



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

**Magistrate Dr. Neville Camilleri B.A., M.A. (Fin. Serv.), LL.D.**

**The Police  
(Superintendent Raymond Aquilina)**

**vs.**

**Simona Ortansa Bostan**

Number: 1325/06

Today the 28<sup>th</sup>. of February 2019

The Court,

Having seen the charges brought against the accused **Simona Ortansa Bostan**, twenty-two (22) years old, daughter of Costica and Evgenia neé Radu, born at Vaslui, Romania on the 26<sup>th</sup>. of March 1984, residing at Flat 4, No. 271, Tower Road, Sliema and Strada A1, Egretei 11A Apartment No. 38, Costanta, Romania and holder of Romanian Passport No. 07815559 (Mob. 79942135),

charged with having in November 2006 and in the preceding months, by several acts committed by her, even if at different times,

which constitute violations of the same provision of the law, committed in pursuance of the same design:

1. by violence, threats, deceit, habitually, or for gain, in order to gratify the lust of any other person, induced a person under the age of twenty-one years to come to Malta for purposes of prostitution elsewhere, or encouraged or facilitated her arrival in Malta for the same purpose;
2. trafficked persons of age for the purpose of exploiting these persons in prostitution, by deceit or fraud, and by giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
3. promoted, constituted, organised or financed an organisation of two or more persons with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more.

The Prosecution requested the Court to apply the dispositions of Article 23A(2) of Chapter 9 of the Laws of Malta.

The Prosecution also requested the Court, if it is appropriate, to provide security of Leila Cadir, Romanian National and her family, to instantly apply the provisions of Article 412C of Chapter 9 of the Laws of Malta and to apply the Protection Order under the conditions ordered by the Court.

The Prosecution, also requested the Court, in the case of guilt, besides applying the appropriate penalty according to law, to order the accused to pay all the appointed experts' expenses, if the case will be, as provided by Article 533 of Chapter 9 of the Laws of Malta.

Having seen all the acts of the proceedings and the documents exhibited, including the certified true copy of *Proces Verbal* Number 1157/06 drawn up by Magistrate Dr. Joseph Cassar (*a fol. 111 et seq.*) and the Letters Rogatory contained in these proceedings (both

those sent to the Romanian authorities and those sent to the authorities in the United States of America).

Having seen that this case had been assigned to this Court as currently presided on the 30<sup>th</sup>. of June 2015 (*a fol. 1404 et seq.*).

Having seen that, during the sitting of the 30<sup>th</sup>. of September 2015 (*a fol. 1415*), both the Prosecution and the defence exempted this Court as currently presided from re-hearing once again all the witnesses who had already been heard by this Court as otherwise presided before this case was assigned to this Court as currently presided.

Having seen the Articles of Law sent by the Attorney General on the 9<sup>th</sup>. of September 2016 (*a fol. 1457*):

- (a) Sections 17, 31, 23A(2), 533 of the Criminal Code (Chapter 9 of the Laws of Malta);
- (b) Sections 18, 205<sup>1</sup> of the Criminal Code (Chapter 9 of the Laws of Malta);
- (c) Sections 18, 2(1), 3 of Chapter 63<sup>2</sup> of the Laws of Malta;
- (d) Sections 18, 248B<sup>3</sup>, 248A(1)(2)<sup>4</sup>, 248E(1)<sup>5</sup> of the Criminal Code (Chapter 9 of the Laws of Malta);
- (e) Sections 18, 83A(1)(a)<sup>6</sup> of the Criminal Code (Chapter 9 of the Laws of Malta).

Having seen that, during the sitting of the 22<sup>nd</sup>. of November 2016 (*a fol. 1468*), the Articles of Law sent by the Attorney General on the 9<sup>th</sup>. of September 2016 (*a fol. 1457*) were read out, during which sitting the accused declared that she does not object for her case to be tried and decided summarily.

Having seen the Decree delivered on the 21<sup>st</sup>. of November 2017 (*a fol. 1491 et seq.*) where the Court declared as inadmissible the statements released by the accused, yet did not declare as

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<sup>1</sup> Prior to Act IV.2014.

<sup>2</sup> Prior to Act XVI.2006 and LN 408 of 2007.

<sup>3</sup> Prior to Act XVIII.2013.

<sup>4</sup> Prior to Act VII.2010 and XVIII.2013.

<sup>5</sup> Prior to LN 407 of 2007, Act XXXI.2007, Act VII.2010, Act XVIII.2013 and Act VIII.2015.

<sup>6</sup> Prior to LN 407 of 2007, Act XXIV of 2014 and Act VIII.2015.

inadmissible the other evidence as requested by the defence during the sitting of the 16<sup>th</sup>. of May 2017 (*a fol. 1471*).

Having heard, during the sitting of the 12<sup>th</sup>. of March 2018 (*a fol. 1500*), the accused inform the Court that she will not be testifying in these proceedings.

Having seen the judgment exhibited by the defence on the 6<sup>th</sup>. of June 2018 (Doc. "PB" - *a fol. 1511 et seq.*) and having heard, during the sitting of the 6<sup>th</sup>. of June 2018 (*a fol. 1507*), the defence declare that no witnesses were required to be brought forward by the defence in these proceedings.

Having seen the written Note of Submissions filed by the Prosecution on the 28<sup>th</sup>. of September 2018 (*a fol.1517 et seq.*).

Having heard the oral submissions by the defence on the 22<sup>nd</sup>. of January 2019 (*a fol. 1533 et seq.*).

### **Having considered**

That reference will be made to the most salient testimonies heard and documents exhibited during these proceedings.

That, during the sitting of the 28<sup>th</sup>. of December 2006, Court Registrar **Paul Miruzzi** testified (*a fol. 11A et seq.*) exhibiting as Doc. "PM" (*a fol. 12 et seq.*):

- a certified true copy of the transcript of the testimony given by Leila Cadir in front of Magistrate Dr. Jacqueline Padovani (*a fol. 14 et seq.*);
- a certified true copy of the Process Verbal Number 1157/06 drawn up by Inquiring Magistrate Dr. Joseph Cassar, which contains sworn testimony given by Leila Cadir (*a fol. 111 et seq.*);
- two cassettes containing the testimony of the mentioned Leila Cadir given by video-conference (cassettes to be found in *Loose Envelope*).

That, during the sitting of the 16<sup>th</sup>. of February 2007, **Prosecuting Officer Inspector Raymond Aquilina** testified (*a fol. 286 et seq.*) saying that on the 20<sup>th</sup>. of November 2006 he was informed by Inspector Josric Mifsud of the Gozo Police Station regarding allegations made by a Romanian lady of nineteen years old, a certain Leila Cadir known as Giorgina. He says that: *“initial information resulted in circumstances when the Romanian girl came to Malta on pretences to be a partner and settle down but she had been divulged into prostitution activities”* (*a fol. 286*). He says that the mentioned Cadir was interviewed by him and Inspector Josric Mifsud and that Cadir explained how she came to Malta, who did the arrangements, who met her in Malta, saying further that Cadir said that she spent some days with a Maltese guy named Josef Camilleri and then was induced into prostitution services. He continues saying what Cadir told them.

He further testifies that Anthony Muscat and Clemenzju Zerafa were arrested in Gozo and investigated about the allegations made by Leila Cadir. He says that both Muscat and Zerafa admitted their involvement and the exchange of Leila Cadir from Josef Camilleri to Clemenzju Zerafa and about the sexual services activity being done in Gozo by Leila Cadir. He says that investigations continued in Malta and Josef Camilleri and Ferdinando Veneziani were also arrested and investigated about these allegations made by Leila Cadir. He says that Veneziani admitted his involvement with Josef Camilleri.

He says that on the 19<sup>th</sup>. of December 2006, the accused Bostan appeared before the Central Immigration Office regarding her extension stay here in Malta and that the said Office informed him about her presence there and he directed his personnel from the vice-squad to meet her from where she was taken to his office for further investigations. He says that the accused was questioned in depth about the allegations made by Leila Cadir and says also that the accused released two statements: one on the 19<sup>th</sup>. of December 2006 and one on the 20<sup>th</sup>. of December 2006. Eventually the accused was arraigned in Court and charged with several charges. During his testimony, Prosecuting Officer Aquilina exhibited a number of documents, amongst others: (a) transaction to Simona Ortansa

[Bostan] to the value of Lm408 (Doc. "RA" - a fol. 308), (b) search and arrest warrants (Doc. "RA 1" and "RA 2" - a fol. 309 et seq.), and (c) two statements released by the accused (Doc. "RA 3" and Doc. "RA 4" - a fol. 311 et seq.).

During cross-examination, when he was asked if Leila Cadir informed him that she came to Malta after she met the accused, he replies: *"Yes. She knew about Simona Ortansa Bostan by her friend Trajan Petrenco"* (a fol. 293). To the question: *"Am I also understanding correctly that Leila Cadir, known as Giorgina, claiming that she approached because she was looking for a boyfriend in Malta and she also confirmed on oath that she came to Malta to meet a Maltese boyfriend, am I correct?"* (a fol. 293), replies: *"Yes that is what I explained"* (a fol. 293). He confirms that the decision of Leila Cadir to come to Malta and meet Josef Camilleri was a decision related to meeting this boyfriend and says: *"at the initial stages"* (a fol. 294). To the question: *"Am I also correct in stating that Leila Cadir is then claiming that after she met Josef Camilleri, and after she started living with him, it was at this point in time that the question of prostitution came into effect, am I correct?"* (a fol. 294), replies: *"That came into effect was that she discovered from Josef that he had paid 1000 Euros to Simona for her to come in Malta and she confronted that with Simona when she met with her later on at Sliema coffee shop and Simona had told her that she was only given by Josef 500 Euros"* (a fol. 294). Asked if Leila Cadir did at any point in time sustain that she was sent to Malta by the accused for prostitution purposes, replies: *"Initially, as I already explained and testified here, it was not given the pretences that she was going to come her to Malta for prostitution, but rather to come here to Malta to meet a partner and if they go well together she can be his partner and then if they continue together they can get married"* (a fol. 295).

When the Prosecuting Officer Aquilina was asked what evidence exists that the accused has by violence, threats, deceits, habitually or for gain in order to gratify the lust of any other person induced Leila Cadir to come to Malta for prostitution, he replies: *"Because Leila Cadir known as Giorgina stated that initially she had come here to Malta as Josef's boyfriend and then she was induced in prostitution by Josef"* (a fol. 296). He says that Cadir claimed that she had been deceived by the accused. To the question whether Leila Cadir said

that the accused asked her to prostitute herself, he replies in the negative. To the question: *“Does Leila Cadir say anywhere that Simona Ortansa Bostan received any money from the sexual services that she described in her deposition?”* (a fol. 297), the Prosecuting Officer replies: *“No she did not have that knowledge”* (a fol. 297). Asked if he has any other evidence that the accused received money for the sexual services carried out by Leila Cadir, replies: *“No”* (a fol. 297). He says that he is basing the first charge on the deceit issue. Asked what evidence he has got to support the claim that Leila Cadir was deceived by the accused, Prosecuting Officer Aquilina replies: *“It is the transaction which I have presented before this Court that actually she received money from Ferdinando Veneziani”* (a fol. 297). To the question: *“you are saying that there was deceits of the transfer of money and Simona Ortansa Bostan did not give you an explanation of the payment of money. Now, besides the fact that the accused is not obliged to give you an explanation, you, who investigated the case, what evidence have you got to sustain your ascertain beyond reasonable doubt that that payment was made on account of the sexual activity provided by Leila Cadir?”* (a fol. 298), he replies: *“Yes during our investigation because it was not me personally, we were both Inspectors investigating this case, Ferdinando Veneziani had explained in his statement, the involvement of Simona Ortansa Bostan”* (a fol. 299). He confirms that this results from a statement of Ferdinando Veneziani and also of Leila Cadir, yet he confirms that Cadir did not say that the money was handed-over because of sexual activities. He confirms that Ferdinando Veneziani is co-accused to the same charge. To the question: *“So the only other reference of the transfer of this money comes from Ferdinando Veneziani, am I correct?”* (a fol. 299), he replies: *“And the accused received a message from Josef in stating that that money was being sent by him”* (a fol. 300). The Prosecuting Officer confirms that he has no evidence other than what Ferdinando Veneziani might have told him that the money was actually transferred for the sexual activities.

Regarding the charge that the accused had trafficked a person of age, Prosecuting Officer Aquilina was asked: *“Now, am I correct in stating that in actual fact Leila Cadir explained to you that it was a deal of the 600 pounds between other persons who are also co-accused in separate proceedings so, actually, so to say, transferred her from one person to*

*another, am I correct?" (a fol. 300), he replies: "Yes, the exchange of control" (a fol. 300). He says that it was not a deal between the accused, Josef Camilleri and Clemenzju Zerafa but it was a deal made with Clemenzju Zerafa and Josef Camilleri by themselves and with the involvement of Ferdinando in between. He confirms that the accused was extraneous to this alleged deal but says that the accused used to be frequently at the Gharghur Football Club administered by Josef Camilleri. When Prosecuting Officer Aquilina was asked if besides the fact that Cadir was present at the Gharghur Football Club, whether he has evidence to show that while she was present at the mentioned club, she was also involved in the deal of trafficking, he replies: "No" (a fol. 301). He says that during the first fifteen days, the accused and Cadir met three times at the Gharghur Football Club and the second time they met in Sliema for shopping. To the questions: "But was Leila Cadir not free because of Simona Ortansa Bostan? Do you have any evidence to substantiate the claim that Leila Cadir was not free to move liberally because of Simona Ortansa Bostan, do you or don't you?" (a fol. 302), Prosecuting Officer Aquilina replies: "No she met Simona at the Gharghur Football Club. She was the Romanian girl that she met here in Malta. She was looking towards her as her friend here in Malta and that is why she met again at the Sliema for shopping, mainly to clarify whether actually the money had been transferred to her or not" (a fol. 302).*

That, during the sitting of the 16<sup>th</sup>. of February 2007, **WPC 232 Nathalie Zerafa** testified (*a fol. 328 et seq.*) saying that the accused was in Malta on the 11<sup>th</sup>. of October 2004 and that she applied for an extension on the 18<sup>th</sup>. of October 2004 and was given an extension until the 12<sup>th</sup>. of December 2004. She says that the accused left Malta and her last arrival was the 7<sup>th</sup>. of October 2006 and that she applied once again for an extension on the 12<sup>th</sup>. of October 2006. She says that whereas Izac Chetcuti was maintaining her during her first visit to Malta, her second partner was German national Kai Graeler. She says that when the accused applied on the 12<sup>th</sup>. of October 2006 she was given an acknowledgement to go back and then went back for an extension on the 19<sup>th</sup>. of November 2006. She confirms that whenever the accused was in Malta she was in Malta regularly on the basis of a visa. She exhibited documents marked as Doc. "A", "B" and "C" (*a fol. 332 et seq.*).



That, during the sitting of the 30<sup>th</sup>. of March 2007, **Martin Bajada** testified (*a fol. 352 et seq.*) regarding his appointment to examine and determine about the subject-matter of a film called "Human Trafficking" as per minute of the 16<sup>th</sup>. of February 2007 (*a fol. 284*).. He exhibited a document marked as Doc. "HT" (*a fol. 355 et seq.*) and states that the film is based on a real life story regarding human trafficking from Europe into the United States. He confirms that the film contains the message that the victims of human trafficking are the persons who should be mostly protected. He also says that the film depicts the horrible state the girls are subjected to and that eventually the Police and other enforcement agencies try to release them from slavery.

**Martin Bajada** testified again during the sitting of the 31<sup>st</sup>. of July 2007 (*a fol. 395*) whereby he stated that he was appointed to examine contents of Doc. "RA 5" and "RA 9" and to provide information on the DVD entitled "Human Trafficking" exhibited as Doc. "RA 6" (*Vide* minute of the 16<sup>th</sup>. of February 2007 - *a fol. 284*). He exhibited his report which was marked as Doc. "MB" (*a fol. 397*).

**Martin Bajada** testified again during the sitting of the 11<sup>th</sup>. of December 2007 (*a fol. 488 et seq.*) whereby he stated that he was appointed to examine Doc. "SD" and "SD 1", to compare these documents together and to see if there was anything in these documents which had not been reported upon. He exhibited reports marked as Doc. "MB 1" (*Envelope Loose*) and Doc. "MB 2" (*a fol. 492 et seq.*).

**Martin Bajada** testified again during the sitting of the 23<sup>rd</sup>. of January 2009 (*a fol. 596 et seq.*) stating that on the 11<sup>th</sup>. of December 2007 the Court extended his appointment. He says that the hard drive of the notebook was examined and found to contain the information as per report prepared by PS 266 Stefan Decelis, which report was exhibited as Doc. "SD". He says what else he was requested to report on, and exhibited his report marked as Doc. "MB 1" (*a fol. 601 et seq.*). He says: "*What I want to add is that although no direct connection was found between Doc. "MDF" which is that hard disc and the notebook, this does not exclude that through other third sources there could have been communication which the Inspector is*

*saying could have allegedly happened” (a fol. 597). Asked by the Court to elaborate, he says: “I believe that in the report by Stefan Decelis there were chat files indicating that a certain person was chatting with obviously Simona Bostan through that notebook” (a fol. 597).*

**Martin Bajada** testified again during the sitting of the 25<sup>th</sup>. of March 2009 (*a fol. 613 et seq.*) stating that he was asked by the Court to indicate which are the email addresses used in the various stages of the information extracted from the hard discs in this case. He says that there are three email addresses and they are all yahoo.com. He says: *“there are three. Two of which are on the statements just mentioned and two on the chat logs” (a fol. 613).* He wrote these emails on a paper marked as Doc. “MBX” (*a fol. 617*).

**Martin Bajada** testified again during the sitting of the 4<sup>th</sup>. of August 2011 (*a fol. 1010 et seq.*) with reference to the communication received by the American authorities (*a fol. 990 et seq.*).

**Martin Bajada** testified again during the sitting of the 9<sup>th</sup>. of October 2012 (*a fol. 1276*) wherein he said that he was authorised to reproduce the contents of two CDs presented by foreign authorities in respect of Letters Rogatory issued by the Court. He exhibited two reports as regards the two CDs mentioned, which reports were marked as Doc. “AG/USA 1” (*Envelope Loose*) and Doc. “AG/USA 2” (*Envelope Loose*).

That, during the sitting of the 23<sup>rd</sup>. of October 2007, **PS 266 Stefan Decelis** testified (*a fol. 436 et seq.*) that on the 20<sup>th</sup>. of December 2006 he had been instructed by Prosecuting Officer Aquilina to do some analysis on one notebook make Hewlett Packard and a hard drive. He says that the case was about trafficking of human beings allegedly committed by the accused. He says that in a chat log there were three users, one called Symonik and the other user has four exclamation marks (“!!!!”) as his name: *“where the user using the login as “Symonik” was asking for money over the chat so he or she can do some, let’s say, form of striptease, take off her clothes over the webcam” (a fol. 437).* He says that a search was also performed for any images, pictures or scanned documents and says that one passport was found scanned. He says that in another chat log the user

"Symonik" was talking to a guy called "xortz\_233965649" where this person by the name of "Symonik" was asking for something to smoke for her partner but this guy "xortz" only said he could only find snow. He exhibited his report marked as Doc. "SD" (*Envelope Loose*). He exhibited also hard drive marked as Doc. "SD 1" (*Envelope Loose*). Asked by the Court: "How can you say that the person who is chatting by the name of Simona is the accused?" (a fol. 440), replies: "I cannot say that" (a fol. 440). He says that, for instance, on the 24<sup>th</sup>. of October 2006 at 15.20 "Symonik" asked the guy named Josef: "How is Georgiana?" (Appendix D1 of Doc. "SD" - *Envelope Loose*). He also says that on the 26<sup>th</sup>. of October 2006 at 13.57, Symonik told Josef: "I talked to her she will find another girls and... give me the answer in max 1 week this is all I know" (Appendix D1 of Doc. "SD" - *Envelope Loose*). He makes reference to what was written by Symonik to Josef on the 31<sup>st</sup>. of October 2006 at 14.11, where Symonik wrote: "OK I have messages on simpatie", ":", "and I replay now", "shall I give them your msn address", "they talk English", "or talk me with them?" (Appendix D1 of Doc. "SD" - *Envelope Loose*). He says that then Josef tells Symonik: "yes ok no problem", "you the boss ;)", Symonik sends Josef ":P" and Josef tells Symonik: "I speak to you later", Symonik replies by sending: "k", and Josef asks Symonik: "Is nice the girls", Symonik replies: "Yes" and says: ":) not like the one she came", "and u send her back", Josef tells Symonik: "for dance or s...", Symonik replies to him by sending: "k", Josef asks: "whic job", and Symonik says: "s", and then Josef tells Symonik: "ok", "tell them to come very qwiek", ":P", Symonik replies by sending: ":D", and then Josef asks Symonik: "you have photos", Symonik asks: "ofthem?", "they r on site", "they r nice", "u dont belive me:D", Josef tells Symonik: "yes I belive you tell them to come this week or next week", "and I pay the ticket", "what you thing?", "I speak to you in 45 min ok" and then Symonik tells Josef: "I gave them more details and give them your msn ...:P", "ok", to which Josef replies: "ok" (Appendix DI of Doc. "SD" - *Envelope Loose*). At this stage, PS 266 Decelis was going to refer to another conversation in the report but was informed by the lawyer that there was no need to continue. He says that this evidence was found and extracted from the laptop pertaining to the accused holder of Passport Number 07815559.

That, during the sitting of the 23<sup>rd</sup>. of October 2007, **Peter Borg Cardona** testified (*a fol. 444 et seq.*), after being exempted from professional secrecy (*a fol. 431*), saying that he is Western Union Manager with FEXCO. He says that a search in their Western Union records covering the period of 2003 to 2007 resulted that thirteen transactions were carried out under the name of Simona Bostan. He says that ten were received in Romania, two were sent from Malta and one was received in Malta. He exhibited a copy of these which were marked as Doc. "PBC" (*a fol. 447 et seq.*).

That, during the sitting of the 23<sup>rd</sup>. of October 2007, **Inspector Josric Mifsud** testified (*a fol. 469 et seq.*) saying that on the 20<sup>th</sup>. of November 2006 the Police had been informed that there was a lady in Gozo who was being forced into prostitution. He says that this person was contacted and during the investigations she declared that she was brought to Malta through a friend Josef Camilleri and she had made contacts with Josef Camilleri via a certain Simona, who was a Romanian who had known her and who had told her that this Josef in Malta wanted to make friends with a foreign lady and she got her in contact with him. He says that it was during the investigations that they they got to know Leila Cadir's name and that when she was christened she was named Giorgio or Giorgina. He says that Leila Cadir was sent money from Malta via Josef Camilleri whom Simona had made the arrangements for the contact. He says that during the conversations between Cadir and Camilleri, they used a computer, "*however in both Romania and Malta, however whose computer used in Romania it was I would not know*" (*a fol. 471*). He says that Leila Cadir mentioned that, after a couple of days, she was forced to sell herself into prostitution and further explains what Cadir said. Asked if he recalls whether there were promises between Leila Cadir and Simona Ortansa Bostan, Inspector Mifsud replies: "*I cannot recall any. However I am not saying that there could not have been. I cannot recall right now*" (*a fol. 473*). He says that he never personally met or saw Simona.

**Inspector Josric Mifsud** testified again during the sitting of the 31<sup>st</sup>. of January 2013 (*a fol. 1292 et seq.*) saying that, during the investigations, Leila Cadir had informed the Police that for her to come over to Malta, Josef Camilleri was to hand over about a

thousand Euros (€1000) to Simona for her assistance. He says that according to further investigations, Leila Cadir declared that Simona only got five hundred Euros (€500) for matching Josef Camilleri with her (with Cadir).

That, during the sitting of the 11<sup>th</sup>. of December 2007, **Maria Dolores Fenech** (*a fol. 480 et seq.*) testified that she is Deputy Registrar with Magistrate Padovani. She exhibited a copy of a hard drive marked as Doc. "MDF" (*Envelope Loose*) which had been exhibited in the proceedings **Il-Pulizija vs. Josef Camilleri et.**

That, during the sitting of the 11<sup>th</sup>. of December 2009, **Jennifer Debono** (*a fol. 657 et seq.*) testified saying she is a Senior Executive at ETC. She exhibited: the employment history of Simona Ortansa Bostan (Doc. "JD" - *a fol. 660*), a copy of her first permit of her first occupation (Doc. "JD 1" - *a fol. 661 et seq.*), and a copy of the second permit (Doc. "JD 2" - *a fol. 663 et seq.*).

That, during the sitting of the 6<sup>th</sup>. of June 2018, the defence exhibited a note marked as Doc. "X" (*a fol. 1509 et seq.*) to which there is attached judgment marked as Doc. "PB" (*a fol. 1511 et seq.*) which judgment was delivered on the 28<sup>th</sup>. of October 2016.

### **Having considered**

That in these proceedings the accused is being charged with a number of charges related to inducing a person to come to Malta for purposes of prostitution, of trafficking persons of age for the purpose of exploiting these persons in prostitution and of promoting an organisation with a view to commit criminal offences. Other criminal proceedings against other persons were also initiated, which proceedings were heard and decided by another Court as differently presided.

That, in the Note of Submissions filed by the Prosecution, the Prosecution concludes the following: *"On account of the above, the Prosecution contends that all evidence which forms part of the criminal proceedings in the above-mentioned names is admissible and there is no issue(s) of ruling of inadmissibility especially to the evidence collated*

along the criminal proceedings. Ms. Simona ORTANSA BOSTAN involvement should be considered of huge importance – the recruiter of the girls from her native country. This cannot be overruled since the chat logs shows her involvement in continuous chats in providing and/or attempting to provide girls and invited the recipient of the chats to log into a particular site to see the photos – vide DOK SD 1. This results to proof that the accused was a reference of the offenders in Romania to find, select and propose girls to visit Malta and she could not hide and/or argue that she had no knowledge of the activities in Malta by local offenders {Josef CAMILLERI and his associates following the above recapitulation of the criminal proceedings acts [Police vs. Simona ORTANSA BOSTAN]}” (a fol. 1526).

That the defence divided its oral submissions (a fol. 1533 *et seq.*) into two: the first part relates to the testimony of Leila Cadir and the second part relates to the issue of computers and logs which were presented. As far as the testimony of Leila Cadir is concerned, the defence requested the Court to declare this testimony as being not admissible. As regards the second part of the submissions, the defence states: “it is difficult to find a piece of evidence which is more confusing than this in so far as basic principles of continuity of evidence are concerned. Confusion reigns indeed and it reigns supreme in what is almost equivalent to a witch hunt” (a fol. 1539).

That, before proceeding any further, it is important to note that by means of a decree delivered on the 21<sup>st</sup>. of November 2017 (a fol. 1491 *et seq.*), the Court decreed that the two statements<sup>7</sup> released by the accused will not be considered as admissible evidence. In the same decree, the Court did not declare as inadmissible the evidence which was obtained as a result of the contents of these statements.

That, apart from what has been noted in the preceding paragraph, the Court makes reference to the judgment delivered on the 15<sup>th</sup>. of January 2019 in the case **Il-Pulizija vs. Nicholas Dimech** where the Court of Criminal Appeal decided the following:

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<sup>7</sup> One released on the 19<sup>th</sup>. of December 2006 (a fol. 311 *et seq.* and a fol. 1028 *et seq.*) and another one released on the 20<sup>th</sup>. of December 2006 (a fol. 315 *et seq.* and a fol. 1033 *et seq.*).

*“Ghalhekk din il-Qorti qieghda b’referenza ghat-talba maghmula mill-Avukat difensur tal-imputat fis-seduta ta’ nhar l-ghoxrin (20) ta’ Novembru tas-sena elfejn u tmintax (2018), tilqa’ t-talba u tiddikjara l-erba’ (4) stqarrijiet rilaxxati mill-imputat ossia tnejn rilaxxati nhar il-hdax (11) ta’ Awwissu tas-sena elfejn u ghaxra (2010) u tnejn rilaxxati fil-wiehed u tletin (31) ta’ Awwissu tas-sena elfejn u ghaxra (2010) bhala inammissibli u qieghda ghalhekk tordna l-isfilz tal-istqarrijiet rilaxxati mill-imputat. **Konsegwentement tiddikjara li kwalunkwe prova u partijiet ta’ xhieda inkluz dik tal-imputat fejn issir referenza ghal dawn l-istqarrijiet hija wkoll inammissibli u ghalhekk sejr in jiggu skartati**”. [emphasis added]*

The Court notes that what has just been quoted above applies *mutatis mutandi* to the proceedings against the accused Bostan.

### **Having considered Legal Considerations Regarding the Level of Proof Required**

That the Prosecution is bound to bring forward evidence so that the Court can find the accused guilty as charged. **Manzini**<sup>8</sup> notes the following:

*“Il così detto onero della prova, cioè il carico di fornire, spetta a chi accusa – onus probandi incumbit qui osseruit”.*

In the Criminal field the burden of the Prosecution is to prove the charges beyond reasonable doubt. With regards to the defence, enhanced by the presumption of innocence, the defence can base or prove its case even on a balance of probabilities meaning that one has to take into consideration the probability of that version accounted by the accused as corroborated by any circumstances. This means that the Prosecution has the duty to prove the tort attributable to the accused beyond every reasonable doubt and in the case that the Prosecution being considered as not proving the element of tort the Court has a duty to acquit the accused.

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<sup>8</sup> **Diritto Penale** (Vol. III, Chapter IV, page 234, Edition 1890).

That the following principles, as clearly outlined by the Constitutional Court in its judgment of the 1<sup>st</sup>. of April 2005 in the case **The Republic of Malta vs. Gregory Robert Eyre et**, must be applied:

“(i) it is for the Prosecution to prove the guilt of the accused beyond reasonable doubt; (ii) if the accused is called upon, either by law or by the need to rebut the evidence adduced against him by the Prosecution, to prove or disprove certain facts, he need only prove or disprove that fact or those facts on a balance of probabilities; (iii) if the accused proves on a balance of probabilities a fact that he has been called upon to prove, and if that fact is decisive as to the question of guilt, then he is entitled to be acquitted; (iv) to determine whether the Prosecution has proved a fact beyond reasonable doubt or whether the accused has proved a fact on a balance of probabilities, account must be taken of all the evidence and of all the circumstances of the case; (v) before the accused can be found guilty, whoever has to judge must be satisfied beyond reasonable doubt, after weighing all the evidence, of the existence of both the material and the formal element of the offence.”

That **Lord Denning** in the case **Miller vs. Minister of Pension**<sup>9</sup> explained what constitutes “proof beyond a reasonable doubt”. He stated:

“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”.

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<sup>9</sup> 1974 - 2 ALL ER 372.



## Having considered Legal Considerations Regarding Circumstantial Evidence

At law the position in Malta relative to circumstantial evidence that can lead to a conviction was analysed in various judgments, including **Il-Pulizija vs. Abdellah Berrad et** decided by the Court of Magistrates (Malta) on the 19<sup>th</sup>. of May 2014 where the main principles were outlined as follows:

*“Huwa minnu wkoll kif rapportat aktar ‘l fuq li fl-Artikolu 638(2) tal-Kapitolu 9 ix-xieha ta’ xhud wiehed biss, jekk emnut minn min ghandu jiggudika fuq il-fatt hija bizzejjed biex taghmel prova shiha u kompluta minn kollox, daqs kemm kieku l-fatt gie ppruvat minn zewg xhieda jew aktar. Ghalhekk jispetta lill-Qorti tara liema hija l-aktar xhieda kredibbli u vero simili fic-cirkostanzi u dan a bazi tal-possibilita’. Huwa veru wkoll li l-Qorti ghandha tqis provi cirkostanzjali jew indizzjarji sabiex tara jekk hemmx irbit bejn l-imputat u l-allegat reat. Dan qed jinghad ghaliex ghalkemm huwa veru li fil-kamp penali l-provi ndizzjarji hafna drabi huma aktar importanti mill-provi diretti, pero’ hu veru wkoll li provi ndizzjarji jridu jigu ezaminati b’aktar attenzjoni sabiex il-Gudikant jaccerta ruhu li huma univoci.*

*Fil-fatt il-Qorti hawnhekk taghmel riferenza ghall-sentenza moghtija mill-Qorti tal-Appell Kriminali fil-hmistax (15) ta’ Gunju, 1998 fil-kawza fl-ismijiet **Il-Pulizija vs. Joseph Lee Borg**, fejn kien gie ritenut li provi jew indizzji cirkostanzjali ghandhom ikunu univoci, cioé mhux ambigwi. Ghandhom ikunu ndizzji evidenti li jorbtu lill-akkuzat mar-reat u hadd iktar, anzi l-akkuzat biss, li hu l-hati u l-provi li jigu mressqa, ikunu kompatibbli mal-presunzjoni tal-innocenza tieghu. Illi ghalhekk huwa mportanti fl-isfond ta’ dan il-kaz li jigi ppruvat li kien l-imputat biss li ghamel dak li gie akkuzat bih u ghalhekk il-Qorti sejra tikkonsidra kwalunkwe prova possibilment cirkostanzjali li tista’ torbot lill-imputat b’mod univoku bir-reati addebitati lilo. Fil-fatt kif gie ritenut fis-sentenza moghtija mill-Qorti tal-Appell Kriminali fis-sitta (6) ta’ Mejju, 1961 fil-kawza fl-ismijiet **Il-Pulizija vs Carmelo Busuttill**: “Il-prova ndizzjarja ta’ spiss*

*hija l-ahjar prova tal-volta hija tali li tipprova fatt bi precizjoni matematika".*

*Illi huwa veru li fil-kamp penali, il-provi ndizzjarji hafna drabi huma aktar importanti mill-provi diretti. Hu veru wkoll li l-provi ndizzjarji jridu jigu ezaminati b'aktar attenzjoni sabiex wiehed jaccerta ruhu li huma univoci.*

*Archbold fil-ktieb tieghu **Criminal Practice** (1997 Edition Para 10-3) b'riferenza ghal dak li qal **Lord Normand** fil-kaz **Teper vs. R** (1952) jghid:*

*"Circumstantial evidence is receivable in Criminal as well as in Civil cases; and indeed, the necessity of admitting such evidence is more obvious in the former than in the latter; for in criminal cases, the possibility of proving the matter charged by the direct and positive testimony of eye witnesses or by conclusive documents much more than in civil cases; and where such testimony is not available. The Jury is permitted to infer the facts proved other facts necessary to complete the elements of guilt or establish innocence. It must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another [...]. It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there is no other co-existing circumstance which would weaken or destroy the inference".*

*Illi din hija ezattament il-posizzjoni hawn Malta, kif fil-fatt giet konfermata b'sentenza moghtija mill-Qorti tal-Appell Kriminali nhar d-disgha ta' Jannar, 1998 fil-kawza fl-ismijiet **Il-Pulizija vs Emanuel Seisun**.*

*Din il-Qorti thoss u tghid li provi cirkostanzjali huma bhal katina li tintrabat minn tarf ghal tarf, b'sensiela ta' ghoqiedi li jaqblu ma' xulxin u li flimkien iwasslu fl-istess direzzjoni.*

*Il-Qorti hija rinfaccjata b'zewg verzjonijiet ta' kif sehhet il-grajja*

*[...]*

*Ghalhekk m'hemmx dubju li l-Qorti hija rinfaccjata b'zewg verzjonijiet dijametrikament opposti ghal xulxin ghalkemm inghad sa minn dan l-istadju bikri tas-sentenza jidher li l-imputati li gew investigati a tempo vegine tal-investigazzjoni baqghu konsistenti fil-verzjoni tal-fatti taghhom sa meta xehdu l-Qorti viva voce minn jeddhom hames snin wara l-incident.*

*Illi ghalhekk m'hemmx dubju li kollox jiddependi fuq il-kredibilita` tax-xhieda u dan billi bhala Gudikant il-Qorti ghandha tqies l-imgieba, il-kondotta u l-karattru tax-xhieda, tal-fatt jekk ix-xhieda ghandhiex mis-sewwa jew hiex kostanti u ta' fatturi ohra tax-xhieda tieghu u jekk ix-xhieda hiex imsahha minn xhieda ohra u tac-cirkostanzi kollha tal-kaz u dan ai termini tal-Artikolu 637 tal-Kapitolu 9 tal-Ligijiet ta' Malta.*

[...]

*Huwa minnu, kif gie allegat mid-difiza, li jekk il-Qorti hija rinfaccjata b'zewg verzjonijiet konflingenti ghandha tillibera, stante li tali konflitt ghandu jmur a beneficcjju tal-imputat, pero' huwa veru wkoll kif gie deciz mill-Qorti tal-Appell Kriminali fid-dsatax ta' Mejju, 1997 fil-kawza fl-ismijiet **Il-Pulizija vs Graham Charles Ducker**:*

*"It is true that conflicting evidence per se does not necessarily mean that whoever has to judge may not come to a conclusion of guilt. Whoever has to judge may, after consideration of all circumstances of the case, dismiss one version and accept as true the opposing one."*

Thus in order for a Court of Criminal Jurisdiction to be able to secure a conviction on the basis of circumstantial evidence:

- (a) it has to assess this evidence with a high degree of circumspection and attention (if only because evidence of this kind may be fabricated to cast suspicion on another);
- (b) it has to be sure that a direct link is established between the alleged perpetrator and the offence itself – and no other person apart from the accused;

- (c) it has to be univocal and not equivocal or ambiguous (It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there is no other co-existing circumstance which would weaken or destroy the inference);
- (d) it has to ensure the continuity of the chain of evidence;
- (e) it has to be such that it leads the Court to conclude, solely on its basis that the accused committed the crime beyond a reasonable doubt.

### **Having considered**

That the acts of the case contain, amongst others:

- (a) a certified true copy of the transcript of the sworn testimony given by Leila Cadir on 21<sup>st</sup>. of November 2006 (*a fol. 120 et seq.*) in front of Magistrate Dr. Joseph Cassar in the Process Verbal Number 1157/06;
- (b) a certified true copy of the transcript of the testimony given by the same Leila Cadir on the 30<sup>th</sup>. of November 2006 (*a fol. 14 et seq.*) in front of Magistrate Dr. Jacqueline Padovani in separate criminal proceedings against Josef Camilleri, Clemenzju Zerafa, Ferdinando Veneziani and Anthony Muscat.

The Court will at this stage make reference to a number of considerations regarding the request of the defence to declare the testimony of Leila Cadir as being not admissible.

That the Court notes that Leila Cadir was **not** physically brought forward as a witness in **these** proceedings against the accused Simona Ortansa Bostan. Following the arraignment of the accused under arrest in Court on the 21<sup>st</sup>. of December 2006, in the first sitting scheduled following her arraignment under arrest (that is on the 28<sup>th</sup>. of December 2006 - *a fol. 11*), Court Registrar Paul Miruzzi testified and exhibited the above-mentioned transcripts of Cadir's testimony and in the following sitting, i.e. on the 29<sup>th</sup>. of December

2006 (*a fol.* 254), the Court as differently presided heard the testimony of a certain Kai Graeler as regards a pending bail application of the accused, and in the same mentioned sitting the Court proceeded to deliver a decree regarding *prima facie* and ordered that the acts be remitted to the Attorney General's office.

That the Court notes the following:

- (a) In the final Note of Submissions, the Prosecution refers to the fact that in the acts of these proceedings the testimony of the alleged victim Leila Cadir in other proceedings and her sworn testimony in front of the Inquiring Magistrate were exhibited. The Prosecution also submits the following: "*Such measures were taken since the alleged victim had already left these Islands and her testimony was already given before the Honourable Court as differently presided*" (*a fol.* 1518). Despite this, it does not result from the acts of the case why Leila Cadir was not brought forward by the Prosecution in these proceedings as witness to give her testimony in open Court in the presence of the accused Bostan.
- (b) In the first Note sent by the Attorney General (*a fol.* 270) following the sending of the acts to the Attorney General's office following the *prime facie* Decree (and in subsequent Notes), the Attorney General did not indicate Leila Cadir as a witness.
- (c) The first set of Letters Rogatory to be sent to Romania were filed in the acts of these proceedings on the 26<sup>th</sup>. of June 2007 (*a fol.* 381 *et seq.*) and eventually on the 21<sup>st</sup>. May 2009 (*a fol.* 630 *et seq.*) (together with the ones to be sent to the United States of America (*a fol.* 632 *et seq.*)) and the final ones were only filed on the 22<sup>nd</sup>. of April 2010 (*a fol.* 679 *et seq.*) together with the final Letters Rogatory to be sent to the United States of America (*a fol.* 673 *et seq.*).
- (d) The Letters Rogatory as received by the Romanian authorities were filed in the acts of these proceedings on the 14<sup>th</sup>. of October 2010 (*a fol.* 792 *et seq.*) from which it results that Leila Cadir did not participate in the mentioned Letters Rogatory since her

father “claimed that his daughter, who was diagnosed with multiple acute psychotic disorder, had run away from home previously without him reporting it and was absent for long periods” (a fol. 797).

- (e) Even though during the sitting of the 13<sup>th</sup>. of April 2010 (a fol. 669) the defence informed the Court that in the execution of the Letters Rogatory in Romania, the accused ought to be assisted by a lawyer mentioned in the minutes of the sitting, it does not result that this lawyer was actually present.

That the Court will at this stage make reference to a judgment delivered by the Court of Criminal Appeal on the 26<sup>th</sup>. of May 2003 in the case **Il-Pulizija vs. Pierre Gravina**. Even though the criminal charges in this appeal related to drug-related charges, yet what has been decided upon by the Court of Criminal Appeal may still be applied to the current case against the accused Bostan. The Court of Criminal Appeal noted the following:

*“Issa, huwa principju generali li “...ix-xhieda ghandhom dejjem jigu ezaminati fil-Qorti u viva voce” (Artikolu 646(1), Kap. 9). Ghal din ir-regola, pero`, hemm certi eccezzjonijiet li jipprovdi ghalihom l-istess Artikolu 646 fis-subartikoli li jigu wara s-subartikolu (1). Hemm ukoll l-eccezzjoni tad-deposizzjoni mehuda in segwitu ghall-hrug ta’ ittri rogatorjali bil-procedura traccjata fl-Artikolu 399 tal-Kodici Kriminali, procedura li giet ritenuta applikabbli anke ghal kawzi sommarji (ara **Il-Pulizija v. Angelo Grima** App. Krim. 18 ta’ Ottubru, 1952), u li fil-prattika giet ukoll applikata mill-Qorti Kriminali f’xi kazijiet wara l-hrug tal-Att ta’ Akkuza. U hemm l-eccezzjoni ta’ meta xhud jinstema’ f’ daru minhabba mard jew xjuhija (Art. 647, Kap. 9). Jigi osservat li anke fil-kaz ta’ xiehda permezz ta’ rogatorji u ta’ xhieda li jinstemghu f’ darhom, l-imputat jew akkuzat ghandu dejjem il-jedd li jkun prezenti waqt is-smigh tax-xhud jew li jahtar rappresentant tieghu ghal waqt tali smigh – Art. 647(3) u 399(2). L-ewwel sentenza tal-Artikolu 30A tal-Kap. 101 taghmilha cara li dak l-Artikolu qed jipprovdi ukoll eccezzjoni, pero` mhux eccezzjoni ghar-regola kontenuta fl-Artikolu 646(1)*

tal-Kodici Kriminali izda ghar-regola kontenuta fl-Artikolu 661<sup>10</sup> ta' l-istess Kodici. Minn dan isegwi, li anke meta l-Prosekuzzjoni tkun trid taghmel uzu minn dikjarazzjoni guramentata mehuda skond l-imsemmi Artikolu 30A, ir-regola ghandha tkun li minn ikun ghamel dik l-istqarrija ghandu jingieb fil-Qorti biex l-imputat jew akkuzat ikun jista' jikkontroezaminah dwarha. S'intendi, dan ma jfissirx li jekk ix-xhud, meta jigi ezaminat jew kontro-ezaminat, ibiddel jew jirritratta minn dak li jkun qal fid-dikjarazzjoni guramentata, allura dik id-dikjarazzjoni (jew il-parti mibdula jew ritrattata) ma tkunx aktar tista' tittiehed bhala prova kontra l-akkuzat; il-Gudikant jista' xorta wahda, wara li jkun sema' lix-xhud, jasal ghall-konkluzjoni li l-verita` hija dik kontenuta fl-istqarrija guramentata u mhux dak li jkun iddepona fil-Qorti x-xhud. Ifisser biss li, bhala regola, min ikun ghamel tali stqarrija guramentata ghandu jingieb il-Qorti ghall-fini ta' kontroll da parti tal-akkuzat jew imputat. F'dan is-sens ukoll esprimiet ruhha l-Qorti Ewropea fil-kawza **Kostovski v. Netherlands** (20 ta' Novembru, 1989) meta qalet li d-dritt ta' akkuzat li jikkonfronta xhud migjub kontra tieghu

*“does not mean, however, that in order to be used as evidence statements of witnesses should always be made at a public hearing in Court: to use as evidence such statements obtained at the pre-trial stage is not in itself inconsistent with paragraphs (3)(d) and (1) of Article 6, provided the rights of the defence have been respected. As a rule, these rights require that an accused should be given an adequate and proper opportunity to challenge and question a witness against him, either at the time the witness was making his statement or at some later stage in the proceedings”<sup>11</sup>.*

Fil-kaz in dizamina Mentosa la gie prodott mill-Prosekuzzjoni fil-Qorti peress li kien telaq minn Malta definittivament, u anqas ittiehdet id-deposizzjoni tieghu permezz tal-procedura tarrogatorji. L-ewwel Qorti, ghalhekk, kellha tiskarta l-istqarrija guramentata tieghu u mhux, kif effettivament ghamlet, tistrieħ in

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<sup>10</sup> “661: “Konfessjoni ma taghmilx prova hliet kontra min jaghmilha, u mhix ta' pregudizzju ghal ebda persuna ohra”.”

<sup>11</sup> “(1990) 12 E.H.R.R. 434, para. 41.”

*parti fuqha. Sfortunatament il-ligi ma tipprovdix ghal dak li jista' jsir f'kaz bhal dak in ezami meta l-persuna li tkun ghamlet l-istqarrija guramentata skond l-Artikolu 30A tmut, jew ma tkunx tista' tinstab, jew ma jkunx ragonevolment prattikabbli li tinstema' permezz ta' rogatorji<sup>12</sup>. Ghalhekk dana l-ewwel aggrawju tal-appellant qed jigi akkolt".*

That, as a consequence of what has been outlined above, and considering that Leila Cadir was never brought to testify in these proceedings and that she could not be cross-examined by the defence, the Court will consider as inadmissible the testimony given by Leila Cadir in front of another Court together with her testimony given in front of the Inquiring Magistrate. For clarity's sake, the Court also notes that the mentioned testimonies will still be considered as being inadmissible even though the lawyer assisting the accused in these proceedings, i.e. Dr. Joseph Giglio, was also assisting Josef Camilleri when Leila Cadir gave her testimony in the proceedings against him and the other three persons and even though the mentioned lawyer cross-examined Cadir. Criminal proceedings against the accused Bostan were

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<sup>12</sup> "Ghal kull buon fini l-Qorti tosserva li l-gurisprudenza tal-Qorti Ewropea ma teskludix l-ammissibilita` ta' stqarrijiet maghmula minn persuni li in segwitu qatt ma jingiebu bhala xhieda fil-process. Dak li dik il-Qorti tara biex tiddetermina jekk kienx hemm jew le smigh xieraq hu jekk dawk l-istqarrijiet kienux l-unika prova kontra l-akkuzat, jew kienux altrimenti prova determinanti biex huwa jinstab hati. Ara f'dan is-sens Ben Emmerson u Andrew Ashworth *Human Rights and Criminal Justice* Sweet & Maxwell (London) 2001: "What appears from these and other decisions is a complex mixture of at least three major factors. First, the Court's chief concern is the fairness of the trial as a whole: the defendant's right to "confront" or cross-examine every Prosecution witness is important, but not absolute. Or, to express the point differently, reliance on pre-trial witness statements is not contrary to the Convention, so long as the rights of the defence are respected. Secondly, the Court's judgment on overall fairness is much affected by the significance of the written or reported statements for the Prosecution case: it is fairly clear that a trial would be unfair if the conviction rested "solely or mainly" on the disputed statement, but in some decisions the test is expressed in terms more favourable to the defence. Thus in *Ludi v. Switzerland* the Court thought it sufficient to render the trial unfair that the written evidence had "played a part" in the conviction. However this may be explained by the third factor: that the Court has regard to the practical possibility of according greater recognition to defence rights than was done at the trial. In other words, there are some cases where the impracticability of producing the witness at the trial might lead the Court to adopt a more flexible approach to Article 6(3)(d) (as, for example, in *Artnet v. Austria*, where the witness had gone missing and was untraceable; or in *Asch v. Austria*, where the witness exercised her right not to testify). But the national court should always look for alternative safeguards. As the Court put it in *Van Mechelen v. Netherlands*, "any measures restricting the rights of the defence should be strictly necessary. If a less restrictive measure can suffice then that measure should be applied"." (para. 15-114, 15-115, pagina 465)."



**separate and distinct from the proceedings against the other four persons!**

### **Having considered**

That by means of a note filed by the Attorney General on the 2<sup>nd</sup>. of May 2012 (*a fol.* 1251), the Attorney General exhibited documentation received from the United States of America marked as Doc. "AG USA" and on the 5<sup>th</sup>. of June 2012 (*a fol.* 1257) the Court appointed Dr. Martin Bajada to extract the contents of the CD received from the United States Department of Justice.

That by means of a note filed by the Attorney General on the 15<sup>th</sup>. of June 2012 (*a fol.* 1259), the Attorney General exhibited documentation received from the United States of America, which documentation was marked as Doc. "AG USA 2" (*a fol.* 1260 *et seq.*).

That it results that the computer and laptop do **not** belong to the accused but belong to Kai Graeler who, on the 29<sup>th</sup>. of March 2007, filed an application asking the Court to order the laptop and computer to be returned to him (*a fol.* 364). Even though there are two minutes of the sitting of 9<sup>th</sup>. of August 2007 (*a fol.* 406 and *a fol.* 412) (in the one found *a fol.* 412 it had been minuted also that the Prosecution exhibited a laptop and a computer and that the Court authorised their release), it is evident that the computer and the laptop had been released. On the 20<sup>th</sup>. of August 2007, Dr. Joseph Giglio withdrew four hard drives (*a fol.* 414).

That, in his testimony, Prosecuting Officer Aquilina exhibited, amongst others, a DVD entitled "Human Trafficking" and marked as Doc. "RA 6" which he says: "*was found in Simona's laptop*" (*a fol.* 304). Apart from what has already been stated above regarding the laptop (i.e. that Kai Graeler filed an application asking the Court to order the laptop and computer to be returned to him), Prosecuting Officer Aquilina states that this DVD "*was rented by Mr. Kai*" (*a fol.* 304). The Court notes that the mentioned Kai Graeler was never asked by the Prosecution to give his testimony in these proceedings, apart from being brought forward as witness regarding a pending bail application of the accused!

That with reference to the testimony of Peter Borg Cardona (*a fol. 444 et seq.*) who said that he is Western Union Manager with FEXCO, the Court notes that even though it is transcribed in his testimony that the Court as differently presided asked to see the originals of the documents he filed (Dok. "PBC" - *a fol. 447 et seq.*) in the following sitting, to which Borg Cardona replied in the affirmative, yet it does not result that this did actually happen.

That it also results that, even though on the 23<sup>rd</sup>. of October 2007, PS 266 Stefan Decelis exhibited his report (Doc. "SD" - *Envelope Loose*) in which he refers to a chat log, on the 11<sup>th</sup>. of December 2007 (*a fol. 478*) the Prosecution requested the Court to extend the appointment of Court expert Martin Bajada for the purposes indicated in the mentioned minute, which request was acceded to as a consequence of which during the same sitting of the 11<sup>th</sup>. of December 2007 the Court ordered that the computer and laptop which had been returned to their owner in August 2007 be returned back to Court!

That it also results that when Martin Bajada testified on the 11<sup>th</sup>. of December 2007 (*a fol. 488 et seq.*) and exhibited Doc. "MB 1" (*Envelope Loose*) and Doc. "MB 2" (*a fol. 492 et seq.*), the Prosecution also requested, amongst others, to have his nomination extended to examine the copy of the hard drive exhibited in these proceedings by Maria Dolores Fenech which document was marked as Doc. "MDF" (*Envelope Loose*) and which is a copy of a hard drive exhibited in the case **Police vs. Josef Camilleri et.**

That the serial number of the notebook seized from the accused (Doc. "RA 13" - *a fol. 325*) does not tally with the number of the notebook returned to Kai Graeler on the 10<sup>th</sup>. of August 2007 (*a fol. 408*).

That on the 23<sup>rd</sup>. of January 2009 (*a fol. 595*), the Prosecuting Officer Aquilina requested the Court to extend Martin Bajada's appointment to establish the chat log addresses produced by PS 266 Stefan Decelis, to obtain details of the persons using those chat log addresses, to which request, the Court acceded to (*a fol. 595*).

Eventually, Letters Rogatory were sent to the United States of America.

That, besides what has been outlined above, the Court also notes that in his testimony, PS 266 Stefan Decelis testified regarding his findings and explained the same. He testified about specific chat log conversations. As has already been noted, Letters Rogatory were also sent to the United States of America regarding the various email addresses. Despite this and despite what has been submitted by the Prosecution in its final Note of Submissions (*a fol. 1517 et seq.*), it does not result that the accused Bostan was actually participating in the chats here-above mentioned. It does not result who the author of these chats is.

That it has already been stated above that Leila Cadir did not give her testimony in these proceedings. Even though the Attorney General asked several times, amongst others, for Josef Camilleri and Ferdinando Veneziani to give their testimony, on the 30<sup>th</sup>. of March 2007 (*a fol. 348 et seq.*) they chose not to testify since they had criminal proceedings pending against them which proceedings were connected to the current case. So this means that they never actually gave evidence in these proceedings. Not even Clemenzju Zerafa and Anthony Muscat gave their testimony in these proceedings.

Even though, in its Note of Submissions, the Prosecution makes ample reference to the chat logs and various email addresses and says: *“the chat logs which managed to be identified, retrieved, secure, analysed and exhibited in Court provides the true picture of the accused, the angel, Ms. Simona Ortansa Bostan”* (*a fol. 1524*), yet, after considering what has been outlined above, the Court notes that there is no concrete evidence to show that the accused Simona Ortansa Bostan was involved as is being alleged by the Prosecution in the mentioned Note of Submissions. This has surely not been proven beyond reasonable doubt since, as has already been said above, it does not result who the author of these chats is.

**Having considered**

That in judgment in the names **Il-Pulizija vs. Joseph Formosa et** delivered on the 15<sup>th</sup>. of January 2016, the Court of Criminal Appeal noted the following:

*“Din il-Qorti hasbet fit-tul dwar iċ-ċirkostanzi kollha ta’ dan il-kaz kif jemerġu mill-provi inkluzi dawk li fuqhom strahet l-ewwel Qorti u din il-Qorti waslet għall-konkluzjoni li fuq dawk iċ-ċirkostanzi l-ewwel Qorti ma setgħetx raġionevolment tasal għall-konkluzjoni li waslet għaliha u cioè li l-imputati appellanti huma htija mingħajr dubbju dettat mir-raġuni tal-imputazzjonijiet miġjuba kontra tagħhom. L-aktar ‘il bogħod li wieħed jista’ jasal fuq l-iskorta tal-provi prodotti huwa li dawn jiġġeneraw suspett raġonevoli li l-imputati ikkommettew l-għemil imputat lilhom mill-Prosekuzzjoni, izda prova sa dan il-grad ma hix bizzejjed sabiex jintlaħaq il-grad għoli ta’ prova meħtieġ għas-sejbien ta’ htija fil-qasam tad-dritt penali”.*

Hence, the Court, after making reference to the charges brought against the accused and to the Articles of Law sent by the Attorney General (*a fol. 1457*) and after considering what has been outlined above, notes that all the charges brought against the accused have not been sufficiently proven and hence the Court will acquit the accused from all the charges brought against her.

Therefore, for the above-mentioned reasons, the Court does not find the accused Simona Ortansa Bostan guilty of all the charges brought against her due to lack of sufficient evidence at law and hence acquits her from the said charges.

Finally, since the accused has been acquitted from all the charges brought against her, the Court rejects the requests as per Articles

412C and 533 of Chapter 9 of the Laws of Malta, which requests are contained in the charge-sheet brought against the accused.

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**Dr. Neville Camilleri**  
**Magistrate**

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**Ms. Christine Farrugia**  
**Deputy Registrar**