



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

**MAGISTRATE DR.  
SAVIOUR DEMICOLI**

Sitting of the 21<sup>st</sup> October, 2005

Number 803/2005

**The Police  
(Inspector Silvio Valletta  
Inspector Jeffrey Cilia)**

**vs.**

**-Omissis-  
Edis Zjajo  
Goran Vete**

**Today the 21<sup>st</sup> October, 2005.**

The Court,

Seen the charges brought against Edis Zjajo 26 years son of Emir and Jadranka, born Bosnia on 24-Jan-79 holder of unknown passport number and Goran Vete 31 years, son of Zlatko and Nada, born Zagreb on 01-Apr-1974, holder of Croatian passport number 001296988 that:

With having on the 7<sup>th</sup> September 2005 at some time in the evening at Ta' Qali National Football Stadium:

(a) without intent to kill or to put the life of any person in manifest jeopardy, caused harm to the body or health of various police officers and other persons, which such bodily harm is deemed to be grievous that can give rise to danger of any permanent debility of the health or permanent functional debility of any organ of the body or any permanent defect in any part of the physical structure of the body or causes any deformity or disfigurement in the face, neck or either of the hands of the persons injured or causes any mental or physical infirmity lasting for a period of thirty days or more (article 214, 215, 216 of Chapter 9);

(b) and also with having on the same date, time, place and circumstances took active part in an accidental affray wherein a grievous bodily harm was committed and it is not known who was the author thereof (article 237 (c) of Chapter 9);

(c) and moreover with having on the same date, time, place and circumstances took an active part in an assembly of ten or more persons for the purpose of committing an offence, although the said assembly may not have been incited by any one in particular, which offence which such assembly of persons intended to commit was committed (article 68 (2) (3) of Chapter 9);

(d) and with having on the same date, time, place and circumstances reviled, or threatened, or caused a bodily harm to any person namely several police officers lawfully charged with a public duty, while in the act of discharging their duty or because of their having discharged such duty (article 95 of Chapter 9);

(e) and furthermore with having on the same date, time, place and circumstances assaulted or resisted by violence or active force not amounting to public violence, any person lawfully charged with a public duty namely several police officers, when in the execution of the law or of a lawful order issued by a competent authority, where the assault or resistance was committed by three or more persons (article 96 (b) of Chapter 9).

(f) And also with having on the same date, time, place and circumstances wilfully committed any spoil, damage or injury to or upon any movable or immovable property belonging to any other person that is to the detriment of the Malta Football Association (MFA) which amount of damage exceeds five hundred liri (Article 325 of Chapter 9).

(g) And moreover with having on the same date, time, place and circumstances in any manner, wilfully disturbed the public good order or the public peace (article 338 dd of Chapter 9)

(h) And furthermore with having on the same date, time, place and circumstances disobeyed the lawful orders of any authority or of any person entrusted with a public service, or hindered or obstructed such person in the exercise of his duties, or unduly interferes with the exercise of such duties (Article 338 (ee) of chapter 9);

(i) And also with having on the same date, time, place and circumstances without inflicting any wound or blow, threatened others with stones or other hard substances, or threw the same, or took up any other weapon against any person (article 339 (b) of chapter 9);

(j) And furthermore with having on the same date, time, place and circumstances attempted to use force against any person with intent to insult, annoy or hurt such person or others (article 339 d);

(k) And also with having on the same date, time, place and circumstances threatened any other person with stones or with any other object or threw any stone or other object on to the field of play or on any other part of the sports ground or conducted themselves in a manner likely to cause a breach of the peace (regulation 6 of Legal Notice 88 of 1979 as amended).

(l) And finally with having on the same date, time, place and circumstances while entering were within or leaving the National Football Stadium at Ta' Qali used insulting words or showed abusive behaviour.

Heard evidence.

Seen the acts of the Case and the exhibited documents.

Seen the Articles given by the Attorney General in his Note of the 11<sup>th</sup> October, 2005 and noted that in the Sitting held on the 13<sup>th</sup> October, 2005 both accused declared that they do not object to their case being heard summarily.

Heard submissions made by the Prosecution and the Defence.

Noted that in the Sitting held on the 13<sup>th</sup> October, 2005 Prosecuting Officer Inspector Silvio Valletta for the Prosecution and Dr Cedric Mifsud for the accused exempted the Court from hearing evidence already heard in these proceedings.

Noted also that in the same sitting held on the 13<sup>th</sup> October, 2005 Dr Cedric Mifsud for accused declared that accused are accepting those parts of the acts and records of the proceedings that are in the Maltese language as being read and understood and therefore they do not insist that these documents be translated and they do not intend to present a plea of nullity in this regard.

The Court will now make a legal consideration as to charge (b) brought against both accused envisaged in article 237 (c) of the Criminal Code.

One of the elements of this crime is the existence of an accidental affray. The Maltese text uses the better phrase “glieda accidentali”. The word “glieda” denotes what Vincenzo Manzini (vide further on in this Judgement) calls “una collutazione reciproca”. Vincenzo Manzini in his “Istituzioni di diritto Penale Italiano” Volume secondo, CEDAM, 1955, p. 318 states as regards the crime of rissa: “L’elemento materiale del delitto e’ costituito dal solo fatto di partecipare ad una rissa (colluttazione reciproca tra persone, pericolosa per l’incolumita` personale, che avvenga in pubblico o in privato), indipendentemente dalle conseguenze che dalla rissa medesima siano o non siano derivate, e dal danno o dal pericolo per l’ordine pubblico o per la pubblica tranquillita.”

The above creates a serious doubt as to whether the incidents which occurred on the 7<sup>th</sup> September 2005 at the Ta' Qali National Stadium fall within the ambit of an accidental affray this because for the subsistence of this crime there has to be a "collutazione reciproca tra persone" (Underlining by the Court).

PS 728 Brandon Borg (Sitting of the 20<sup>th</sup> September, 2005), *inter alia*, stated that he identified "the one with the small beard" (referring to accused Goran Vete) as one "throwing things like the other supporters". Asked to explain what kind of things he replied "the seats, basically the seats". Under cross examination same witness, *inter alia* stated:

Defence: But in this particular case, with regards to Goran, you were not the arresting officer who identified him and arrested him? Witness: There and then at the football ground no, but from the photographs I could easily recognize him.

Defence: Which photographs?

Witness: We were shown photographs.

Defence: Am I correct to say that you were shown mug shots of the face only?

Witness: Yes.

Defence: You did not identify him from the photos taken of the incident, am I correct to say?

Witness: We had the videos, the photos and the mug shots.

Defence: So, you identified him from the mug shots.

Witness: Yes."

"....."

Defence: From the photos of the incident, did you identify him in any of those photos of the incident? Were you shown those photos?

Witness: The first photos I was shown, were blurred, so I could identify him from the other photos, as I just said.

Defence: Which other photos?

Witness: The mug shots.

Defence: The video – did you identify him or anybody from these two accused from the videos?

Witness: From the videos, I personally and my colleagues identified various of them.

Defence: No these particular two persons?

Witness: I identified the one with the beard only.

Defence: On the video as well?

Witness: I am sure only of him, the other one .....

Later on still under cross examination said witness, stated, *inter alia*:

“Defence: Was Mister Goran one of this leaders?

Witness: Yes he was in the vicinity, there were others which were standing a few metres away, throwing from behind the others.

Defence: You can identify him because he was one of the leaders, he was inciting people to do what he.....

Witness: Yes I can recognize a person who is inciting to insult and threat others.”

“.....”

“Court: So during the match everything was calm?

Witness: Everything was very calm.

Court: So you'd had no reason why you should remember any of the faces of the Croats' supporters? before the incident.

Witness: Before the termination of the match no.”

As regards accused Goran Vete the Court also refers to the deposition given by Charles Pisani (Sitting of 20<sup>th</sup> September 2005) where, said witness, under cross examination, *inter alia*, stated that accused had his Croatian T-Shirt raised to his face and then lowered the T-Shirt. Replying to a question by the defence whether the Police had shown him any films or photographs, said witness replied photographs yes. Asked by the defence what type of photographs, if of the incident, the witness replied no, of faces.

As to the above the Court notes that the Prosecution did not exhibit any videos, photographs or mug shots to sustain the charges against accused, something which

would have constituted the best evidence. On the contrary the defence produced a CD (fol. 108 of the acts of the proceedings) containing a number of video clips of the incidents which the Court viewed *seduta stante* in the Sitting held on the 14<sup>th</sup> October, 2005.

In this CD accused Goran Vete appears with his hands crossed, showing signs of disapproval and distant from the focal points of the incidents. Certainly he does not appear to be a ring leader!

PS 860 Keith Caruana (Sitting held on 26<sup>th</sup> September, 2005) *inter alia*, stated:

“Witness: A cup, sorry not made of glass, because they are not allowed to bring glass to the ground. As soon as I saw this I ran towards that direction, because I ..... noted who threw the glass, and all of a sudden they started pushing us and also beating us in their side. They threw us against the gates, we were few police officers only four at that time, we tried to calm the situation but it was impossible to keep them away from us, so we entered in the VIP side. In the mean time they started throwing a lot of chairs towards our direction in order to hit us, they hit us more than once, they also punched us several times.

Court: Did you notice the accused doing anything of this sort?

Witness: The one with the beard I don't recognise him, but the other one yes, I recognise him and I picked him up from the crowd.

Court: So you are recognising the one on the left?

Witness: Yes.

Court: The Court notes that the witness is indicating Vitis Gjajo.”

Under cross examination said witness, *inter alia*, stated:

“Defence: When he was supposed to be throwing chairs, was he down near the gate, downstairs where ..... or else was he further up, in the middle

Witness: The Croat's side better know as the Valletta side is divided into two, the lower part and the higher part, yes I recognise him very well in the lower part

Defence: The lower part?

Witness: Yes but I'm not sure because they were going up and down from the upper to the lower part, so I'm not sure about the higher part but the lower part I'm sure about it.

Defence: Now, can you describe what he was wearing?

Witness: No that's impossible.

Defence: So all you recognise is his .....

Witness: His face, his hair.

Defence: And it's the first time you said

Witness: Yes I've never meet him before."

Later on in the same cross examination said witness *inter alia*, said:

"Defence: If I had to tell you that he was far away from the incident, in fact he was even taking a film from a certain distance and he was not involved in the fighting.

Witness: The fight took about forty minutes or more, so if he took some photos and then he came. I saw him I'm sure of that. Example the other guy I'm not sure of him so I'm not going to indicate him, but that guy I'm sure about him.

Defence: And what was he doing? Explain.

Witness: I'm sorry, but in that situation you can't explain what he was doing. I recognise his face, I'm sure of his face, I was protection myself at that time, but I recognise his face very well.

Court: Sergeant the accused is here to answer for a crime, you have to tell us what you saw him doing at that time, if you saw him doing anything at that time.

Witness: He was there, I'm sure of that, I'm trying to get the picture of that day, I'm sure that he was there I saw him in front of me.

Court: Yes he was there because he was arrested from the place, but what did you see him doing?

Witness: Most of them who where in the front line they threw chairs towards our direction.

Court: Not 'they' 'he', what was he doing?



Witness: He threw chairs, like others, he threw a lot of chairs.

Defence: Like others?

Witness: Yes he wasn't alone, obviously wasn't alone.

Defence: Are you sure, I have to be sure beyond reasonable doubt that he was throwing chairs?

Witness: At this point in time I can't be sure about that thing, but I'm sure he was there, I'm sure of that and .... Your Honour when they throw something towards your direction the first thing you have to do is protect your eyes. I saw him there but most of the time I was like this, so it was very hard to indicate those persons who threw chairs."

PC 622 Emanuel Cutajar, (Sitting of 26<sup>th</sup> September, 2005) *inter alia*, stated:

"At one moment I saw seats being broken away from their anchorage and being thrown in our direction. We were shielding ourselves from these seats and I myself got hit and I recognise the accused – Edis Gjajo as one of the persons throwing the seats".

Witness Sandra Kussin (Sitting of the 26<sup>th</sup> September, 2005), *inter alia*, stated:

"Witness: Adis is my boyfriend, and I was with him on the football game, and I was all the time next to him."

"....."

"Witness: After the match there were hooligans, about ten or twenty, and they were downstairs on the left side of the fence, they threw seats to the Maltese side and I was very shocked, I never saw something like this, and I had fear so we went upstairs to the last row.

Defence: When you say 'we' went upstairs, can you explain who?

Witness: Edis and me, I was the whole time next to him.

Defence: Throughout the match were you together all the time?

Witness: Yes."

“ .....

“Court: When the incident occurred you saw people throwing seats, where was your boyfriend?

Witness: My boyfriend was the whole time next to me, we sat at the seats, and and as the trouble began we went upstairs to the last row.

Defence: So you went further away from where you were.

Witness: Yes. We went upstairs to the last row and my friend made a video of the trouble.”

“ .....

“Witness: He was all the time next to me, he didn't leave me, I had so much fear and

Court: So why is he arrested here today? Can you explain why he is over here today, is there any reason why he is here?

Witness: No, there is no reason why he is here. He didn't do anything he only watch the game, he was all the time next to me.”

The Court notes that “a tempo vergine” accused Goran Vete in his signed Statement (dated 8/9/2005) denied that he caused trouble in the game Malta vs Croatia held on the 7<sup>th</sup> September, 2005 (vide fol. 105 of the acts of the proceedings) and accused Edis Zjajo in his signed Statement also dated 8/9/2005 (vide fol. 106 of the acts of the proceedings), *inter alia*, declared: “I did not cause any trouble, and I did not throw any chairs.”

The Court also makes reference to the deposition given by both accused in the sitting held on the 14<sup>th</sup> October, 2005. In their depositions accused gave their respective versions of the events which versions the Court cannot dismiss as not being credible.

Accused Edis Zjajo in the sitting held on the 14<sup>th</sup> October, 2005 stated:

“The first occasion that I came to Malta happened on the 5<sup>th</sup> of September 2005 and I came to Malta with my girlfriend. I came to Malta in order to take a holiday and not specifically to come to see the football match. I got to know about the match in the country where I live that is in Germany and I happened to know this on the internet but however I did not know where the match was going to be played in the sense which stadium and also I did not have any information about tickets. In fact I queired about the tickets in my hotel when I had already arrived n Malta. I went to the stadium myself and my girlfriend. I was not in a group. I went to the stadium with a bus. I viewed the whole game at the Valletta Side and I presume I was in Section C. This Section C is the upper part of the Valletta Stand. The place were I stood was above the toilet. Over the whole game my girlfriend stood by me and even during the period when there was the incident. When the incident started I stood up from my seat and went further up to the top. Then about ten minutes later I saw the people going down to the right side and at that time I was starting to think about the way of getting out. I wish to add that the people that moved to the right side where actually moving onto the opposite side where there were the incident. Then myself and my girlfriend went also to the right side. With reference to the CD exhibited in folio 108 of the acts of the proceedings and whih the relevant parts related to the incident in the date in question were viewd today in open court I wish to add that these video part were taken by me. I declare that I did not at any time throw any hard objects or things during these incidents or during any time of the match. I also wish to add that I did not threaten any public officer including police officers or any other person for that matter during these incidents or during the time of the match. I did not cause any kind of damage to any movable or unmovable property in the stadium. I also wish to add that I obeyed all orders that the police told me to do. I did not take part in any disturbances in any way during these incidents or during the match. I wish also to declare that I did not try in any way to use force against any person or to insult, injure or hurt any person during the said incident and also during the match. I wish also to add that I did not use insulting

words or show abusing behaviour while entering within or leaving the National Stadium at Ta' Qali in the said date of the incident. At no time during the match or during the incident did I form part of any group. I also wish to add that I did not injure anybody present in the stadium in the day in question. I wish also to state that I was looking for a way out from the stadium and I wish to add that my girlfriend had a big fear and because of her I wanted to leave immediately. I noticed that Croatian women went out of the stadium. We went to the gate from where these Croatian women were going out of the stadium and we tried to go out and the police officer told that it was just women who could go out. He also told that my girlfriend should go out but I had to remain inside the stadium. So my girlfriend left the stadium and I remained near the gate from the inside waiting to see that I could be among the first to out from the gate. Then the police officers and other persons there to sit down and then they started selection amongst us people. I was dressed on that occasion with casual clothes and I did not have any sports gear of whatever sort that is of Croatian or football teams or any other nation. Then a police officer came over, and he pointed towards me and towards others present who were also sitting down and told us to stand up. I stood up and tried to explain that I did not do anything. Then this police officer told me that it was a problem if I was not on the video then I could go. This police officer told me that there was a video from the local television station. Then I came to a group of arrested people and we were taken from the stadium to the police station. With regards to the police officers who testified in this case I wish to add that I did not see any of them during the incident at the stadium or during the match at the stadium. As regards the video CD which is found at folio 108 of the acts of the proceedings I wish to confirm that I did not in any way edit or omit any of this CD.”

Under cross examination said accused in the same sitting stated:

“I am being asked by the prosecution how can I explain that in this video CD there are missing clips in the sense

that clips are numerically in sequence however this sequence is not followed in this video CD and I am being asked how to explain this. I wish to add that this I cannot explain it in the sense that I don't know how this happened but I confirm that I did not omit or edit in any way these clips. Here I wish to make an explanation in the sense that when I was in the football ground I could have deleted a file or pictures which I did not like however all that there was then in the camera and was transported over to the CD which has been exhibited in court nothing was deleted or edited by me on the procedure from the video camera to the CD namely therefore all the files that were there were put in the CD in the sense that upon leaving the football ground I did not omit or in any way edit any of the clips. I am being asked also what was the lapse of time between the first video clip taken and the last video clip taken regarding the incident. I wish to explain that there were about twenty (20) minutes interval from the first video clip to the last. I started taking the video clips from the very beginning that the accident started. I believe that the whole incident lasted about thirty minutes (30). I stopped taking the video clip about ten minutes (10) prior to the end of the incidents and this because I had enough evidence in my possession. I wish here to explain that I am using the word evidence in the sense that I wanted to show these video clips to my friend back in Germany in order to show what type of violence the Croatians did here in Malta.”

Accused Goran Vete in the sitting held on the 14<sup>th</sup> October, 2005 stated:

“I came to Malta on the 6<sup>th</sup> September 2005 and I came with a group of five (5) people and we came here for holiday and we booked our hotel for seven days (7). My intention was that I came over to Malta for a holiday and also because there was the match against Croatia. As regards this football match in particular this football match we went to the stadium by bus and as a group we were three (3) in number. As regards the stand we were at the Valletta Side in the stadium and we sat together us three (3) all the time. At the stadium we sat in the Section C. I

wish to also add that I sat together with my friends on the opposite side were afterwards the incident occurred. I wish also to add that I remained where I stood during the whole period of the match and also during the incident. My two (2) friends remained all the time with me. For this match I wore a Croatian shirt. I wish to add that with regards to the CD in particular to a video clip in this CD where I am seen in this video clip in the CD which is at folio 108 of the acts of the case and which was viewed today in the court I confirm that the person that I indicated to the Court was actually myself. I wish also to add that the position I am seeing in this video was the same position that I remained throughout the whole period in the stadium. I confirm under oath that at no time during this football match or during the incident did I throw any hard objects towards any persons. I was in the football match with two (2) friends and I was never in a group of ten (10) or more persons for the purpose of committing offence during my whole stay at the stadium. I also did not threaten or boss anybody to harm any person during the whole time at the stadium. I did not resist or assault any public officer. I did not at any time cause any damage or spoil any movable or immovable property in the stadium. I obeyed all the orders that the police gave me. I did not attack or use any force on the people against me. I also wish to add that on no time upon entering or else when I was within or even in the National Football Stadium at Ta' Qali did I use insulting words or show abusive behaviour. All this I am referring to the date in question namely the 7<sup>th</sup> September 2005. I wish to add that at one moment the police entered into the C Section in the stadium where I was sitting down and the police told me to go down near the fence and I did so. Then I was ordered to be seated down in the second row and I sat down. Then there were two police officers behind the fence and these two officers were walking along the fence and they were identifying people. When there were about twenty or thirty (20-30) left then as I was sitting next to my friends one of the police officers told me to stand up and also told my friend to stand up. I was ordered to raise up my shirt, I raised my shirt, he told me to turn around and I did and he told me to sit down. These police officers continued for about another two

minutes just walking and then they told the police officers that were on our side to take us out. Then they took us out as a group I was handcuffed and then I was taken along with the others to the Police Headquarters.”

Under cross examination said accused in the same sitting stated:

“I am being asked by the Prosecution what I have to say in regards what one witness Charles Pisani stated in evidence in this case namely that he saw me throwing seats I deny that I did throw any seats and infact state that I did not throw any seats or any other hard object during this match or during the incidents. I am being asked by the Prosecution as regards the evidence tentered by PS 728 Brandon Borg whereby at folio 75 of the acts of the case this witness stated that he saw me throwing seats during these incidents I deny that I threw any kind of objects during the football match or during the incidents. With reference to the video clips in the CD which CD is at folio 108 of the acts of the case which was viewed in open court today the position that I am seen in this particular video clip was the position that I remained during the whole time of the match and during the incidents and this is being suggested by the prosecution that the incident took about three quarters of an hour and is being suggested that during these three quarters of an hour I did not remain always in the same place. I wish to add that I was in the same place all the time, all I did was that I walked a bit because I was very shocked and nervous and therefore all I did was that I walked a bit.”

Therefore the Court, considering all the circumstances of the case and having examined the evidence produced by all the parties, is of the opinion that there emerges a serious doubt as to whether the accused did commit the crimes and contraventions of which they are charged in this case. In other words the evidence produced does not lead the Court to establish, beyond reasonable doubt, the guilt of the accused of the crimes and contraventions so charged. In such circumstances such a doubt has to go in favour of the accused.

Informal Copy of Judgement

Therefore the Court finds accused Edis Zjajo and Goran Vete not guilty of all the charges brought against them and consequently frees said accused from said charges.

Finally as regards the application of Article 533 of The Criminal Code given by the Attorney General in his Note dated 11<sup>th</sup> October 2005, the Court declares that this article is not applicable since the Court has not found the accused guilty of any charges brought against them.

**< Final Judgement >**

-----END-----