



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

**MAGISTRATE DR.
ANTONIO MIZZI**

Sitting of the 13 th February, 2007

Number 1259/2006

The Police
(Inspectors Paul Vassallo, Louise Calleja and Therese
Sciberras)

vs

Krisztina Illes, daughter of Kalman, born in Hungary on
the 9th March, 1976

and

Simona Hebauer, daughter of Vasile Siladi, born in
Romania on the 7th June, 1978

and

Jana Mrozkova, daughter of Karel, born in the Czech
Republic on the 28th January, 1984

and

Luciana Ciobanu, daughter of Anton, born in Romania on
the 24th December, 1985

and

Ramona Bulea, daughter of Loan, born in Romania on the
5th February, 1979

and

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Ancuta Elena Ungureanu, daughter of Dan, born in
Romania on the 5th May, 1982
and
Ramona Georgiana Stoian, daughter of Ion, born in
Romania on the 13th November, 1979
and
Anett Scherer, daughter of Henrik, born in Hungary on the
11th January, 1987
and
Monica Eva Palinkas, daughter of Janas, born in Hungary
on the 12th February, 1985
and
Linda Sarok, daughter of Karoly, born in Hungary on the
3rd May, 1985
and
Jana Hradilova, daughter of Ludek, born in the Czech
Republic on the 12th May, 1982
and
Katrina Kissova, daughter of Anton, born in Slovakia on
the 1st December, 1978
and
Anna Maria Novakova, daughter of Pavol, born in
Slovakia on the 19th August, 1975
and
Andreea Ioana Tarbujaru, daughter of Ion, born in
Romania on the 7th September, 1978
and
Radka Jurackova, daughter of Vladimyr, born in the
Czech Republic on the 9th March, 1984
and
Ana Loredana Monea, born in Romania on the 19th May,
1986
and
Kinga Maria Bachlaj, daughter of Jerzy, born in Poland on
the 10th March, 1983
and
Romana Srankova, born in the Czech
Republic on the 4th December, 1985
and
Claudia Nalbaru, born in Romania on the 11th June, 1982
and

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Mihaela Rosiu, daughter of Konstantin, born in Romania
on the 8th November, 1980

and

Laura Elena Martin, daughter of Virgil, born in Romania
on the 8th January, 1988

and

Theodora Korca, daughter of Francisk, born in Romania
on the 1st August, 1984

and

Mirela Radu, daughter of Alexander, born in Romania on
the 17th May, 1982

and

Monica Daniela Butanche, daughter of Yon, born in
Romania on the 31st July, 1980

and

Mihaela Cristina Nedea, born in Romania on the 1st
December, 1985

and

Laura Sylia Stanescu, daughter of Radu, born in Romania
on the 1st July, 1977

and

Mihaela Llie, daughter of Marian, born in Romania on the
6th June, 1984

and

Camelia Muntean, daughter of Adam, born in Romania on
the 9th February, 1986

and

Florentina Orania Banica, born in Romania on the 7th
March, 1977

and

Petronela Piracalabelu, daughter of Konstantin, born in
Romania on the 14th May, 1986

and

Eva Doczi, daughter of Eugene, born in Romania on the
4th May, 1984

The Court,

Having seen the charges proffered against the accused –

1. with having on the 18th November, 2006, and in the preceding weeks, in these Islands kept or managed or shared with others in the management of a brothel or of any house, shop or other premises or in any part thereof which is or are, or is or are reputed to be resorted to for the purpose of prostitution or other immoral purposes in contravention of section 8(1)(3) of chapter 63 of the Laws of Malta;
2. with having on the same dates, place, time and circumstances committed an offence against decency or morals, by any act committed in a public place or in a place exposed to the public in contravention of section 209 of the Criminal Code;
3. with having on the same dates, place, time and circumstances in any other public place exposed themselves naked or were indecently dressed.

Having seen the note filed by the Attorney General whereby he gave his consent that this case be tried summarily.

Having heard the evidence produced including that of the accused Simona Hebauer.

Having seen the documents exhibited in the records of this case.

Having heard the prosecution and the defence counsels of all the accused.

Considers,

On the night between the 17th and the 18th November, 2006 three Assistant Commissioners of Police, various superintendents, inspectors, sergeants and other police officers were detailed to effect inspections in entertainment establishments all over Malta. The purpose of the inspections was to see whether any form of prostitution or immoral activity was taking place inside these establishments of entertainment. These inspections took place after midnight and so the inspections took place effectively on the 18th November, 2006.

From the inspections carried out, the police arrested the accused, who were in the places where the inspections were carried out. The owners and/or operators of these establishments were ordered to close their premises. As a matter of fact, seven establishments were closed namely, Steam, AO Bugibba, AO Platinum in Paceville, Midnight Cowboy, Secrets, Darlings and Club Rouge. The police alleged that in all these places prostitution and/or other immoral activity was taking place. The police took this course of action as they wanted to investigate the suspicions that led to these inspections. Definitely, such a course of action is laudable in the eyes of this Court.

From the evidence presented to this Court, a particular situation occurred where the police did not act in a laudable way. This Court is referring to the fact that several of the accused were not allowed to change from their working attire to more suitable clothing. They were asked to board a police bus in the state of attire they were in. Several of the accused were left without proper attire up to 3.00 p.m. of that day. The excuse put forward was that the police wanted to photograph the accused for the benefit of the Court. This is a crass excuse. The photographs could have been taken at their places of work. They could have been asked to change and then transferred to the Police Headquarters in Floriana. It must be underlined that this did not happen to all the accused as not all the police officers involved in these inspections showed this disregard to the wellbeing of the persons under their care. Every person has a right to his dignity and this was an attempt to humiliate these persons attempting to paint them as criminals and ridiculing them in public. Even the most hardened of criminals have a right to their dignity, let alone these women. This is being pointed out in order to make sure that in future a correct mode of action be adopted in similar cases. An apology is due, which is the least one can do.

From the evidence produced a second problem has to be sorted out. All the witnesses for the prosecution, police

officers, gave evidence to the effect that they found no evidence of prostitution taking place. Moreover, no brothel was discovered. The question that comes to mind immediately is why are the accused charged that they managed a brothel or other establishment for prostitution purposes. This is not correct. The prosecution has to accuse a person according to his actions from the evidence gathered. In a court of law a fishing expedition is not allowed. If this is what the prosecution was attempting, then it has resulted in a very poor expedition doomed to failure. Consequently, with regard to the first charge proffered against the accused we are left only with the issue of "...other immoral purposes..." postulated in section 8(1) of Chapter 63 of the Laws of Malta.

From the evidence produced it has resulted that several of the accused could not have been charged with any wrong doing as it results that these accused were doing absolutely nothing remotely illegal. Again, one would have expected the police to use its discretion and not to charge these persons. The line of action that appears to have been taken is to charge everybody and then let the Court decide. This is deplorable. If the investigating officer finds no fault in the action of a person then he must be upright and decide not to charge that person. If his superior or superiors think otherwise, it is up to them to have the courage of their convictions, sign the charges and come to court to put forward their views. It is very easy to order a subordinate but it takes courage to put into effect the order you have given in good faith.

No evidence was produced that the following accused were doing anything immoral or against public morals. ANNETT SCHERER, was simply a patron at the Midnight Cowboy. She was properly dressed, was on holiday and does not work as a dancer. ANDREA LOANA TARBUJARU, was described by a witness for the prosecution as having a drink at Darlings. She was dressed in a normal way as one wears in Paceville. The same can be said of MIHAELA ROSLU, also found at Darlings and described by the same witness as dressed in a normal way. LAURA SYLVIA STANESCU, was also at

Darlings, again described by the same witness as dressed as one would expect to be in Paceville. The same witness described MIHAELA LLIE in the same way as the accused aforementioned. She was also at Darlings having a drink with her boyfriend. Then we have seven girls who were all found at Club Rouge dressed normally. These are LAURA ELENA MARTIN, THEODORA KORCA, MIRELA RADU, MONICA DANIELA BUTANCHE, MIHAELA CRISTINA NEDEA, CAMELIA MUNTEAN and EVA DOCZI. There was no reason to charge the accused above mentioned. The police found no evidence of any sort against the accused, not for the date mentioned above or for the previous weeks, and better sense should have prevailed then proffering the charges outlined above.

From the evidence produced, it has transpired that the police requested a meeting with the owners or operators of these establishments. These were asked to go to Police Headquarters for a meeting. They requested that one of their lawyers be present but this request was denied. Definitely, this cannot be considered a very intelligent move by the police. One would have expected that the police be assisted by a lawyer just as much as the owners and/or operators would have been assisted. This meeting took place some time after the inspections and the establishments were given permission to reopen on condition that no lap dancing be performed and that the girls wear more modest attire. Pole dancing and table dancing were allowed.

The foregoing introduces us to the reason why the inspections were carried out. These were actually carried out because lap dancing was carried on in the establishments and the girls performing, table, pole and lap dancing were dressed in a bra and pants only, many a time it would have been a tanga. As a matter of fact it has transpired that all the girls wearing a tanga were to be arrested. Consequently, it must be established if lap dancing and the wearing of a tanga can be considered as an "...immoral purpose" according to law. Moreover, the prosecution is contending that the accused were managing these shops for immoral purposes.

From the evidence produced, it has resulted that all the accused are today EU nationals. They have come to Malta to work as dancers. They have regular contracts, most of them have ETC permits and pay their taxes. The girls who did not have an ETC permit at the time of the inspection were expecting one shortly. These girls have come to Malta out of their own free will and have declared that they work in one country for a short period of time traveling around. Practically, all have their agents who find them work world wide. They are self-employed. These girls are paid a daily wage, receive a commission if the customer orders drinks and also receive an amount of money which they split with the establishment for any lap dance they perform. They pay for their accommodation and pay part if not all of their air tickets. There is no evidence of prostitution. Some of the accused have declared that they do not lap dance. It is quite evident in the eyes of this Court that these accused cannot be considered as managing or sharing with others in the management of a shop for immoral purposes. An interpretation of this sort can hold water were the accused to share in all the profits made by the 'shop' or in the decision making process of the running of this 'shop'. This is not the case, the word 'management' must be understood as being in actual control of such a 'shop'. It has been brought to the attention of this Court that at least three of the establishments are operated by duly registered companies. This would imply a board of directors, at the very least. None of the accused has been described as a director of any such company. The interpretation of the prosecution must fail.

From the foregoing it is evident that the next issue to be tackled is the issue of '...other immoral purposes...'. One of the witnesses for the prosecution stated that he was ordered that if a woman was wearing a tanga, she was to be arrested. Moreover, lap dancing was to be considered as immoral and consequently such dance must not be allowed. What is moral ought not to be left in the hands of a court of law. This is a concept which philosophers have debated for centuries and this court will not attempt a

definition. It will limit itself to some observations which we see in our daily life on these Islands. When the legislator promulgated the 'White Slave (Suppression) Ordinance' (Ordinance VIII of 1930) – Chapter 63 of the Laws of Malta, he had a very specific aim in mind which is very far away from today's lap dancing. He wanted to put an end to the brothels and to grant a greater dignity to the woman. Let us not forget that those were difficult times for women in Malta. The problem with the wearing of a tanga in an establishment could be considered a problem where it only that tangas be used as ladies' underwear. Today, we see tangas on our beaches. Our beaches are frequented by everybody from a young child to the older members of our society. Are we shocked? Some of us are not happy with this state of affairs but unfortunately we are a tourist country and so this was bound to happen. Up to a few years ago only tourists would be in such attire on the beach, today our younger generation has become more daring. This Court was told that the wearing of a tanga in an adult public place of entertainment is not legal but it is something different on a beach. It is the complete opposite. This court is not unduly stressed that girls wear tangas in adult entertainment places but worried if seen on a beach where children are around. This is sending the wrong message to our younger generations. But this is not all. Postcards have been presented in court showing ladies in various degrees of nudity. These postcards are found in all our stationers, are printed by a local company and readily available. This again sends the wrong message, not to our kids but to those people who receive these cards, making them believe that our country is of very loose morals. Again, magazines form part of the records of the case. Magazines, where ladies bare all. A witness for the prosecution stated that none of the accused were nude or even topless – some wearing tangas. A calendar also forms part of the records of this case. Again a Maltese company produces it. This court is also aware that in one of our leading bookshops erotic books are sold placed amongst other books. It is the usual and best practice that such books are kept separate so as not to offend any person who happens to be looking at other literature. If all this is available to whosoever wishes

to buy such objects where has our sense of morality gone. There is also another issue which is closely linked to our tourist vocation. The magazine called 'Guide me – a showcase of Malta' which is published by the Malta Hotels and Restaurants Association contains adverts of these places of entertainment. The same can be said of the inflight magazine of Air Malta. The adverts leave nothing to the imagination. When a person goes there, he knows what to expect. Last but not least we have also an adult cinema.

The prosecution has brought to the attention of the Court a study by the Glasgow City Council entitled "Profitable Exploits: Lap Dancing in the UK". This is an interesting study. This study highlights several problems which are not present in our establishments at this time. However, particular attention must be given for these establishments not to degenerate in what is described therein. Today, these places of entertainment are open again in Malta leading one to belief that the authorities have the regulation of this industry on their agenda.

From the evidence produced it results that these establishments apply a door policy. This means that no person under the age of twenty one is allowed to enter these premises. Actually, it is a policy aimed to attract the more affluent customer but nevertheless it guaranties that no minors enter these places.

From the evidence produced it has transpired that the Malta Tourism Authority regularly monitor these establishments and that the police regularly visit. Two of the operators of three clubs stated under oath that the police regularly visit and have been aware of the dress code of the girls. Moreover, the dance programs have never been changed since their opening four and a half years ago.

From the foregoing it has been amply made clear that the moral standard of our society has evolved in such a way that what was illegal to sell (Playboy, Perfect 10, etc.) is now legal. This does not mean that society as a whole

approves of this. It means that we are free to buy or not to buy according to our moral standards. In this context one must analyze the proliferation of these establishments in Malta. A country with a tourist vocation where it is simpler to give permits to persons willing to invest in the entertainment industry than to invest in and enhance our history, culture and traditions. Notwithstanding, the authorities had better start looking with greater vigilance that these places of entertainment do not degenerate in what was described in the Glasgow report.

Consequently, the Court does not find all the accused guilty of the charges proffered against them and consequently sets them free.

< Final Judgement >

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