



MALTA

**QORTI TAL-MAGISTRATI (MALTA)**  
**BHALA QORTI TA' GUDIKATURA KRIMINALI**  
**MAGISTRAT DR.**  
**CLAIRE-LOUISE STAFRACE**

Seduta tas-7 ta' Lulju, 2014

Numru. 151/2012

**The Police**  
**[Spettur Melvyn Camilleri]**

**vs**

**Paul Attard**  
**Andra laona Togo**  
**Gary Camilleri**

**The Court,**

Having seen that the accused Paul Attard, holder of ID Card number 256753(M), Andra laona Togui holder of ID Card number 51548(A) and Gary Camilleri holder of ID Card number 135774(M).

Were accused of having:

1. On the 9<sup>th</sup> February 2012 and in the preceding days, as operators of Club Paradiso within the Hotel Roma Complex, Triq Ghar il-Lembi, Sliema, kept or managed or shared with others in the management of a brothel or of any house, shop or other premises or 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;
2. Kept any shop, lodging-house or hotel or any private apartment and suffers or permits such shop, lodging-house, hotel or apartment or any part thereof to be used as a place of assignation for the purpose of prostitution or any other immoral purpose;
3. Owned or had under their administration any house or other premises and knowingly lets or permits the use of the same for the purpose of prostitution or other immoral purposes.

Seen the request of the prosecution to annul or revoke any licence the accused may have with regards to the indicated premises and its operation;

Seen the conviction sheets of the accused.

Kopja Informali ta' Sentenza

Heard examinations of all the accused whereby they replied that they were not guilty to the charges brought against them.

Seen the articles of the law by which the Attorney General deemed that this Court finds guilt that are:

- (a) In terms of articles 8, 9, 10 and 14 of the White Slave Traffic (Suppression) Ordinance, Chapter 63 of the Laws of Malta;
- (b) In terms of articles 17, 31 and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

Seen that all accused did not have any objection that this Court converts itself to a Court of Criminal Judicature and consequently decides this case after the articles were read.

Seen all acts of the proceedings and took note of all witnesses produced by all parties.

Heard the submissions of all parties.

Considered that:

These proceedings relate to a private club known as *Club Paradiso* in Ghar il-Lembi Street, Sliema whereby the police were performing routine check-ups in various clubs and in this club a topless dancer was found dancing in front of a male person in one of the so-called private rooms.

It transpired from evidence of **Inspector Melvyn Camilleri** that the police interviewed the persons involved including the dancer and she said that the man wanted a private dance and whilst she was performing the dance, the same man who was drunk, removed the bikini top that she was wearing and since he was not aggressive to her, she continued with this dance. She also said that this was strictly prohibited by the rules of the club.

The manager of the club was also questioned who is accused Andra Togui and she in fact reiterated the dancer's version that no topless or nude dancing was accepted in the club not even sexual services were allowed.

The inspector also mentioned that the accused Paul Attard is the owner of the property but that he had sub-leased it to Andra Togui to manage the place and

that he insisted to her that she would make sure that she would run a clean place. The other co-accused Gary Camilleri is Andra's partner.

The evidence of **WPC 104 Amanda Xuereb** confirmed the testimony of inspector Camilleri in that when she went to inspect the private rooms in the club she found this topless dancer leaning over the male person and that her bra was found next to her on a seat. She confirmed also that all the dancer told her that it was forbidden that they dance topless to customers.

Heard testimony of **Charles Vella Rapa** who was the male person found in the private room in front of the female dancer where he stated that he was there drinking and then since he wanted some rest, he went in this private room where this dance happened. He said that this dancer was wearing a bikini top and after a few minutes of her performing such dance, the police came. He said nothing and was not questioned who effectively took off the bikini top.

Heard evidence of accused **Gary Camilleri** and **Andra Togui**. Ms Togui stated that she manages the club and that when she engages a new girl she tells her explicitly that no topless or nude dancing are permitted and that no one is allowed to go out with customers. She said that she had monitors to

show even the private rooms where she goes and views occasionally. On that day she did not know that there was someone in the private room and that when the policewomen came, she panicked because she thought they were wives of customers since they were plainly dressed.

Gary Camilleri who is the partner of Andra Togui, stated that his only involvement in the club was that sometimes he helps out his girlfriend and nothing else. He confirmed that he had indeed signed the sub-lease agreement with Paul Attard but this on behalf of Andra so that she improves her financial career. On that day when the police came he was there because he was worried that Andra was late and went there to see if everything was ok.

## **PRINCIPLES AND APPLICATION OF LAW**

Section 8 of the White Slave Traffic Ordinance states *inter alia* that:

***“(1) Whoever shall keep or manage or share with others in the management of a brothel or of any house, shop or other premises or 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 shall be liable, on conviction, to imprisonment for a term***

***not exceeding two years and to a fine (multa) not exceeding four hundred and sixty-five euro and eighty-seven cents (465.87).”***

***(3) A person shall be deemed to share in the management of a brothel or of any house, shop or other premises or any part thereof for the purpose of prostitution or other immoral purposes, if he partakes directly or indirectly of any of the profits of such management, or takes an active part in the management of such brothel, house, shop, premises or part thereof”.***

Sections 9 and 10 are additions to the previous section and refer to use and letting of houses etc. used as brothels for immoral acts.

It is an accepted principle between all jurists and courts throughout Malta and abroad, that whereas the term prostitution can be easily defined, the term “immoral acts” cannot be as easily defined. This is so because what is immoral in one country can be considered not immoral in another country, and what was immoral a few years ago may be considered as perfectly acceptable in a modern society where things are evolving in a rapid manner.

In fact as **Il Manuale di Diritto Penale**<sup>1</sup> states that when referring to immoral acts:

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<sup>1</sup> Parte Speciale, seconda edizione, Parte I – Capitolo 9

***“Tali delitti presentano il nucleo comune dell’oscenita’ quale elemento integrativo della fattispecie, per la cui perimetrazione interviene, seppur in misura non esaustiva, l’articolo 529 c.p., a norma del quale agli effetti della legge penale, si considerano osceni gli atti e gli oggetti, che, secondo il comune sentimento, offendono il pudore.***

***Non si considera oscena l’opera d’arte o l’opera di scienza, salvo che, per motivo diverso da quello di studio, sia offerta in vendita, venduta o comunque procurata a persona minore degli anni diciotto.***

***L’offesa del pudore, quale requisito caratterizzante l’oscentia’ di un atto o di un oggetto e’ difatti elemento intrinsecamente soggettivo e notevolmente variabile nel tempo e nello spazio, giacche’ il pudore e’ nozione extragiuridica di difficile individuazione e dai confini oltremodo incerti.”***

In this case, therefore, by the dancer dancing topless in a private room even though in front of one customer, can this be interpreted to constitute an immoral act. By analogy, this court finds more obscene and immoral in most of the television programmes and films readily available and viewable even by younger generations that portray the female figure and body in a more obscene way than the case under examination.

The prosecution in this case did not manage to prove that the club known as Paradiso in Sliema was used either solely or partly for the purposes of



prostitution nor it has managed to prove that normally this club is or was used solely or partly for any immoral acts. The fact that a dancer was caught topless in a private room dancing for a customer, in the court's opinion, does not fit in the parameters of sections 8, 9 or 10 of Chapter 63 of the Laws of Malta.<sup>2</sup>

The same Manuale di Diritto Penale referred to above also states that:

***“A riprova di quest’assunto, la giurisprudenza di legittimita’ ha precisato che la misura dell’osceno e’ fornita dalla capacita’ offensiva, la quale non e’ avulsa e valutabile ex se, ma condizionata dal contesto in cui gli atti e gli oggetti si manifestano; inoltre, le nozioni di osceno e di pudore non sono riferite as un concetto considerato in se’, ma al contesto ed alla modalita’ in cui gli atti o gli oggetti sono compiuti o esposti . . .***

***In argomento, con affermazione lapidarie, la Suprema Corte ha evidenziato che “il giudice non deve essere un fustigatore dei costumi, un promotore di campagne moralistiche, come la Corte di cassazione ha piu’ volte affermato. . .Come gia’ ricordato, il fondamentale, il fondamentale parametro di riferimento per il giudice e’ “il sentimento medio del popolo nel momento storico dato”. ”***

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<sup>2</sup> Reference is also made to various judgments by the Court of Magistrates in the cases:

- i) ***Police v. Marco Bonnici (2.10.2013 Mag Edwina Grima);***
- ii) ***Police v. Luciana Loredana Sekan (2.10.2010 Mag. Edwina Grima);***
- iii) ***Police v. Rebecca Camilleri (16.05.2013 Mag Ian Farrugia);***

whereby the same reasoning was applied in these cases.

It is quite evident therefore that having established that that was the only incident caught by the police in that club, that the club is now once more in operation, and that it was made clear by all the witnesses that the club had rules about topless or nude dancing, the court cannot consider that one dance as an immoral act.

This Court feels that once this element is lacking, the prosecution's case has not been proven. However it feels that it must also address the participation of the other two co-accused that is of Paul Attard and of Gary Camilleri. The relationship between these two people is governed by the letting agreement presented by the same accused Gary Camilleri at fol 251 of the proceedings (Dok GC1) whereby Paul Attard is leasing the club to the same Gary Camilleri. In the evidence produced both by Gary Camilleri and by Andra Togoï it transpired that Camilleri was acting on behalf of Andra Togoï indirectly since she is a foreigner and it would have been much easier if Gary Camilleri would appear in the contract. Paul Attard's involvement in the club was from then on to receive the rent due and to hold periodic meetings with Andra to settle any matters. Andra also said on oath that Paul used to tell her to run the club in a clean manner and this was even the statement that the dancers gave to the Inspector Melvyn Camilleri when they were apprehended on the day of the charges. However these dancers were for a reason never produced as witnesses in these proceedings.

For these reasons this Court feels that the charges against the accused **Paul Attard, Gary Camilleri** and **Andra Togo** were not proven beyond reasonable doubt and therefore they are being acquitted from all of them.

**< Sentenza Finali >**

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