

Court of Magistrates (Malta)

As a Court of Criminal Judicature

Magistrate Dr Claire L. Stafrace Zammit B.A., LL.D.

**The Police
[Inspector Carl Pace]**

vs

Doru Florian Jianu

Compilation Number: 94/2025

Today, 16th June, 2025

The Court;

Having seen the charges against accused **Doru Florian Jianu** holder of Maltese Identification document number 0045052A accused for having, on these Islands, on the 10th of January 2025, and in the preceding months and years, affected several acts even if at

different times, which constitute violations of the same provision of the law, and were committed in pursuance of the same design, and shall be deemed to be a single offence:

1. Made or produced or permitted to be made or produced any indecent material or produced, distributed, disseminated, imported, exported, offered, sold, supplied, transmitted, made available, procured for himself or for another, or showed such indecent material, or where such person under age has not completed the age of nine years or where the indecent material shows, depicts or represents a minor involved in acts of bestiality, brutality, sadism or torture
2. For having during the same period, time, place and circumstances, acquired, knowingly obtained access through information and communication technologies to, or was in possession of any indecent material, which shows, depicts or represents a person under age.

The court is humbly requested to issue a treatment order, if it deems fit and this according to Article 412D of Chapter 9 of the Laws of Malta.

The Court is being requested that in case of guilt, in pronouncing judgement or in any subsequent order, sentence the accused to the payment, to the registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, as contemplated in article 533 of Chapter 9 of the Laws of Malta.

Having heard the accused register an early admission of guilt and this after the Court duly gave him time to reflect and understand the consequences of such a guilty plea;

Having seen the clean criminal record of the accused;

Having heard all evidence produced;

Having heard submissions by the parties.

Having Considered

Having heard Probation Officer Charisse Boffa who presented a pre-sentencing report marked as Doc. CB1. Whereas she testifies that the conclusion of the report is a positive one in that the accused has a good relationship with his family. She explains that he has a twelve-year-old daughter living in Romania with her mother and the accused supports the child financially. She further explains that the accused has been living a stable life in Malta for a number of years and works on a full-time basis with Servizzi Malta as a manager whose main duty lies with managing the cleaning team at Mt. Carmel Hospital. She confirms that whilst she was unable to speak to family members, she did speak to the accused's employer who spoke very highly of him. She further confirms that the accused has no addictions related to alcohol or drugs. She states that regarding a care plan it would be ideal for the accused to focus on hobbies as he dedicates a good part of his energy towards his work. She concludes that the accused would benefit from attending therapy sessions which is why in her report she suggests that the accused be given a suspended sentence under Article 28A of the Criminal Code coupled with a Treatment Order as per Article 412D of the Criminal Code. She explains that regarding the reason as to why the accused was in possession of

indecent material relating to minors, he had explained to her that the first photo taken from Facebook was depicting a person who was not a minor whilst the photo generated by Artificial Intelligence was done out of curiosity and nothing more.

Having Considered

That the admission of guilty of the accused was registered at the beginning of these proceedings and this after he was given time to reflect on the legal consequences of this admission. The Court notes however that the accused will not be given a *carte blanche* as though nothing has happened much more so in relation to the charges brought against him. After all, the accused admitted to all the charges brought forward against him along with the punishment pertaining to those same charges.

That the Court deems it fit to list down the articles of the law with which the accused is being charged with and this with the aim to outline the gravity of the allegations.

That the accused is charged with the crime as per Article 208A of the Criminal Code:

“Any citizen or permanent resident of Malta whether in Malta or outside Malta, as well as any person in Malta, who makes or produces or permits to be made or produced any indecent material involving or showing persons under age or produces, distributes, disseminates, imports, exports, offers, sells, supplies, transmits, makes available, procures for oneself or for another, or shows such indecent material shall, on conviction, be liable imprisonment for a term from twelve months to five years.”

That, furthermore, the accused Doru Florian Jianu is being charged with the crime as per Article 208A (1B) of the Criminal Code:

“Any person who acquires, knowingly obtains access through information and communication technologies to, or is in possession of, any indecent material which shows, depicts or represents a person under age, shall, on

conviction, be liable to imprisonment for a term from not exceeding three years.”

Having Considered

That reference is being made to the care plan that can be found in the pre-sentence report authored by Probation Officer Charisse Boffa wherein it is stated that:

- *Doru should continue to lead a stable life which includes his employment as apart from having a good income, it seems to give him a lot of satisfaction.*
- *The accused should also engage in a hobby or activity to have a more balanced life rather than focus solely on his employment.*
- *Given that the defendant admitted to the accuses put forward against him, he would benefit from attending therapy sessions to process this and possibly work on himself to avoid similar behaviour in the future.*

That the Court has taken cognisance of the images in question and does not deem them to be so vile and explicit as to merit a harsh punishment. Nonetheless the Court deems it appropriate that the accused should be duly punished for his actions particularly in light of the fact that he has admitted to the charges put against him but not such as to give him effective imprisonment since such images were not of a sexual nature.

That further to this it was concluded by the same Probation Officer that the ideal recommendation for the accused would be a suspended sentence under the auspices of Article 28A of the Criminal Code coupled with a Treatment Order as per Article 412D of the same Code. Probation Officer Charisse Boffa aptly states that “the aim of this recommendation is to ensure a sufficient deterrent whilst also providing the necessary support and treatment.”

That the Court is thus embracing this conclusion along with the recommendation outlined in the report and will thus apply it whilst passing judgement.

Having Considered

That the punishment that this Court will apply will be a reformative one. This theory of reformative justice was dealt with in the judgement given by the Court of Criminal Appeal in the names of Il-Pulizija vs Francis Bonnici decided on the 25th of March of the year 1975:

“Din il-Qorti, minghajr bl-ebda mod ma tinsa l-htigijiet tar-ripressjoni tad-delinkwenza u tad-dixxiplina, temmen fil-probation u hi tal-fehma li f’ Malta, bhal pajjizi ohra, hemm bzonn ta’ izjed u mhux inqas probation u tawspika ... li dan is-servizz pregjevoli ... jigi amplifikat b’ gusta mizura specjalment ghal dawk iz-zghazagh li ma kellhomx il-vantaggi li l-ohrajn kellhom fil-hajja.”

That the same was said in the judgement given by this Court as diversely presided in the names of Il-Pulizija vs George Zammit decided on the 4th of February of the year 1985:

“Kif inhu ben risaput, ghalkemm is-socjeta `tirrikjedi xi tip ta’ sodisfazzjon tar-reat li jkun wettaq l-individwu, bniedem li jkun qatta’ perjodu sostanzjali ta’

inkarcerazzjoni mhux lakemm titfghu lura fis-socjeta` biex ifendi ghal rasu: jinhtiglu diversi mezzi ta' ghajnuna, u mhux lanqas "guidance", sabiex tigi facilitate r-reintegrazzjoni tieghu fis-socjeta` u tigi assicurata r-riabilitazzjoni tieghu; ghalhekk l-importanza ta' sistema organizzat u koordinat ta' "after care".

That this Court is making reference to the judgement handed down by the Court of Criminal Appeal in the names of Il-Pulizija vs Dean Micallef decided on the 11th of July 2024 wherein the following was stated:

"Illi din il-Qorti taghmel riferenza ghas-sentenza moghtija fit-12 ta' Dicembru 2022 fl-ismijiet Il-Pulizija vs. Nazzareno Caruana (Numru 45/2020) fejn din il-Qorti diversament preseduta qalet hekk:

"Din il-gurisprudenza ormai ben kristallizzata u accettata in linea ta' principju fil-gurisprudenza taghna, tghallimna illi l-Onorabbli Qorti ta' l-Appell ghandha tbiddel u tvarja l-piena inflitta minn l-Ewwel Onorabbli Qorti, fil-kazijiet

fejn dik il-piena ma tkunx pjenament imsejsa fuq dispozizzjonijiet tal-ligi. Dan il-principju kien gie ukoll kristallizzat fis-sentenza fil-kaz Il-Pulizija vs. Joseph Attard moghtija [...] fis-26 ta' Jannar 2001, fejn il-Qorti qalet li:

“Il-Qorti tal-Appell rarament tbiddel il-piena li tkun imponiet l-Ewwel Qorti. Dan taghmlu biss meta jkun manifestament evidenti li dik il-Qorti tkun imponiet xi piena mhux kontemplata mil-ligi ghar-reat in ezami, jew tkun xi piena harxa wisq jew sproporzjonata ghal dak li jkun ghamel il-hati, jew tkun xi piena mhux fil-parametri tal-ligi.”

Illi jkun opportun li jigi nnutat li l-piena ma ghandhiex l-iskop ta' tpattija minn naha tas-socjeta' kontra min iwettaq ir-reat izda ghandha l-iskop li teduka u tirriforma lill-hatja ta' reati halli dawn jkunu jistghu jergghu jigu reintegrati fis-socjeta' u b'hekk ikunu ta' kontribut ghas-socjeta'. B'hekk il-Qorti trid tiehu in konsiderazzjoni wkoll l-element retributtiv u l-element preventiv. F'dan

ir-rigward din il-Qorti tagħmel riferenza għas-sentenza mogħtija fl-20 ta' Dicembru 2022 fl-ismijiet Il-Pulizija vs. Clifford Gatt Baldacchino (Numru 243/2019) fejn dwar il-principju tal-piena din il-Qorti diversament preseduta qalet hekk:

“12. [...] Dan peress li l-gustifikazzjoni tal-imposizzjoni tal-piena fl-ezercizzju tad-Dritt Penali modern hija pernjata fuq tliet principji kardinali u tiffoka fuq tliet effetti principali, jgħid li l-effetti:

(a) Retributtiv;

(b) Preventiv; u

(c) Riedukattiv jew rijabilitattiv tal-piena.

13. L-aspett retributtiv tal-piena huwa, skont il-gurista Francesco Carnelutti, dak li jservi biex jirristabbilixxi moralment is-sitwazzjoni għal kif kienet qabel ma sehhiet il-hsara bil-kommissjoni tar-reat. Il-hati jrid jagħmel tajjeb għall-azzjoni

vjolattiva tad-dritt penali kommissa minnu u li tkun kisret il-paci u trankwillita' socjali.

14. L-aspett preventiv tal-piena huwa dak li jrid jassigura li l-piena tkun strument li bih, grazzi ghal biza' li s-sanzjoni li tkun tista' tinghata tohloq f'mohh il-persuni, b'mod li dak li jkun jerga' jahsibha darbtejn qabel ma jikkommetti reat. Fi kliem ieħor, minhabba l-biza' li tehel il-piena, persuna tigi mgieghla tixtarr sew il-konsegwenzi t'eghmilha qabel ma twettaq l-att kriminuz.

15. L-effett preventiv ghalhekk huwa duplici: wiehed ta' natura generali u l-iehor ta' natura specjali. L-effett preventiv generali huwa dak li bis-sahha tal-ligi penali li tistabbilixxi l-piena, l-kollektivita' tigi kemm jista' jkun mizmuma milli tikkommetti reati minhabba l-biza' li tinkorri fil-piena jekk tinstab hatja. Aktar ma' dik il-piena tigi applikata fil-prattika, aktar dak l-effett preventiv generali jkun lahaq il-mira tieghu. L-aspett preventiv specjali

huwa dak li japplika għall-hati innifsu, li jkun esperjenza fuqu personali l-effetti tal-piena, b'mod li darb'ohra jerga' jahsibha sew qabel ma jaghzel li jikser il-ligi. Jekk il-kollektivita' titlef din il-biza' mill-piena minhabba li l-ligi penali tibda titnaqqar fil-kwalita' jew kwantita' tal-piena jew inkella minhabba li l-pieni ma jigux applikati bir-rigorosita' dovuta għall-fattispecie tal-kaz, allura ma jkun hemm xejn li jgieghel lill-kollektivita' milli tiddezisti ghax jekk tiddelinkwi minghajr konsegwenza jew b'konsegwenza zghira, isir konvenjenti għall-kollektivita' li tiddelinkwi. Dan iwassal għal proliferazzjoni ta' delinkwenza b'konsegwenzi nefasti għall-interessi tal-istess kollektivita'. Il-kollektivita' allura tehtieg li l-piena jkollha aspekk preventiv li jkun effettiv u effikaci mehtieg għall-eżistenza pacifika tal-istess kollektivita'. Altrimenti, il-kollass.

16. Finalment hemm l-aspekk riedukattiv u rijabilitattiv tal-piena, li tikkoncentra mhux daqstant

fuq l-aspett tal-htija specifika tal-hati u li ghaliha tkun immirata l-azzjoni repressiva tal-piena, daqskemm fuq l-aspett ta' trattament terapewtiku individwali, immirat lejn ir-rijabilitazzjoni tal-hati. Dan l-aspett rijabilitattiv huwa krucjali ghall-kollettivita' in kwantu jghin lill-hati jghaddi minn process ta' riforma tieghu innifsu biex jghinu jinqata' mir-ragunijiet u l-kundizzjonijiet li jkunu wasluh biex jiddelinkwi, billi jaghraf iqum fuq saqajh, billi jibni hajtu mill-gdid u ma jibqax aktar ta' theddida ghas-socjeta' bhal meta kien fil-mument meta jkun iddelinkwa."

...

Illi mehud in konsiderazzjoni dak kollu li nghad hawn fuq, din il-Qorti ma tantx ghandha aktar xi tghid ghajr li l-piena hekk kif erogata mill-Ewwel Qorti taqa' sewwasew fil-parametri tal-piena ghall-imputazzjonijiet li tagghom l-appellant instab hati. Il-Qorti zzid tghid li l-piena mposta mill-Ewwel Qorti fuq l-appellant kienet wahda legalment u

*ragonevolment valida, mhux “manifestly excessive” u
tirrispekja l-imputazzjonijiet li taghhom huwa nstab hati.
Il-Qorti hija tal-fehma li ma tezisti l-ebda raguni li tista’
twassalha sabiex titbieghed mid-diskrezzjoni ezercitata
mill-Ewwel Qorti fil-kalibrazzjoni tal-piena minnha
maghmula, liema piena ghalhekk ghandha tibqa’
invarjata.”*

That the Court is making the reasoning of these judgements as its own and will decide accordingly in this judgement.

Decide

The Court, on the above basis, and upon seeing Articles 17, 208A (1B) and 208A (3) of Chapter 9 of the Laws of Malta, finds the accused **Doru Florian Jianu** guilty of all the charges brought against him due to a guilty plea and by virtue of Article 28A of Chapter 9 of the Laws of Malta condemns him to a punishment of two (2) years imprisonment which is being suspended for three (3) years and simultaneously subjects the accused to a Treatment Order

under Article 412D of Chapter 9 of the Laws of Malta for a period of three (3) years.

The Court is hereby explaining to the accused the responsibilities that a suspended sentence carries in terms of Article 28B of Chapter 9 of the Laws of Malta whilst making it clear that the order outlined is to form an integral part of this judgement.

Finally, on the basis of Chapter 518 of the Laws of Malta, the Court orders the name of the accused **Doru Florian Jianu** to be put on the Register established by the same Act and consequently orders a copy of this judgement to be notified to the Court Registrar for the necessary annotations.

Dr Claire L. Stafrace Zammit B.A., LL.D.
Magistrate