



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

**MAGISTRATE DR. KEVAN AZZOPARDI B.A., LL.D**

**SLIEMA DISTRICT**

Today, the 7<sup>th</sup> May 2025

Case Nr: 7280/2024

**The Police**

**--VS--**

**Dragan Pljevaljcic u**  
**Karen Borg**

**The Court:**

Having seen that the accused, Dragan Pljevaljcic, born on the 12<sup>th</sup> September 1991, residing Imperia Court, Fl 3, Gerry Zammit Street, Gzira holder of identity card bearing number 190218A and Karen Borg, born on the 16<sup>th</sup> September 1969 in Sliema, daughter of Saviour Borg and Lilian Borg nee Inglott, residing Blk. T9F, Fl 5, Il-Ponta Ta' Tigne', Sliema and holder of identity card bearing number 381869M:

*“You are both hereby being accused for having on the 13.07.2024 from around the time of 00:30hrs to 01:30hrs at the establishment known as 1926, La Plage, which is situated at Qui-Si-Sana, Seafront, and/or in the nearby whereabouts:*

- 1. You generated a commercial activity located in an urban area which generated noise that can be heard from outside the premises that causes annoyance and disturbance to*

*neighbours by playing of music by live bands or amplified music or other means between the hours of 11.00 p.m. and 9.00 a.m. Part.9 Second Schedule S.L. 441.07 - Trading Licences Regulations*

2. *In the street, or outlet or other public place, Sliema, you forced or permitted a loud speaker or gramophone or amplifier or any other similar item to work, or you forced or permitted that loud sounds are made that would be of nuisance to the neighbours that resides in the nearby building. Art.41(2)(a)(b) Ch. 10*

*'Lil Karen Borg wahedha, akkuzata wkoll talli nhar 13.07.2024 għall-ħabta ta' bejn 00:30hrs u 01:30hrs:*

3. *Bħala persuna li f'ismek għandek il-liċenzja tal-ħanut 'Hotel 1926 Bar', li jinsab ix-Xatt ta' Qui-Si-Sana, Sliema, ippermettejt lil Dragan Pljevaljcic jagħmilha ta' sostitut tiegħek mingħajr liċenzja mill-Awtorità Regolatorja. Reg.21 L.S. 10.09''*

Having seen that on the 27<sup>th</sup> of November 2024 after the prosecuting officer read and confirmed the charges on oath, both accused pleaded not guilty.

Having heard the evidence tendered by the prosecution, and that on the same date the prosecution declared that it did not have any further evidence to produce.

Having heard the defence declare on the 26<sup>th</sup> of February 2025 that it did not have any evidence to produce.

Having heard the prosecuting officer declare that the prosecution rests the case on the acts of the proceedings.

Having heard the defence counsel's final oral submissions.

## **Considerations**

The prosecution produced the following proof in sustention of the charges brought against the accused:

1. Affidavit by PS 186 K. Mintoff
2. Affidavit by PC953 Gennaro Vassallo
3. Document entitled 'Establishment Details'
4. NPS Report

5. Testimony of Ivana Priyavko during which she presented a pendrive marked as Doc IP1
6. DVD marked as Doc IAK1

### **Degree of Proof**

The Court considers the legal principle that one witness if believed, will be sufficient for the Court to establish its moral conviction that the case has been proven to the degree established at law, that is beyond reasonable doubt in the case of Criminal Proceedings. It is an established principle that in criminal procedures, the level of conviction in the adjudicator is not to be based on a balance of probabilities as in the case of civil proceedings, but it must be higher than that and beyond any doubt dictated by reason, however one witness may be enough, if such witness is credible and therefore convinces the Court with his or her testimony. In a case decided by the Court of Criminal Appeal on the 28<sup>th</sup> September 2006, in the names **Il-Pulizija vs. Marco Bugeja**, it was held that:

*“Issa, ix-xiehda ta' xhud wiehed biss, jekk emmnut, hija biżżejjed biex tikkostitwixxi prova sħiħa u kompluta minn kollox, daqs kemm kieku l-fatt ikun ġie pruvat minn żewġ xhieda jew aktar. U kif ġie ritenut minn din il-Qorti diversament presjeduta fis-sentenza fl-ismijiet Il-Pulizija vs. Joseph Thorne tad-9 ta' Lulju 2003, "mhux kull konflitt fil-provi għandu awtomatikament iwassal għal-liberazzjoni tal-persuna akkużata. Imma l-Qorti, f'każ ta' konflitt fil-provi, trid tevalwa l-provi skont il-kriterji enunċjati fl-artikolu 637 tal-Kodici Kriminali u tasal għall-konklużjoni dwar lil min trid temmen u f'hiex ser temmnu jew ma temmnux".*

As to the degree of proof beyond reasonable doubt the Court cites the explanation given by Lord Denning in the case **Miller vs. Minister of Pension** - 1974 - 2 ALL ER 372:

*“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the case is proved beyond reasonable doubt, but nothing shall of that will suffice”.*

## **Formalities of the Affidavits**

During the sitting of the 27<sup>th</sup> November as soon as the prosecution declared its evidence closed, defence council raised the plea that the affidavits of PS 186 and PC 953 presented by the prosecution do not satisfy the requirements of Chapter 79, specifically article 7, as there is no indication of the date, time and place taken.

## **Considers**

In terms of article 646 of Chapter 9 with respect to criminal proceedings, witnesses shall always be examined in court and viva voce.

Article 360A then provides an exception to this rule thereby laying the conditions for the said affidavit to be admissible in evidence as proof of its contents in criminal proceedings in the same way as if it had been testimony given viva voce in the presence of the accused.

The legislator through Chapter 79 further provides the rules applicable to affidavits, by specifying that Commissioners of Oath duly appointed by the responsible Minister may administer oath and take affidavits for the purposes of any matter arising in terms of law, including use in any court proceeding or judicial purpose. Chapter 79 further lays down rules and formalities for the validity of such affidavits. These may be summed up as follows:

1. Confirmation of the identity of the person taking oath
2. The person's understanding of the facts stated on oath
3. The place and date of the oath or the affidavit

The Court notes that the Minister responsible for justice has the power to make regulations prescribing inter alia the form and manner of oaths and affidavits, however no such regulations have been promulgated.

The Court will focus on the third requirement as the contestation by the defence is directed specifically to the lack of the date, time and place the affidavit was taken. The affidavits in question seem to use a predetermined template whereby towards the end on the right hand side one finds a place for the Commissioner of Oath to indicate *inter alia* the date and place. Here the Commissioner of Oath used his rubber stamp which includes the identification of the said Commissioner, being Inspector Eman Hayman, the date being the 1<sup>st</sup> of September 2024 and a

designation indicating ‘Malta Police’. The said inspector also proceeded to sign over the rubber stamp.

Therefore, whilst the Court is satisfied that the requirement of the date is satisfied, it needs to analyse whether the indication ‘Malta Police’ satisfies the requirement of the place of the affidavit.

As to the requirement to indicate the place the Court makes reference to the Maltese version of article 7 of Chapter 79, where this requirement is stressed by the use of the word “sewwa” which in the opinion of the Court should be translated in English in this context as “well”. The English version of the law uses the word “truly”. In terms of Article 74 of the Constitution of Malta if there is a conflict between the Maltese and the English texts of any law, the Maltese text prevails:

*“Kull kummissarju ... **għandu jiddikjara sewwa** fil-jurat jew fl-attestat il-lok u d-data li fihom il-ġurament ikun ġie mehud jew l-affidavit ikun sar”*

The use of the words “*għandu jiddikjara*” clearly indicate that the Commissioner of Oaths is under an obligation to declare the place and date of the affidavit. Furthermore, the use of the word “*sewwa*” cannot be interpreted but to mean that special attention should be drawn to the place and the date of the affidavit.

The court considers that the mere use of the words “Malta Police” do not indicate the place where the affidavit was taken, as these words could be interpreted as being the police station of a particular locality, or the Police Headquarters or any other place for all it matters. This was the interpretation given by the Court of Criminal Appeal presided by Honourable Judge Consuelo Scerri Herrera, in the case **Il-Pulizja Vs Toussaint Azzopardi** (Appeal Nr: 1513/2024), decided on the 21<sup>st</sup> November, 2024 as well as in the case decided on the 19<sup>th</sup> July 2024 by this court presided by Magistrate Dr. Jean Paul Grech in the case **Il-Pulizija vs Jan Christopher Oskarsson** (Case Nr 1612/2024), where in both instances the Court was faced precisely with the issue of lack of indication as the place and time of the taking of the affidavit. The Court therefore considers that the lack of proper indication of the place where the affidavit was taken detracts from the value which is to be attributed to the said document. This document can no longer be considered as testimony lawfully given by the said police officers, and therefore such evidence will be discarded by the court.

Furthermore, the Prosecuting officer presented two DVDs (Dok IA1) which purportedly contain the bodycam footage of the Police Officers whose aforementioned affidavits will be discarded by the court. Now the Court considered that there is no other proof in the acts of the proceedings as to the origin, date, authenticity and in general the chain of custody relating to these DVDs, and therefore in view of such a complete lack or failure by the Prosecution in relation to this video evidence, the Court has no choice but to also disregard such evidence.

### **Other evidence**

The Prosecution also produced as evidence witness Ivana Priyavko, who declared that music which originated from Medasia Playa could be heard between the night of the 12<sup>th</sup> July and the morning of the 13<sup>th</sup> July 2024. She claimed that she even went down from her apartment and followed the music to Medasia Playa. She claimed that there were other establishments around which had music. She mentions Tigne Beach Club and La Plush, but claims that the sound from these establishments did not bother her personally as it did not reach her apartment.

Ivana Priyavko claims that at Medasia Playa she saw Dragan who she recognised as the accused in the Court room, and spoke to him. Witness said she knew Dragan, who told her ‘what can I do’ and she knew he did not have a say and tried to speak with the organiser. She claimed the police officers were not there.

The Prosecution also presented an affidavit of the representative of the Malta Tourism Authority, a certain Malcolm Zerafa, with attachments in relation to an establishment by the name of “Hotel 1926” formerly “Plevna Hotel” which indicates as Licencee the accused Karmen Bugeja. The address of the establishment indicated in the said documents is 32, Hughes Hallet Street, Sliema.

The Court notes that this address is close to the location of the incident, yet the prosecution failed to bring forward evidence which links the said establishment with the establishment indicated in the charges. Furthermore, Ivana Priyavko mentions that the nuisance was coming from Medasia Playa, and no connection whatsoever, apart from the fact that she spoke to the accused Dragan who was at the said Medasia Playa, between the establishment mentioned by Ivana Priyavko and the Establishment indicated by the prosecution in 32, Hughes Hallet Street, Sliema.

**The first charge:** *You are both hereby being accused for having on the 13.07.2024 from around the time of 00:30hrs to 01:30hrs at the establishment known as 1926, La Plage, which is situated at Qui-Si-Sana, Seafront, and/or in the nearby whereabouts: 1. You generated a commercial activity located in an urban area which generated noise that can be heard from outside the premises that causes annoyance and disturbance to neighbours by playing of music by live bands or amplified music or other means between the hours of 11.00 p.m. and 9.00 a.m. Part.9 Second Schedule S.L. 441.07 - Trading Licences Regulations*

As already stated above, the proof by the prosecution, specifically the testimony of Ivana Priyavko, indicates that the nuisance was coming from Medasia Playa. However no connection whatsoever, apart from the fact that she spoke to the accused Dragan, who was at the said Medasia Playa, was made between the establishment mentioned by the said Ivana Priyavko and the establishment indicated by the prosecution in the charge sheet being ‘1926, La Plage, Qui-Si-Sana, Seafront’ or that mentioned in the Licence being ‘Hotel 1926, 32, Hughes Hallet Street, Sliema.’

The Court notes that this address is close to the location of the incident, yet the prosecution failed to bring forward evidence which links the said establishment with the establishment indicated in the charges.

Therefore, as regards the accused Karen Borg, the prosecution failed to prove that the said accused generated or was responsible for the noise which caused the nuisance mentioned by Ivana Priyavko.

As regards the accused Dragan Pljevaljcic, the prosecution also failed to prove that the said accused, as also admitted by the said Ivana Priyavko when she said that he had no say, generated or was responsible for the noise which caused the nuisance mentioned by Ivana Priyavko.

For these reasons the Court is of the opinion that the Prosecution failed to prove the first charge beyond reasonable doubt and will be acquitting both accused from the said first charge.

**The second charge:** *You are both hereby being accused for having on the 13.07.2024 from around the time of 00:30hrs to 01:30hrs at the establishment known as 1926, La Plage, which is situated at Qui-Si-Sana, Seafront, and/or in the nearby whereabouts: 2. In the street, or outlet or other public place, Sliema, you forced or permitted a loud speaker or gramophone or amplifier or any other similar item to work, or you forced or permitted that loud sounds are made that would be of nuisance to the neighbours that resides in the nearby building. Art.41(2)(a)(b) Ch. 10*

For the same reasons mentioned in relation to the first charge, in view of the failure by the Prosecution to prove the connection between the establishment mentioned in the charges, that mentioned in the License issued by the Malta Tourism Authority, and the establishment mentioned by Ivana Priyavko from where the nuisance was coming, the Court is of the opinion that the Prosecution failed to prove the first charge beyond reasonable doubt and will be acquitting both accused from the said second charge.

**The third charge:** *Lil Karen Borg waħedha, akkużata wkoll talli nhar 13.07.2024 għall-ħabta ta' bejn 00:30hrs u 01:30hrs: 3. Bħala persuna li f'ismek għandek il-liċenzja tal-ħanut 'Hotel 1926 Bar', li jinsab ix-Xatt ta' Qui-Si-Sana, Sliema, ippermettejt lil Dragan Pljevaljcic jagħmilha ta' sostitut tiegħek mingħajr liċenzja mill-Awtorità Regolatorja. Reg.21 L.S. 10.09*

The Court considered that Ivana Priyavko on the morning of the incident she walked down to Medasia Playa, and there she say and even spoke to Dragan Pljevaljcic. However, again the prosecution failed to draw the link between the said Medasia Playa, and the establishment indicated in the affidavit by the Malta Tourism Authority being 'Hotel 1926, 32, Hughes Hallet Street, Sliema.'

Therefore, the prosecution failed to prove this third charge to the level expected in criminal trials, and will be acquitting the accused from this third charge.

## **Decision**

For these reasons, the Court finds the accused Dragan Pljevaljcic, holder of identity card bearing number 190218A not guilty of the charges brought against him, and orders his acquittal.



Furthermore, the Court, finds the accused Karen Borg, holder of identity card bearing number 381869M not guilty of the charges brought against her, and orders her acquittal.

**Dr Kevan Azzopardi B.A. LL.D**

**Magistrate**

**Josanne Gauci**

**Deputy Registrar**

**< Final Judgement >**

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