

# A Comparative Analysis of *Regina vs Emmanuel Mercieca and Repubblica ta' Malta vs Edwin Cioffi:* Parallels in Law and Fact

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This article by **Shania Dimech** was previously submitted as part of LHM1002 and is being published with the author's permission. This article provides a comparative analysis of two seminal Maltese criminal cases, *Regina vs Emmanuel Mercieca* and *Repubblica ta' Malta vs Edwin Cioffi*. The focus is on how Maltese law regulates the boundaries of self-defence in homicide. Through a thorough analysis of the factual circumstances and the judiciary's reasoning and determinations, the article investigates how fear, imminence of danger and proportionality operate within the legal framework of Articles 223 and 227(d) of the Criminal Code. It demonstrates how similar patterns of threat and victim intimidation can lead to contrasting legal classifications, ranging from lawful justification to excusable excess. Rather than treating self-defence as a fixed legal formula, Maltese criminal jurisprudence applies a contextual and evaluative approach, where the defendant's perception of danger and the nature of the responses are central to criminal liability. This article ultimately illustrates the flexible but structured manner in which Maltese law balances personal survival instincts with legal accountability.

**TAGS:** Criminal Law, Homicide, Criminal Law, Self-defence

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## **Introduction**

The cases of *Regina vs Emmanuel Mercieca*<sup>1</sup> and *Repubblika ta' Malta vs Edwin Cioffi*<sup>2</sup> are landmark judgements in the history of Maltese Criminal Law that focus on the limits of self-defence and the principle of proportionality in homicide cases. Through the analysis of these cases, a critical distinction emerges between justifiable homicide and excusable homicide, as well as the consequences of exceeding the lawful limits of self-defence.

This article will first present the facts of the cases, including the circumstances surrounding the acts and the court's reasoning under articles 223 and 227(d) of the Maltese Criminal Code. Subsequently, a comparative analysis will be conducted, examining both points of law and fact.

## **Facts of the Cases – The Nature of the Delict and its Origin in Our Law**

### ***Regina vs Emmanuel Mercieca***

The individuals involved in the case were the victim, Giuseppe Darmanin, commonly known as iż-Żuż, and the accused, Manwel Mercieca, known as ix-Xabaj. Darmanin had earned a notorious reputation throughout the 1940s and 50s for his violent behaviour, instilling fear in many, including law enforcement officers.<sup>3</sup>

The incident arose from a dispute over an unpaid debt. Darmanin, a regular customer at Mercieca's wine shop in Hamrun, often left without settling his bills, which led to an accumulating debt.<sup>4</sup> On Wednesday, 1st October 1955, whilst working on making wicker baskets, Mercieca confronted Darmanin about his unpaid debt. When Darmanin inquired as to the total of the debt, Mercieca informed him that he owed 17 shillings. After leaving briefly, Darmanin returned shortly after and threw the money that he owed to Mercieca.<sup>5</sup>

Two days later, on Friday, 3rd October, Darmanin, in an intoxicated state and accompanied by his friend Joseph Vassall, known as is-Sigarr, entered Mercieca's shop. Feeling humiliated by Mercieca's demand for payment, Darmanin attempted to assault him. However, Mercieca managed to escape

<sup>1</sup> *Il-Maestà Tagħna r-Regina vs Manwel Mercieca*, Court of Criminal Appeal (Inferior) 27 October 1955 Vol XXXIXD.iv.916.

<sup>2</sup> *Ir-Repubblika ta' Malta vs Edwin Cioffi*, Court of Criminal Appeal, 27 November 1990 Vol LXXIV.v.667.

<sup>3</sup> 'The Death of Iż-Żuż: Man Charged with Murder' *Times of Malta* (7 June 1955) 10.

<sup>4</sup> Charles B Spiteri, 'Iż-Żuż' (*BDL Books*) <<https://bdlbooks.com/blog/dak-kien-zmien/iz-zuz/>> accessed 8th December 2024.

<sup>5</sup> 'Trial by Jury: The Killing at Hamrun' *Times of Malta* (28 October 1955) 3.

and fled the shop.<sup>6</sup> Darmanin followed him outside, where he attempted to seize Mercieca again. Fearing for his safety given Darmanin's violent reputation, Mercieca used a penknife which he had been using to make the wicker baskets to defend himself.<sup>7</sup> Mercieca had earlier instructed his son to notify the police about a potential altercation, anticipating trouble.<sup>8</sup>

The fatal blow was struck with the knife, piercing Darmanin's heart with near surgical precision. As a result, Mercieca was charged with wilful homicide under article 211 of the Criminal Code of Malta.<sup>9</sup> After the incident, Emmanuel Mercieca sought legal advice from Guido de Marco, then a legal procurator, who advised him to report the matter to the police.<sup>10</sup> When the police arrived, they found Darmanin severely injured and lying on the pavement outside the shop.<sup>11</sup>

### **Repubblika ta' Malta vs Edwin Cioffi**

The case involved John Lepre, the victim, and Edwin Cioffi, the accused. Lepre, aged 49, was feared and known for his dangerous reputation, even among police officers.<sup>12</sup> The murder occurred on October 1, 1987, at Lepre's residence in Valletta.<sup>13</sup> His body was discovered later that afternoon by workmen, lying in a pool of blood.<sup>14</sup> Lepre had been shot with a revolver equipped with a silencer,<sup>15</sup> and the bullet had lodged above his left ear, as confirmed by the post-mortem report.<sup>16</sup>

After the murder, Cioffi voluntarily surrendered to the police and confessed to killing Lepre.<sup>17</sup> He revealed that the weapon used in the crime had been given to him by Lepre and claimed that he had accepted it out of fear and intimidation, as Lepre frequently threatened both him and his family.<sup>18</sup> According to Cioffi's testimony, Lepre had even pressured him to murder his wealthy father-in-law, the owner of a woodworking factory, in order to inherit his assets. When Cioffi refused, Lepre threatened to commit the act himself. Cioffi also described how Lepre's coercion led to spiralling debts amounting to approximately 175,000 Maltese Liri.<sup>19</sup>

Witness testimonies further painted a picture of Lepre's intimidating behaviour. One of the witnesses, Carmelo Borg, recounted an incident in

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<sup>6</sup> (n 3).

<sup>7</sup> Guido de Marco, *The Politics of Persuasion: An Autobiography* (Allied Publications Limited 2008) 52.

<sup>8</sup> Charles B Spiteri (n 4).

<sup>9</sup> Guido De Marco (n 7) 51-53.

<sup>10</sup> *ibid* 52.

<sup>11</sup> Spiteri (n 4).

<sup>12</sup> 'Accused had specific intention to kill – Prosecution' *Times of Malta* (27 November 1991) 40.

<sup>13</sup> 'Valletta Man Killed by Single Bullet' *Times of Malta* (5 October 1987) no. 468 Postmortem Report.

<sup>14</sup> 'Man charged with Valletta murder' *Times of Malta* (4 October 1987) no.469.

<sup>15</sup> *Times of Malta* (5 October 1987).

<sup>16</sup> (n 13).

<sup>17</sup> Edward Attard, *Delitti f' Malta: 200 Sena ta' Omicidji 1800-200 Edizzjoni Riveduta* (BDL 2011).

<sup>18</sup> 'Cioffi Acquitted of Wilful Homicide' *Times of Malta* (25 November 1991) 40.

<sup>19</sup> *Times of Malta* (22 November 1991).

which Lepre physically assaulted Cioffi and demanded money from him.<sup>20</sup> Lepre had also used threats against Cioffi, uttering statements such as ‘You want me to blow you up?’<sup>21</sup> Despite these accounts, witnesses described Cioffi as a ‘nice boy’.<sup>22</sup> In the weeks leading up to the murder, several witnesses noted that Cioffi had not been acting like himself.<sup>23</sup>

On the day of the murder, Cioffi decided to confront Lepre at his residence. Armed with the gun Lepre had given him, Cioffi demanded the payment of the money that was owed to him. In response, Lepre pushed Cioffi inside his home, told him to be quiet and bent over, which led Cioffi to believe that Lepre was reaching for a weapon.<sup>24</sup> Fearing for his life, Cioffi shot Lepre and fled. An autopsy later revealed that Lepre did not die instantly but succumbed to his injuries after being shot.

## **Analysis of *Regina vs Emmanuel Mercieca* and *Repubblika ta’ Malta vs Edwin Cioffi* within Maltese Criminal law: The Application of Articles 223 and 227(d) and the Verdicts**

The cases of *Regina vs Emmanuel Mercieca* and *Repubblika ta’ Malta vs Edwin Cioffi* highlight the distinction in Maltese Criminal Law between justifiable and excusable homicide, especially in the context of self-defence.

### ***Regina vs Emmanuel Mercieca***

The trial of Emmanuel Mercieca, also known as the ‘Hamrun Killer’, occurred between October 27 and October 28, 1955.<sup>25</sup> Mercieca faced charges of wilful homicide under article 211 of the Maltese Criminal Code for the killing of Darmanin, with the prosecution seeking the death penalty by alleging that Mercieca had the malicious intent as defined under article 211. Under article 211, which deals with wilful homicide, the intent may be either to kill or to put another’s life in manifest jeopardy.<sup>26</sup> At the time of the trial by jury, wilful homicide under article 211, then article 225, was punishable by death and not by life imprisonment.<sup>27</sup>

The defence, led by lawyer Dr. Joseph Flores and Legal Prosecutor Guido de Marco, raised arguments of provocation, excusable excess, and legitimate defence. Ultimately, the court determined that while Mercieca’s actions were intentional, they were carried out in a state of fear and under the parameters

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<sup>20</sup> ‘More evidence in murder trial’ *Times of Malta* (20 November 1991) 27.

<sup>21</sup> *Times of Malta* 23rd November 1991

<sup>22</sup> ‘Man testifies on meeting between accused, victim: A Nice Boy’ *Times of Malta* (19 November 1991) 40.

<sup>23</sup> ‘Police Officer testifies accused in murder trial said he had been threatened: Strange Behaviour’ *Times of Malta* (22 November 1991).

<sup>24</sup> “‘I will blow you to smithereens’: Notes’ *Times of Malta* (23 November 1991) 3.

<sup>25</sup> ‘Trial by Jury: The Killing at Hamrun’ *Times of Malta* (28 October 1955) 3.

<sup>26</sup> Criminal Code, Chapter 9 of the Laws of Malta, Article 211(1).

<sup>27</sup> Capital punishment was abolished from the Criminal Code by Act XXI of 1971.

of excessive self-defence. As a result, the defendant, Emmanuel Mercieca, was not given the death penalty for the killing of iż-Żuż, with the court acknowledging the defence of inevitability.

The defence contended that Mercieca's actions fell within the scope of articles 223 and 227(d), which pertain to lawful self-defence and excusable homicide. Article 223 provides that no offence is committed when a person acts in self-defence against an imminent threat, provided that the response is proportional. By contrast, article 227(d) recognises that individuals may exceed these limits under conditions of fear, fright, or being taken by surprise.

Dr. Joseph Flores' defence was based on this principle of legitimate self-defence under article 223, then article 237, of the Criminal Code, which allows a person to protect themselves from an imminent and unjust threat without facing criminal liability.<sup>28</sup> However, recognising that Mercieca's actions might have exceeded the strict limits of self-defence, Flores also referred to article 227(d), then article 241(d), which addressed situations where a person's force exceeds that which is necessary to defend themselves due to fear, fright or being taken by surprise.<sup>29</sup> By combining these arguments, Flores' aim was to show that Mercieca acted out of genuine fear for his safety. As a result, he was not found guilty of wilful homicide under article 211 but guilty of exceeding the limits of authority under article 227(d). While a conviction under (d) still constitutes a crime, it differs from situations under article 224, where such actions would not be considered a crime at all.

Dr. Joseph Flores made iż-Żuż's reputation a cornerstone of the defence, focusing on the fear and intimidation he instilled in others. He addressed the jury with a striking argument, referencing iż-Żuż's conduct sheet, which listed numerous past convictions for violent offences, ranging from brawls to other serious offences. As recounted by Giudo de Marco, Flores' delivery was compelling, especially when he challenged the jury to consider how they would have reacted if faced with such a dangerous figure. This rhetorical strategy aimed to illustrate that Mercieca's fear was reasonable and justified.<sup>30</sup>

When faced with this, the jury delivered a verdict of not guilty of voluntary homicide but of guilty of exceeding legitimate self-defence due to fear or fright under article 227(d), with eight votes to one. Mercieca was sentenced to eight years in prison but was granted a pardon after serving one year. The defence attempted to argue that they jury's verdict excluded the offence altogether, claiming that the exclusion of the primary charge invalidated any derived offence. However, this exception was deemed inadmissible by the

<sup>28</sup> Criminal Code, Chapter 9 of the Laws of Malta.

<sup>29</sup> *ibid.*

<sup>30</sup> De Marco (n 7).

court.<sup>31</sup> The Court emphasised that the verdict should be understood as holding the accused guilty of voluntary homicide but with excusable circumstances arising from excessive self-defence.<sup>32</sup>

### **Repubblika ta' Malta vs Edwin Cioffi**

The case of Edwin Cioffi, decided on November 27, 1991, centred on the fatal shooting of John Lepre. Cioffi was indicted on 4 counts: wilful homicide under article 211, illegal possession of a firearm, illegal possession of ammunition and carrying a firearm without a legitimate purpose.<sup>33</sup>

John Lepre, aged 49, was found dead from a single bullet wound to the head in his home in Valletta on a Thursday afternoon. The prosecution, led by Assistant Attorney General Dr. Silvio Camilleri, argued that Cioffi had intended to kill John Lepre when he visited the victim's house in Valletta. They pointed to his possession of a firearm and his decision to confront Lepre as evidence of premeditation. However, the defence urged the jury to consider Cioffi's mental state, after enduring a year of serious threats from Lepre. The defence argued that Cioffi acted out of fear and instinct rather than with premeditated intent as a consequence of his overwhelm due to the emotional turmoil.

Witnesses portrayed Lepre as a notorious individual, while Cioffi was depicted as a respectable person driven to act out of desperation. Mario Grech, one of the witnesses, described Cioffi as a gentleman –serious, quiet and saintly. The defence further mentioned that Lepre's movement during the confrontation could have created a reasonable perception of imminent threat, prompting Cioffi to act instinctively in self-defence. The jury acquitted Cioffi of wilful homicide, deeming his actions justified under article 223, but convicted him of illegal possession of a firearm. He was sentenced to 18 months of imprisonment, which he had already served during preventive custody.<sup>34</sup>

## **Comparative Analysis**

### **Both judgements brought forward the defence of self-defence**

In analysing the points of law in *Regina vs Emmanuel Mercieca* and *Repubblika vs Edwin Cioffi*, a point of similarity emerges in that, both defendants invoked the justification of self-defence under article 223. This provision justifies the use of force when faced with imminent and unlawful danger. According to this article, no offence is committed when a homicide or bodily harm is permitted by law or occurs in response to actual necessity,

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<sup>31</sup> 'Hamrun Killer Gets 8 Years' *Times of Malta* (29 October 1955) 3.

<sup>32</sup> *Regina vs Manwel Mercieca* (n 1).

<sup>33</sup> 'Murder trial enters third week' *Times of Malta* (25 November 1991) 3.

<sup>34</sup> (n 12).

such as in self-defence or defence of others.<sup>35</sup>

The principle behind self-defence is rooted in the inherent right to personal security. This is emphasised by legal scholars like Professor Mamo, who states that 'every person has a natural inherent right of personal security, consisting in the enjoyment of his life, his body and his limbs'.<sup>36</sup> Both Mercieca and Cioffi relied on this principle, arguing that their actions, though resulting in death, were necessary to protect themselves from imminent threats.

To justify the offence, article 223 of the Criminal Code must be applied, which permits an individual to use lawful self-defence when faced with an unjust, grave and inevitable threat.<sup>37</sup> In both cases, the defendants argued that they had acted out of necessity, fearing imminent harm to their person. In Mercieca's case, the defendant claimed that his attacker, iż-Żuż, initiated unlawful aggression by entering his shop and assaulting him, thereby justifying the reciprocal use of force.

Another one of the key conditions for self-defence is that the aggression must be grave. To determine this, an assessment must be conducted of the severity of the threat from the perspective of the defendant, considering whether the aggression could lead to irreparable harm.<sup>38</sup> In Mercieca's case, the crucial issue was whether iż-Żuż's aggressive actions warranted the use of a weapon, a matter ultimately left for jury determination. Additionally, the aggression must be inevitable, meaning that the threat had to be immediate and could not have been avoided by other means.

However, a key difference arises between the two cases with respect to the proportionality of their response. Professor Mamo stresses that self-defence must be proportionate to the degree of danger directed at the defendant, and the court must therefore determine when the line is crossed between lawful defence which justifies the act and excess which only excuses it.<sup>39</sup> Whilst Mercieca's actions were driven by fear, they were deemed excessive leading to his conviction under article 227(d) for excusable homicide, resulting in a lesser sentence compared to a conviction under article 211 for wilful homicide.<sup>40</sup> Indeed, Mercieca drew a knife and fatally stabbed the victim, whereas Darmanin only lifted Mercieca and was about to strike him. Although it was an act of self-defence, it was not proportionate to the danger, thereby exceeding the necessity which is required by the law. Consequently, Mercieca was convicted under article 227(d) and sentenced

<sup>35</sup> Criminal Code (n 28) Article 223.

<sup>36</sup> A J Mamo, *Notes on Criminal Law* (Revised Edition, GhSL 2020) 103.

<sup>37</sup> *Il-Pulizija vs Toni Micallef* 1937 Vol XXIX.764 as cited in Joseph Sammut, 'The Grounds of Self-Defence under Maltese Criminal Law' (LL.D. thesis, University of Malta 1993) 32.

<sup>38</sup> Francesco Carrara, *Programma del Corso Di Diritto Criminale (Parte Generale)* (4 edn, Tipografia Giusti 1897) 278.

<sup>39</sup> Mamo (n 37) 104.

<sup>40</sup> Article 228(3) of the Criminal Code stipulates that excessive self-defence under article 227(d) is punishable by imprisonment for a term not exceeding 12 years.

to eight years imprisonment . The offence remains categorised as a hot-blooded crime rather than a cold-blooded one, even though it was only excused, not justified. In Mercieca's case, his excessive actions were driven by fear and occurred in the heat of the moment as opposed to being premeditated.

In contrast, Cioffi was acquitted of wilful homicide and the court accepted the defence of justifiable homicide based on self-defence under article 223. The court found that Cioffi had acted out of fear, believing that his life was in danger, when the victim moved as though he was reaching for a weapon. As a result, it accepted his actions as proportionate, leading to a finding of justifiable homicide rather than excusable homicide.

**In both cases, they acted in fear of their lives – threatening behaviour of the victims as justification for the defendants' actions**

In both cases, the defence argued that the defendants had acted out of fear for their lives. The defence, in both Mercieca and Cioffi, emphasised that the victims' threatening behaviour left the defendants with no choice but to react in self-defence. In Mercieca, the defendant faced a known aggressor, iż-Żuż, who was a known bully. On the day of the incident, Darmanin physically assaulted Mercieca in his shop, prompting him to stab Darmanin with a penknife. In Cioffi's case, the defence argued that the defendant had acted out of fear when confronting Lepre, a man who had a known criminal history in both Malta and Australia.<sup>41</sup> During the trial, it was revealed that Cioffi had attempted to take his own life, showing the true extent of his fear and desperation. While the prosecution dismissed this claim, if true, it would illustrate the extent of Cioffi's mental state due to the fear Lepre instilled in him.<sup>42</sup>

**Difference in the Verdicts**

The cases of Mercieca and Cioffi differ in both their verdicts and also the legal provisions which were ultimately applied.

In Mercieca, the defendant was convicted under article 227(d) for exceeding the limits of self-defence. While the court acknowledged that Mercieca's fear was genuine, it deemed his response disproportionate to the threat posed by Darmanin. Hence, the court rejected a full justification under article 233 which would have led to an acquittal. However, Mercieca was not convicted under article 211 either, which pertains to wilful homicide and carries harsher penalties. Instead, he was convicted of excusable homicide, resulting in a more lenient sentence.

In contrast, Cioffi was acquitted of wilful homicide since the jury accepted his defence of justifiable self-defence under article 223. Cioffi's response was

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<sup>41</sup> *Repubblika ta' Malta vs Edwin Cioffi* (n 2).

<sup>42</sup> 'Accused in murder trial testifies on what led him to shoot a man' *Times of Malta* (23 November 1991) 40.

considered proportionate to the threat, and thus, faced no punishment.

Another difference was in the weapon used. In Mercieca's case, he used a penknife, a small tool which he used to make wicker baskets. The penknife is a relatively less lethal weapon when compared to a firearm since it is not a tool which is inherently designed for violence. By contrast, Cioffi used a firearm which was provided by the victim himself. The use of a firearm, although a more lethal means of defence, was considered proportionate by the jurors given the perceived threat, with the jurors deeming the threat as severe enough to warrant such a forceful defence.

## **Conclusion**

The difference in weapon used and the jurors' decision highlights that the concept of self-defence is not solely determined by the lethality of the weapon but also by the nature and perceived severity of the threat faced by the defendant. In fact, in the case of *Repubblika ta' Malta vs Edwin Cioffi*, the homicide was deemed justifiable, and therefore is not considered as a crime or as unlawful conduct and consequently, does not warrant a sentence or penalty. In contrast, in *Regina vs Emmanuel Mercieca*, the homicide was considered excusable, meaning that while it remains an unlawful act, it is subject to a reduced penalty due to the circumstances.<sup>43</sup>

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<sup>43</sup> Saviour Demicoli, 'The Notion of Excusability in Homicide' (LL.D Thesis, University of Malta 1983) 10.



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