligi minn servizz pubbliku". Illi l-Qorti ssostni li huwa necessarju illi ghalkemm tali persuna mhux necessarjament ghandha tkun liebsa uniformi jew xi marka jew sinjal li turi l-kapacita` li fiha qed tagixxi, madanakollu x-xjenza tal-persuna li qed tikkommetti dan ir-reat illi l-vittma hija ufficjal pubbliku, hija necessarja.*

*Altrimenti l-element formali għall-kummissjoni ta' dan ir-reat ikun nieqes.*

*Fl-ahharnett huwa necessarju illi l-attakk jew ir-resistenza kontra l-ufficjal pubbliku jrid isir filwaqt illi huwa jkun qiegħed jagixxi għall-esekuzzjoni tal-ligi jew ta' ordni mogħtija skond il-ligi minn awtorita` kompetenti.*

*Il-Professur Mamo jkompli jghid:*

*"Therefore, any violence committed after the law or the order has already been executed, even though it may be on account of such execution, would not give rise to this crime."*

*U kif ingħad fis-sentenza fl-ismijiet Il-Pulizija vs Stephen Borg (mogħtija fis-26 ta' Jannar 1999 mill-Qorti tal-Appell Kriminali):*

*"Biex jissusisti r-reat irid ikun hemm bhala minimu xi forza llegali diretta lejn jew ezercitata fuq il-persuna nkarigata skond il-ligi minn servizz pubbliku. L-att li bih tali forza llegali tigi ezercitata, irid ikun tali li jkun tendenti, ossia li jkollu l-potenzjalita` li jikkaguna hsara lill-persuna tal-Ufficjal Pubbliku, zghira kemm hija zghira dik il-hsara, anke jekk bhala fatt u fil-kaz konkret ebda hsara ma tigi effettivament ikkagunata u anke jekk l-agent ma jkollu ebda intenzjoni li jikkaguna tali hsara. Biex ikun hemm dan ir-reat, l-agent irid ikun mhux biss attakka 'il fatto di prendere l'offensiva' jew irrezista 'il fatto di prendere la difensiva' lill-Ufficjal Pubbliku, izda li tali attakk jew resistenza tkun giet magħmula permezz ta' vjolenza jew b'hebb."*

*L-artikolu 96 jirrikjedi li l-attakk jew ir-resistenza jkun "bi vjolenza jew b'hebb". Hija din l-espressjoni li tat lok għal mhux ftit diskussjoni kemm fil-gurisprudenza kif ukoll fost il-guristi. Mill-gurisprudenza nostrana kif ukoll mid-dottrina din il-Qorti tikkonkludi li sabiex jissussisti r-reat kontemplat fl-artikolu 96 irid ikun hemm kif gie deciz fis-sentenza fl-ismijiet Il-Pulizija vs Stephen Borg fuq citata:*

*"fost affarijiet ohra u bhala minimu xi forma ta' forza illegittima diretta lejn jew ezercitata fuq il-persuna inkarigata skond il-ligi minn servizz pubbliku. L-att li bih tali forza illegittima tigi ezercitata irid ikun tali li*

*jkun tendenti ossia li jkollu l-potenzjalita li jikkaguna xi hsara lill-persuna ta' l-ufficjal pubbliku, zghira kemm hi zghira dik il-hsara, anke jekk bhala fatt u fil-kaz konkret ebda hsara ma tigi effettivoament ikkagunata u anke jekk l-agent ma jkollu l-ebda intenzjoni li jikkaguna tali hsara; Hekk per ezempju, ikun il-kaz ta' min semplicement jimbotta b'mod goff jew ostili lill-ufficjal pubbliku li jkun intimalu li ser jarrestah jew ta' min jibda jithabat meta jkun fl-idejn l-ufficjal pubbliku proprju biex jehles minn idejh".*

*Ghalhekk, biex il-Qorti tikkonkludi fuq dan ir-reat mhux bizzejjed li l-agent ikun attakka ("il fatto di prendere l-offensiva") jew irrisista ("il fatto di prendere la difensiva") lill-ufficjal pubbliku izda li tali attakk jew resistenza tkun giet maghmula permezz ta' vjolenza jew b'hebb."*

In the case decided by this Court, as differently composed on the 27<sup>th</sup> February, 2013, in the names of **Il-Pulizija (Spettur Kevin J. Farrugia) vs Renald Briffa**, it was outlined that:

*"Illi l-artikolu 95 jittellem dwar l-ingurja jew theddid fil-konfront ta' l-ufficjal pubbliku. Illi ghalhekk l-element materjal ta' dana r-reat huwa l-ingurja jew it-theddid. Dawn jistghu jiehd kemm il-forma verbali kif ukoll miktuba, gesti jew tpingija li huma intenzjonati biex inaqqsu il-gieh u ir-reputazzjoni tal-persuna lejn min huma diretti.*

*Illi l-vittma ta' dana ir-reat jista' ikun biss l-ufficjal pubbliku u l-ingurja jew it-theddida trid issir jew (1)filwaqt illi ikun qed jaghmel servizz pubbliku (2)jew inkella minhabba li ikun ghamel dana is-servizz pubbliku, (3)jew bil-hsieb li ibezzghu jew jinfluwixxi fuqu kontra l-ligi fl-esekuzzjoni ta' dak is-servizz.*

*"Illi l-awturi jaghmlu distinzjoni bejn il-mottiv wara l-ingurja jew it-theddid fl-ewwel istanza u dana il-mottiv fit-tieni u it-tielet istanza imsemmija fil-ligi. Dana billi meta l-oltragg isir fil-mument illi l-ufficjal pubbliku ikun qieghed jaghti is-servizz ma huwiex necessarju illi l-ingurja jew it-theddida tkun marbuta mal-funzjoni illi huwa ikun qieghed jezercita.*

*L-awturi Cheveau et Helie, li isemmi il-Professur Mamo fin-notamenti tieghu, ighidu:*

*“Quando l’oltraggio si verifica nel corso delle funzioni, il-motivo che lo determina e’ indifferente; la legge vede soltando il turbamento, l’ingiuria fatta all’esercizio delle funzioni, l’insulto che degrada la loro dignita’; avesse pure quest’ingiuria una causa determinante estranea alle funzioni, il turbamento all’esercizio di esse sussisterebbe sempre.”*

*Kuntrarjament fiz-zewg istanzi l-ohra irid ikun jigi ippruvat nexus bejn l-oltragg u il-qadi tal-funzjoni pubblika.*

*Illi finalment ir-reat irid necessarjament jigi kommess fil-konfront ta’ ufficjal pubbliku jew ta’ persuna inkarigat skond il-ligi minn servizz pubbliku.*

*Illi l-artikolu 96, imbaghad, ghalkemm ukoll ghandu bhala vittma, l-ufficjal pubbliku, jikkontempla tlett elementi essenzjali ghal kostituzzjoni ta’ dana ir-reat:*

*1. Fl-ewwel lok, irid ikun hemm l-attakk jew resistenza. Illi ikun hemm biss disubbidjenza tal-ligi jew ta’ ordni moghtija minn xi awtorita’ ghalhekk mhux sufficjenti ghal kummissjoni ta’ dana ir-reat. Il-Mamo ikompli ighid:*

*“It is only when the insubordination or defiance goes so far as to obstruct the execution of the law or of lawful orders of the competent authority that the crime of attack or resistance can arise. The purpose of the agent in this crime, therefore, must be precisely that of obstructing or frustrating the execution of the law or the lawful orders of the competent authority, by opposing the action of those charged therewith.”*

*Fin-nuqqas ta’ dana jista’ jissussiti biss ir-reat ikkontemplat fl-artikolu 95 biss.*

*Inoltre l-attakk jew resistenza trid tkun necessarjament akkompjanta bl-uzu tal-forza, vjolenza jew bil-hebb.*



*Ghalhekk insulti jew theddid qatt ma jistghu iwasslu ghal htija taht dina id-disposizzjoni tal-ligi.*

*2. Fit-tieni lok ir-reat irrid jigi komess fil-konfront ta' ufficjal pubbliku jew kif tghid testwalment il-ligi "persuna inkarigata skond il-ligi minn servizz pubbliku". Illi l-Qorti taghmel referenza ghal dak sottolinjat iktar 'il fuq u cioe' illi huwa necessarju illi ghalkemm tali persuna mhux necessarjament ghandha tkun libsa uniformi jew xi marka jew sinjal li turi il-kapacita li fiha qed tagixxi, madanakollu ix-xjenza tal-persuna li qed tikkometti dana ir-reat illi l-vittma hija ufficjal pubbliku hija necessarja. Altrimenti il-mens rea ghal kummissjoni ta' dana ir-reat ikun nieqes.*

*3. Fl-ahharnett huwa necessarju illi l-attakk jew resistenza kontra l-ufficjal pubbliku irid isir, filwaqt illi huwa ikun qieghed jagixxi ghall-esekuzzjoni tal-ligi jew ta' ordni moghtija skond il-ligi minn awtorita' kompetenti. Il-Mamo ikompli ighid: "Therefore, any violence committed after the law or the order has already been executed, even though it may be on account of such execution, would not give rise to this crime."*

*Il-Qrati taghna f'diversi sentenzi spjegaw id-differenzi bejn dawn iz-zewg reati. F'sentenza Il-Pulizija vs Joseph Zahra deciza mill-Qorti ta'l-Appell Kriminali fid-9 Settembru 2002 gie deciz:*

*"Dana l-artikolu (b'referenza ghall-artikolu 96) jirrikjedi mhux biss li l-vittma tkun persuna inkarigata skond il-ligi minn servizz pubbliku" (l-istess bhalma jirrikjedi l-Artikolu 95(1)), izda wkoll li r-reat ikun sar filwaqt li dik il-persuna hekk inkarigata minn dak is-servizz pubbliku "tkun qed tagixxi ghall-esekuzzjoni tal-ligi jew ta' xi ordni moghti skond il-ligi minn xi awtorita' kompetenti". Din l-espressjoni hi differenti minn dik uzata fl-Artikolu 95(1) – "waqt li jkun jaghmel jew minhabba li jkun ghamel dan is-servizz, jew bil-hsieb li jbezzghu jew li jinfluwixxi fuqu kontra l-ligi fl-esekuzzjoni ta' dan is-servizz".*

Reference is also made to the judgement given by the Court of Criminal Appeal, in the names of **Il-Pulizija vs Sean Sinclair Pace**, decided on the 26<sup>th</sup> May, 2016:

*“L-artikolu 96, imbaghad ghalkemm ukoll ghandu bhala vittma, l-ufficjal pubbliku, jikkontempla tlett elementi essenzjali ghal kostituzzjoni ta’ dana ir-reat:*

*1. Fl-ewwel lok, irid ikun hemm l-attakk jew resistenza. Illi meta ikun hemm biss disubbidjenza tal-ligi jew ta’ ordni moghtija minn xi awtorita’, ma tistax tissussiti r-reat taht din id-disposijoni tal-ligi. Il-Mamo ikompli ighid: “It is only when the insubordination or defiance goes so far as to obstruct the execution of the law or of lawful orders of the competent authority that the crime of attack or resistance can arise. The purpose of the agent in this crime, therefore, must be precisely that of obstructing or frustrating the execution of the law or the lawful orders of the competent authority, by opposing the action of those charged therewith.” Inoltre l-attakk jew resistenza trid tkun necessarjament akkompjanta bl-uzu tal-forza, vjolenza jew bil-hebb.*

*2. Fit-tieni lok ir-reat irid jigi komess fil-konfront ta’ufficjal pubbliku jew kif tghid testwalment il-ligi “persuna inkarigata skond il-ligi minn servizz pubbliku”.*

*3. Fl-ahharnett huwa necessarju illi l-attakk jew resistenza kontra l-ufficjal pubbliku irid isir filwaqt illi huwa ikun qieghed jagixxi ghall-esekuzzjoni tal-ligi jew ta’ ordni moghtija skond il-ligi minn awtorita’ kompetenti. Il-Mamo ikompli ighid: “Therefore, any violence committed after the law or the order has already been executed, even though it may be on account of such execution, would not give rise to this crime.”*

## **Considers:**

### **Evidence brought forth before this Court**

This Court took note of all the evidence produced.

**PS 274 James Turner** explained that assistance was requested by RIU officers, who alleged that they were assaulted whilst on duty. Turner stated in his affidavit, that PC 971 Scicluna c/o RIU and his colleague had gestured a driver of a car to stop, since a female passenger in this car was leaning out of the window in a dangerous fashion. PC 971 reported to PS 274, that the car did not

stop immediately, and that the female passenger showed the officers her third finger. PS 274 continued that PC 971 explained that he went to ask for the driver's documents, but the female passenger exited the vehicle and started shouting, pushing at the other officer. PC 971 reported to PS 274, that the lady already had some blood on her face. PS 274 continued, that PC 971 stated that he went to call for reinforcements from other units and he heard his colleague stating, that this woman was attempting to take his weapon. All this occurred after that the female attempted to enter in the police car. He stated that PC 971 reported that this lady continued insulting the Police in Maltese and in English, and that she even went on top of the vehicle's bonnet, smudging the vehicle with blood.

PS 274 also reported that PC 142 confirmed the version given by PC 971 and added that this female hit his colleague with a blow in his stomach. He said that she insulted continuously the Police Officers. He explained that PC 142 reported that he tried to stop her from hitting his colleague, but then she started hitting PC 142 and tried to snatch his weapon. He continued that according to PC 142, the female spat and went on the vehicle's bonnet and also started punching the passenger's front window. PS 274 explained that when she was given her rights, the accused continued to insult the other Police Officers.

**WPC 189** presented an affidavit wherein she stated that she reported on site, where she found the accused handcuffed and sitting in the Police's vehicle. She explained that Cachia was continually insulting the Police Officers, and although she was asked to stop, she continued since she was drunk. The said officer also testified *viva voce* and confirmed what she had already stated in her sworn affidavit.

**PC 479 Frank Anthony Portelli** explained that he and his colleagues received a call from PS 971 and PC 142, as they had stopped a vehicle and the persons were being aggressive towards the Police. He stated that once on site, he noticed the accused with blood on her face, attempting to open the vehicle of the Police. He stated that once this woman was approached, she became aggressive and started insulting them. He stated that the accused was being physically aggressive towards PS 971 and PC 142, as she was trying to fight physically with these two officers. He said that the Police's car was covered in

blood on the front bonnet and their window. He continued to state that the two Police Officers locked themselves inside the car. PS 479 confirmed that the accused had blood on her face and she was wiping it from her face unto the car. He stated that the accused was stopped before she could physically hit someone. He said that when he and his colleagues arrived, the two Police Officers went out of the car, but the accused reattempted to attack them physically. He explained that she also spat at them. He said that she also stated in his regards, that she wanted to curse him. He stated that as soon as the accused was being restrained, the male who was with the accused, came to her rescue. PC 479 also presented a sworn affidavit confirming these facts.

**PS 571** testified viva voce and explained that he and his colleague PC 142, stopped a car who had a female passenger leaning out of the window. He explained that the car stopped and he approached the driver. At that point in time, he stated that the accused came out of the car, and came next to him and his colleague, whilst she started shouting at them and insulting them with words like 'Go Fuck Yourselves'. He stated that he went to ask for help from other Police Units, by moving towards his car. He stated that he saw blood on the driver's hands as he was speaking to him, and that the woman had blood on her nose. He continued that as soon as he went towards his car, the accused came after him, and his colleague tried to stop her. The accused tried to take his colleague's weapon from him. He stated that he told his colleague to get in the car until help arrives. He continued that he suffered some injuries and that the accused threatened them that she knew a lot of Magistrates and Police Officers.

In cross examination PS 571 explained, that the male driver was not restrained by his colleague. He denied that he was informed by the accused, that the man with her had just undergone an operation. He insisted that the blood was already on the face of the accused from the very beginning. When asked whether the blood came out because the Police Officers hit the accused, PS 571 denied this. He stated that his colleague and himself went out of their vehicle, when the other officers arrived on site and arrested the accused. He stated that the accused continued to threaten them, that she knows a lot of Magistrates and Police Officers. He stated that he was present when the male driver was tested for alcohol intake and the breathalyzer resulted in the positive.

**PC 142 Joseph Camilleri** gave evidence, where he stated that a car was stopped and when the male driver was asked by his colleague to produce the relative driving documents, the female passenger went out of the car and tried to hit the Officer with her legs. He stated that he tried to pull her away from his colleague but she tried to seize his weapon. He explained that the accused continued to insult him and push him. He said that he was threatened since the accused stated that she knew a lot of powerful people. He said that when the accused came out of the car, she had blood and she had a strong smell of alcohol. He said that she started spitting blood and she splashed blood all over the police car. He continued that she punched the windows of the police car and continued to insult them, whilst he and his colleague stayed locked in the car. PC 142 explained that other Policeman came and arrested the accused.

In cross examination, he stated that the accused spat blood. He admitted that he used some force to pull her back, in order to prevent the accused from taking his weapon. He confirmed that he saw blood under her nose at the beginning, but afterwards, he could not confirm whether there was more blood on her face, due to the darkness in the street. He explained that the male driver exited the car later on, after he was asked to do so several times.

The Prosecution presented two medical certificates of PS 571 Glenn Scicluna (fol 42) and PC 142 Joseph Camilleri (fol 45), whereby it transpires that both suffered from injuries of a slight nature.

The defence claims that the accused started being punched at by the Police Officers in question for no reason at all. She stated this in the statement she gave, which statement is exhibited at fol 43 and 44 of the acts. **The accused** also chose to testify *viva voce* in Court. She explained that her partner had been at home being taken care of by herself for 4 months, and on the day of the incident, they had gone out for dinner, since the doctor had authorized him to start driving again. She stated that as her partner was driving, she put her hand out of the window as she was feeling very happy, but their car was stopped by the Police. She stated that the Police came to the driver's side and forced him to take out the key. She insisted that the Police Officers were very aggressive and her partner/boyfriend had to exit the car. She continued to say that the Police

Officers were very aggressive towards her and there was force used. She stated that when she saw this, she panicked, as she knew that her boyfriend had wires in his legs. She stated that her boyfriend was punched by the Police, and so she came out of the car.

She continued that she pleaded with the Police Officers that her partner had a 6% disability, and she screamed at them not to touch him, but one Policeman punched her in the face. She stated that when she was punched, she fell down and she had bruises all over her body. She explained that she started screaming, as blood started coming out of her nose like a fountain. She stated that she simply asked why she was being treated in this manner. She explained that she was arrested and separated from her boyfriend. She denied being aggressive towards the Police Officers, but she confirmed that she panicked, cried and screamed. She stated that she was left in a cold room and then when she was released, she went to the Polyclinic.

In cross examination, she stated that she was under control of herself and wasn't drunk. She denied that she screamed and also denied that she was singing with half of her body, leaning out of the window of the car being driven by her boyfriend. She insisted that she saw the Police very angry and aggressive towards her boyfriend.

The accused also presented a certificate of the injuries she suffered at fol 117.

**Keith Pace** also testified, where he stated that he had done a major operation and they had gone out for dinner. He stated that he was stopped by the Police whilst driving. He continued that the two Police Officers started shouting at him and ordered him to give them the car keys. He stated that the accused panicked, since they were shouting at him. He insisted that the accused had only her hand out of the car window. He explained that he was driving at a normal speed. He said that he gave them the keys and his documents, but his girlfriend started screaming, as she was afraid that they were going to touch him and hurt him. He explained that one Police Officer punched the accused in her face and she fell down. He stated that at that point, he started shouting

and asking why this was done. He insisted that he panicked even more, when he saw the blood coming out of the accused's face.

He stated that when he questioned the Police Officers for the reason why the accused was hit, they entered into their car and radioed for other Police Officers to come. He stated that he was also assaulted by the Police Officers. He exhibited a medical certificate at fol 145, as regards the injuries he allegedly suffered.

Defence produced also **Dr Mario Scerri** as witness, who explained that he had examined the accused, as she had suffered from bruising on the left eye, which is compatible with a blunt trauma. He stated that the injuries were of a slight nature.

### **Considers:**

From the above, it transpires that the two Police Officers, PC 142 and PC 971, were insulted and threatened by the accused. This results not only from the evidence given by the two Officers, but also it is corroborated by the evidence given by the other Police Officers which came to the aid of the said two Police Officers. The accused swore at the Officers, spat at them and also threatened them that she knew a lot of Magistrates and other Police Officers, in order to intimidate PC 142 and PC 971, while they were doing their duties as Police Officers.

From the description given by the Officers present, it was clear that it was no easy feat to control the accused. The accused not only disobeyed the orders given to her, but behaved aggressively. The incident was not of a "mere verbal resistance", but was also physical.

As pointed out by this Court presided by Magistrate Aaron Bugeja, in the case **Il-Pulizija vs Jerkin Decelis**, decided on the 22nd November, 2013:

*“L-imputat kien fid-dmir li, minghajr paroli u xenati zejda, jobdi l-ordnijiet legittimi li kienu gew moghtija lil mill-Pulizija ...L-ordnijiet legittimi moghtija mill-Pulizija lic-cittadin ma humiex hemmhekk biex jigu konstestati, argumentati, mkasbra jew injorati sommarjament mir-ricevent. Qeghdin hemmhekk biex jigu obduti – dejjem u minghajr dewmien, ghalkemm bla pregudizju ghad-dritt ta’ dak li jkun li jirreklama wara l-gustizzja intrinseka ta’ dik l-ordni. Altrimenti jkun ifisser li kull persuna jkollha l-jedd tagixxi kif trid u joghghobha minghajr hadd ma jista’ jzommha jew irazzanha. Nigu fi stat ta’ gungla – l-antitezi tal-ordni mehtiega biex il-hajja socjali tkun tista tezisti f’armonija relattiva.”*

The Court took note of the arguments brought forth by the defence, but it emerged from the evidence given by all the Officers, that both the accused and the male driver had a strong smell of alcohol. It does not make any sense that the Police Officers stopped the car driven by the boyfriend of the accused, for no valid reason and then for no reason, one Officer punched the accused on her face. It is true that the accused suffered from injuries, as all the Officers confirmed that she had blood on her face. However, the two Police Officers testified that the accused had already some blood on her face, when she and her boyfriend were stopped. The Court cannot discard all the evidence which was brought, where the aggressive behaviour of the accused towards these two Police Officers was confirmed. Although the evidence given by the boyfriend of the accused was in line with the evidence given by the accused, he confirmed that it is true that the accused panicked and was very agitated at what was happening.

Consequently, from examination of all the evidence brought forth before her, the Court finds that the sixth and seventh charges are proven beyond all reasonable doubt.

As regards the punishment, the Court makes reference to what was decided by the Court of Appeal on the 10<sup>th</sup> July, 2015, in the names of **Il-Pulizija (Spettur Frank Anthony Tabone) v. Peter Paul Said**:

*“L-aggravji tal-appellant Avukat Ġenerali jikkonsisti sostanzjalment filli jilmenta li l-piena erogata mill-ewwel Qorti ma hix tax-xorta li trid il-liġi*



*peress li l-artkolu 96(a) tal-Kodici Kriminali fic-cirkostanzi tal-kaz kien jipprovd i ghal piena ta' prigunerija minn sitt xhur sa sentejn u ghal multa ta' mhux inqas minn erbat elef euro (4,000) u mhux izjed minn ghaxart elef euro b'mod li l-ewwel qorti kellha necessarjament timponi kemm is-sanzjoni ta' prigunerija kif ukoll il-multa mentri l-ewwel qorti naqset milli timponi multa.*

*11. L-imputat appellat, minn naħa tieghu, isostni li l-Avukat Generali qieghed jinsisti li l-piena li ghalih huwa suggett ir-reat li tieghu l-appellat instab hati teskludi l-possibilita tal-applikazzjoni tad-dispozizzjonijiet tal-Kap. 446 u jissottometti li dan ma hux korrett ghaliex id-dispozizzjoni relevanti li tirregola meta tista' u meta ma tistax tigi applikata probation fil-konfront ta' persuna misjuba hatja ta' reat huwa l-artikolu 7 tal-istess Kap. 446 li jipprovd li l-qorti tista' taghmel ordni ta' probation biss jekk il-persuna tigi dikjarata hatja ta' reat "li ma jkunx reat punibbli biss b'multa jew ammenda" li ma hux il-kaz tar-reat li tieghu l-imputat nstab hati.*

*12. L-imputat appellat ghandu sostanzjalment raġun. Jinghad "sostanzjalment" ghaliex l-appellant ma ghandux raġun fejn jallega li l-Avukat Generali qieghed jippretendi li l-piena prevista mill-artikolu 96(a) teskludi l-possibilita tal-applikazzjoni tal-Kap 446. Dak li jilmenta minnu l-Avukat Generali fir-rikors tal-appell tieghu hu li l-ewwel qorti qieghdet lill-appellat taht ordni ta' probation biss (sottolinear tal-Avukat Generali) u jzid li l-ewwel qorti riedet ukoll tassattivament tinflggi multa (sottolinear tal-Qorti). Jidher car, ghalhekk, li l-Avukat Generali jsostni li ghalkemm ma hux eskluż l-applikazzjoni tal-Kap 446 l-ewwel qorti hi tassattivament mehtieġa mil-ligi li timponi dejjem multa f'ammont li jkun jinkwadra fil-parametri previsti mill-artikolu 96(a) tal-Kodici Kriminali.*

*13. B' danakollu, l-appellat ghandu raġun fejn isostni li l-interpretazzjoni li l-Avukat Generali jrid jaghti lill-artikolu 96(a) imsemmi ma hix sostenibbli fid-dawl tad-dispozizzjonijiet relevanti tal-Kap 446. Ma hemm xejn fl-artikolu 96(a) msemmi jew band' ohra fil-Kodici Kriminali, jew f'xi ligi ohra, li jeskludi l-applikazzjoni ta' xi mizura prevista fil-Kap 446 bhala alternattiva ghas-sentenza prevista ghall-htija tar-reat taht l-artikolu 96(a). Minn naħa l-ohra, l-artikolu 7(1) tal-Kap 446 jipprovd li l-qorti tista' "minflok taghti sentenza dwar il-hati" taghmel ordni ta' probation, u dan hu li setghet taghmel, u li ghamlet, l-ewwel qorti.*

*Minflok tat is-sentenza ta' prigunerija u multa prevista fl-artikolu 96(a) iddecidiet li taghmel ordni ta' probation. Is-subartikolu (2)(a) tal-istess artikolu, imbgħad, jipprovi li ordni ta' probation tista' biss issir jekk persuna tigi dikjarata hatja ta' reat, li hu l-kaz tal-imputat. L-ordni ta' probation, skont l-imsemmi subartikolu (2)(a), ma tistax issir jekk ir-reat ikun punibbli b'multa jew ammenda biss, li ma hux il-kaz tar-reat taht l-artikolu 96 fejn ir-reat hu punibbli bi prigunerija u multa. Għalhekk iddecizjoni tal-ewwel qorti li taghmel l-ordni ta' probation li għamlet hi konformi ma l-artikolu 7(1) tal-Kap 446 li jissanzjona l-istess ordni ta' probation minflok is-sentenza prevista fl-artikolu 96(a) għall-htija tar-reat taht l-istess artikolu. Għalhekk ma hemm xejn censurabbli fis-sentenza appellata."*

The Court agrees with the above and due to the circumstances, shall impose a Probation Order.

## **Decide**

**For the above mentioned reasons and after taken note of Articles 95 and 96(a) of the Criminal Code, the Court finds the accused guilty of the sixth and the seventh charges and by application of Article 7 of Chapter 446 of the Laws of Malta, is putting the offender under a Probation Order for a period of two (2) years from today, with the conditions as stipulated in the same Probation Order herewith attached and which forms an integral part of this judgement. The Court abstains from taking further cognizance of the first, second, third, fourth, fifth, eighth, ninth and tenth charges, since they are all prescribed.**

**The Court, in terms of Article 7 (7) of Chapter 446 of the Laws of Malta, has warned the offender, about the legal consequences if she commits another crime within the prescribed operative period of the Probation Order, and/or if she fails to abide by one of the orders stipulated in the Probation Order, and the offender confirmed her will that she will abide by this Probation Order.**

**The Court orders that a copy of this judgement, together with the Probation order be sent to the Director, Probation Services and Parole, so that he assigns a Probation Officer to be responsible for the supervision of the probationer.**

**The Court, after having seen Section 383 of Chapter 9 of the Laws of Malta, binds the accused for a period of one year, under a penalty of five hundred euro (€500), to keep peace with the said PC 142 and PC 971, and generally not to disturb the public good order.**

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**Magistrate Dr. Simone Grech**

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**Janet Calleja  
Deputy Registrar**