

Tribunal Judicial da Comarca de Coimbra
 Juízo Central Criminal de Coimbra - Juiz 2
 Palácio da Justiça - Rua da Sofia
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Ex. Excmo. Sr. Juiz
Central Criminal



Certificação Cijus: elaborado em 19-03-2018

Assunto: _____
 Categoria: _____
 Processo: _____
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200460-10079600



RE912018082P 2013/18

Exmo(a) Senhor(a)
 Santa Cruz do Bispo - Estabelecimento Prisional Central
 Rua de S. Brás
 4450 Matosinhos

O Director

123/14.9PFCBR

Processo: 123/14.9PFCBR	Processo Comum (Tribunal Coletivo)	Referência: 77000483 Data: 19-03-2018
Assistente: Maria Filomena de Osório Pinto dos Santos Figueiredo e outro(s)...		
Arguido: Colin Paul Gloster e outro(s)...		

Assunto: Solicitação de entrega de acórdão

Solicito a V. Ex^a, se digne providenciar pela entrega ao arguido abaixo identificado de cópia devidamente traduzida para a língua inglesa, do acórdão proferido pelo Tribunal Colectivo nos autos supra indicados, em 08-03-2018, a qual se anexa ao presente ofício.

RECLUSO:

Arguido: **Colin Paul Gloster**, nascido em 03-07-1980, nacional de Irlanda, Autorização de residência - Eo814975, domicílio: Clínica Psiquiátrica e Saúde Mental, Estabelecimento Prisional de St^a Cruz Bispo, 4455-848 Matosinhos.

Com os melhores cumprimentos,

O Escrivão Auxiliar,

Miguel Pinto

Solicita-se que na resposta seja indicada a referência deste documento e n.º de processo

2013-18
1421
12-281

Digitally signed. This electronic signature replaces the handwritten signature.
Dr. António Miguel Condoso do Vango

Digitally signed. This electronic signature replaces the handwritten signature.
Dr. António Miguel Condoso do Vango

Digitally signed. This electronic signature replaces the handwritten signature.
Dr. José António Filipe Ferreira

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Common Case (Panel Court)

76903647

CONCLUSION -03-08-2018

(Electronic Term prepared by Assistant Head Clerk Miguel Pinto)

=CLS=

The judges taking part in this Panel Court hereby agree:

REPORT

Under common case with the intervention of a Panel Court a pre-trial ruling was given against:

Colin Paul Gloster, born on 07.03.1980, the son of John Robert Twyford and Susan Mary Byrne Gloster, Irish, resident on Rua da Sofia, no. 139, 2.ª Esquerdo, Coimbra.

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As *per* the facts given in the pre-trial ruling, the defendant was found guilty as a material author of two separate criminal counts:

- **one count of attempted aggravated homicide**, p. and p. [provisioned and punishable] under articles 22, 23, 131 and 132(2)(f), all of the P.C. [Penal Code].
- **one count of illicit recordings** p. and p. under article 199(1)(a) of the P.C.

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Maria Filomena de Osório Pinto dos Santos Figueiredo and the **University of Coimbra** requested the status of parties assisting the Public Prosecutor in this case.

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Maria Filomena Figueiredo claimed a civil compensation, seeking from both the defendant and the University of Coimbra the joint and several liability of EUR100.000.00 (one hundred thousand euros) as *per* moral damages, plus interest at the legal rate, calculated on the amounts referred to since summons and up to full payment.

She has furthermore petitioned the estimated costs with the surgical intervention(s) required to overcome (or at least mitigate) injuries caused by the defendant's criminal conduct to be relegated for settlement within the final ruling's execution, as well as an adequate compensation for financial damage (due to the pain suffered in relation with the convalescence and recovery period) that shall also be paid by both the defendant and the University of Coimbra.

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The Hospitals of the University Coimbra, EPE claimed a civil compensation, seeking from the defendant the payment of EUR5.482.10 concerning the medical assistance provided to Maria Filomena Figueiredo, plus interest at the legal rate calculated since summons and up to full payment.

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The pre-trial ruling was duly received as *per* the facts therein and respective legal qualification.

The civil claims were both declared admissible.

A psychiatric report was ordered to find whether the defendant is imputable or non-imputable or even bears a diminished imputability.

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Summoned of the civil compensation sought by Maria Filomena Figueiredo, the University of Coimbra filed a statement of defence, pleading the civil claim to be inadmissible or otherwise dismissed.

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The defendant filed a statement of defence, offering the case records and called witnesses.

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The trial date was duly scheduled.

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In the absence of preliminary or incidental matters to be addressed by the Court, the trial was duly conducted.

A motion has been raised and duly conducted as to change the legal qualification of the facts, as *per* this Court minutes, no requests having been lodged.

There were no nullities nor preliminary queries to be addressed thereafter.

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DE FACTO MOTIVATION:

As a result of the trial, the following facts were found proven in view of the final ruling (the Court shall not address the legal reasoning, nor value judgements, nor refer to conclusive or irrelevant facts mentioned in the lodged pleading files):

1. On the 4th of August 2014, at about 1:30 PM, the defendant Colin Gloster, who was a student at the University of Coimbra, came to Polo 1 of the Academic Services, having been met by Silvia Figueiredo, who promptly brought him to Filipa Machado, given that the issue was to do with the defendant's PhD.

2. Filipa Machado met the accused in an office and provided him with the information he sought, indicating, *inter alia*, the amount of tuition fees in debt (EUR5560.00 plus interest) and the information that there was a resignation to the guidance of his PhD, on behalf of Professor Rui Miguel Curado da Silva. This information did not please the defendant, who clearly demonstrated it.

3. Then the defendant asked when were the services due to close, him having been informed that the schedule was at 2:00 PM. Immediately thereafter, the defendant withdrew a hatchet from the interior of his trousers, wielding it in front of Filipa Machado, who upon glimpsing this object shouted for her colleagues, as the defendant turned his back and went out, crossing the entire room bearing the hatchet on his hand.

4. Later on, at about 3:00 PM, the accused came to the Department of Physics, located on Rua Larga, in Coimbra, with the aim of addressing the offended, a professor at that Department, Maria Filomena de Carvalho Pinto dos Santos Figueiredo, carrying on him the above mentioned hatchet, stuck on his waist and concealed underneath his clothes.

5. He then went up to room G, located on the 4th floor, where the offended Maria Filomena Figueiredo was accompanied by André Cortez and Bruno Rasteiro.

6. After the door had been opened to him by the offended, the accused stood at the entrance as he was talking with her, yet at some point he raised the tone of his voice, reason why the offended asked him to withdraw. As the accused did not withdraw and increased even more his voice tone, in a threatening attitude, the offended attempted to close the door of the room, which she was prevented of doing by the defendant who had put his foot on the base of the door.

7. Then the defendant pushed the door, pushing also the offended, and entered the room.

8. It was then that the defendant withdrew the hatchet he had concealed on his waist and, with its blade, began striking blows aimed at the chest of the offended, who in order to avoid being hit on the chest, placed her arms and hands in front of her chest area; various blows having been struck against her chest, hitting both of the arms, for several times.

9. As if he had sensed the assault, the witness Sharif Ghitan sought to remove the hatchet held by the accused, which he was able to do with the help of Paulo Crespo, having both managed to immobilise the accused until the police arrived.

10. The Police arrived at the scene a few minutes later, following a phone call reporting the facts, having seized the hatchet as well as having arrested the accused.

11. The offended, however, had already been moved to the hallway where she waited for the arrival of INEM, having been transported to CIUC [Hospitals of the University of Coimbra], where she was immediately submitted to reconstructive surgery of the arm tendons, once the blows struck by the defendant reached her tendons.

12. The seized hatchet showed traces of blood, and such signs were also visible in the hallway and room where the assault took place.

13. The hatchet was subject to direct examination (as per pgs. 14), which concluded as to [the hatchet] having a metal cutting blade on one of the ends, of 10.9 cm in length, and another end assuming the purpose of a hammer, with a wooden handle of 37.4 cm.

And moreover, it being a hatchet or multipurpose hatchet, designed for agricultural, industrial, forestry and domestic use.

14. With the above described conduct, the defendant slashed the left forearm and right hand of the offended, delivering a cross-section of the deep and surface digital flexor of the right hand's 3rd finger; a section of both the radial extensors of the wrist and of the common extensors of the left hand's fingers and a section of the digital ulnar nerve of the right hand's 5th finger;

15. The offended was subject to a medical examination by the INML [National Institute of Forensic Medicine] (As per pgs. 240 to 242), on the 17th of November 2014, which concluded as to her bearing the following injuries:

Right upper limb - multiple scars on the palmar side of the hand and fingers:

- nacreous scar in the anterolateral surface of the proximal phalanx of the 1st finger in the form of an "X", the longest inferior medial axis with two and a half centimetres and the lower shaft with two centimetres in length;

- linear scar with an inferolateral oblique orientation, on the anterior side of the 2nd finger's medial and distal phalanxes, with three and a half centimetres in length;

- pinkie scar, hardened and retractable, in the form of an inverted "Y", occupying both the faces of palmar hand, 3rd and 5th fingers, being the largest inferolateral oblique branch until the proximal edge of the 3rd finger's proximal phalanx, measuring seven centimetres long, and the lowest branch beginning in the middle third of the anterior, inferomedially oriented, up to the edge of the 5th finger's middle phalanx, with five centimetres in length;

- nacreous scar with inferior-posterior orientation, located from the hypothecar region to the medial edge of the hand, with three centimetres in length;

-Mobility of the fingers' joints - does not deliver full extension of the hand: flexion of 30° of both 3rd and 5th fingers;

-Decreased sensitivity on the 1st finger's pulp, on the spot of the scar; other scars painful to palpation.

Upper left limb - multiple nacreous scars with traces of stitches in the entire length of the posterolateral side of the forearm:

- an anterior concavity scar on the proximal third, circular in shape, with seven and a half centimetres long after rectified, with another intersecting scar on the distal third, oriented to the anterior side, with two and a half centimetres in length;

- linear scar immediately behind the previously described, with twelve millimetres in length;

- three scars on the anterolateral side of the middle and distal thirds, the most superior being circular in shape, of inferior concavity, measuring four and a half centimetres long after rectified; the middle one having an inferior-posterior orientation, with two centimetres in length, and the inferior, being circular in shape, of inferomedial concavity, with three and a half centimetres in length;

- Scar, no traces of stitches, oblique with inferior medial orientation, on the proximal third of the posterior side, measuring four centimetres in length;

- Mobility of the wrist joint is kept, not painful;

- Decreased sensitivity in the entire posterolateral side of the forearm, on the spots of the scars above described.

- The offended continues to be monitored by the Orthopaedics Service of CHUC, awaiting surgical intervention.

16. On January the 20th, 2015, in pursuit of investigations relating to the proper clarification of the facts, at the premises of P.J. [Criminal Investigation Police] - Board of Coimbra, Inspector Sandra Roxo proceeded with the defendant's additional interrogation, during the course of which she realised the accused was recording the interrogation.

17. The defendant was then asked if he had a sound recording device in his possession, which he admitted as a possibility.

18. Following a personal search of the defendant, a switched on "TOSHIBA" tablet, model AT300SE, was found in his possession showing an active application for recording, foreign language commands and bearing a numeric counter, which was thereby seized.

19. As a result of the forensic examination conducted on the above mentioned tablet, thereby seized from the defendant, an audio file was identified, stored in aforesaid device, under "File Name"- Recording-20150120_133836.3gpp, dated as of the 20th of January 2015, with 21.57 MB in size, bearing as modification hour 17:34:09 UTC on the referred day 20, file matching the recording of the additional interrogation the accused was being subject to.

20. The defendant recorded the interrogation he was being subject to without authorisation and against the will of the inspector who carried it, knowing not only was she unaware that her words were being recorded, but also that the content of the investigation was not intended for the public; and moreover, that the investigation was under the secrecy of legal proceedings.

21. In fact, the defendant did not inform he was recording the interrogation, nor did he request the required authorisation to do so, and therefore he was aware that such conduct was unlawful.

22. By using the hatchet aiming at the chest and arms of the offended as above described, the defendant was aware of the highly lethal use of that instrument used as such, and directed to the chest of the offended where vital organs are lodged, as well as towards the arms and wrists, where important veins and arteries; him being aware that it could cause death, which he represented and intended.

23. The defendant, at all times, acted freely, wilfully and knowingly, with the intent to take the life of Maria Filomena Figueiredo, not having achieved its purpose due only to a reason beyond his will, in virtue of the witnesses having intervened.

24. The defendant was aware of the offended capacity as University Professor, because he had earlier contacted her, on several occasions, in regard of his PhD studies.

25. The defendant acted freely, wilfully and knowingly, with the materialized intent to record the interrogation he was being subject to by the Police Inspector, without her prior consent, whom he did not request authorisation from, having proceeded to do so in a concealed and secret way.

It has been furthermore found proven:

26. The defendant although suffering from an autism spectrum disorder, is not mentally impaired as *per* the concept's strict and more precise sense. Such a condition does not prevent him, nor did at the time of the events, of evaluating his lawful or unlawful conduct or otherwise determining himself; therefore, in as far as forensic psychiatry is concerned there are no grounds as to as to his imputability resulting diminished or excluded.

27. According to the international classification of diseases-10 (ICD-10) Asperger Syndrome is: a disorder characterized by the same qualitative abnormalities of reciprocal social interaction featured within autism, together with a restricted, stereotyped, repetitive repertoire of interests and activities. It differs from autism primarily in the fact that there is no general delay or retardation in language or in cognitive development. Psychotic episodes occasionally occur in early adult life.

28. On the level of personality development, significant situational pressures can be pointed out; his control ability and tolerance to stress being thus compromised as well as his ability to process new information. Problems regarding ideation and emotional control give place to impulsive behaviours, especially in situations perceived as poorly structured.

29. There are significant issues on the level of cognitive and emotional structuration, which seriously prevent him from organising and managing situations in a balanced way, with substantial consequences on his behaviour. To deal with these issues, it is of the utmost importance that he can be monitored on a weekly basis through psychotherapy and cognitive/neuropsychological (re)education.

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Proven Facts Concerning the Civil Claim by the Plaintiff Maria Filomena:

30. Following the accused's criminal conduct, the offended began being monitored by the "Psychiatric Outpatient Services of the University Hospital Centre of Coimbra".

31. The defendant's conduct caused in the offended the justified fear that he may act in a similar or even in a more threatening way.

32. The offended has been hospitalised, having undergone several surgical procedures.

33. Furthermore having the need for medical monitoring and medication, as well as psychological support she continues to be provided with.

34. During much of the time, the offended husband had to follow and assist her in the most basic tasks.

35. Her having to remaining at rest, at home, experiencing pain and failing to socialise with family and friends.

36. Before the events herein described, the offended was a self-confident person, interacting with everyone who knew her.

37. Even today the offended has to be taken by her husband in and out of her workplace, within the Department of Physics of the University of Coimbra, for fear of being confronted with the accused.

38. She ceased to take pleasure in coming to the University.

39. She is sad, showing fear when strolling on the street.

40. Revealing intense periods of distress, easy tearfulness, experiencing periods of emotional imbalance, feelings of insecurity and social withdrawal.

41. About two years before the events took place the defendant Colin, by then a scholarship student regularly enrolled at the University, had already caused disruption at the Department of Physics of the University of Coimbra.

42. At that point, the defendant Collin had destroyed several material and existing equipment in the Department of Physics' lab at the University of Coimbra.

43. The offended argued for stronger action from the University, claiming the defendant should be prevented from entering the premises of the Department of Physics.

44. On the date of the events the defendant was not regularly enrolled, him not being a student of the University of Coimbra at that time.

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Proven facts concerning the civil claim by the Hospitals of the University of Coimbra EPE:

45. On the 8/4/2014 Maria Filomena Osório Pinto Santos Figueiredo was admitted to this Hospital, having been assisted in the Emergency Room, followed by hospitalisation from 8/4/2014 to the 8/21/2014, and from 10/19/2015 to the 10/19/2015, having had external Orthopaedics appointments on 8/28/2014, 9/17/2014, 11/26/2014, 1/21/2015, 3/18/2015, 5/20/2015, 7/22/2015, 10/1/2015, 11/18/2015, 2/10/2016, 6/22/2016 and 9/28/2016, external physiatrist appointments on 9/25/2014, 12/1/2014, 3/16/2015, 6/23/2015, having been subject to clinical analyses on 10/8/2015, [and moreover] to exams and treatments within the speciality of Physical medicine and Rehabilitation from the 10/1/2014 to the 05/25/2015.

46. The assistance was provided following the injuries she suffered because of the assault, which took place on the 8/4/2014 around 3:00 pm, in room G, on the 4th floor of the Department of Physics, located on Rua Larga, in Coimbra, and conducted by the defendant as *per* the proven facts described herein.

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Statement of defence (to the offended's civil claim) by the University of Coimbra

47. At the time of the events, the defendant was still connected to the Department of Physics at the University of Coimbra.

48. Despite his PhD being suspended, the defendant was still allowed to pay the past due tuition fees and re-enrol his doctorate program.

49. Exception made to the areas he had been banned of, the defendant was allowed to move freely in and around the Department of Physics at the University of Coimbra.

50. Before the 4th of August 2014 none of the premises of the University of Coimbra had access control in order to prevent the entry of unauthorised persons.

51. The defendant was not an unauthorised person.

52. He was not unknown to the students.

53. He was not unknown to the scholars.

54. After the events took place, the department itself hired security.

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Additional proven facts:

The defendant is Irish. He was brought up within his family of origin, along with his parents and a sister two years younger.

He has started school at five years of age, prior to average in his country. He attended primary school in his place of residence and secondary school in Dublin.

He then pursued higher education in this city and was enrolled in computer engineering at "Dublin City University, Ireland" up to 2003. He further extended his studies to Sweden where he accomplished his master degree in spatial engineering in January 2006, aged 25.

He was very focused on his studies using his spare time in playing astronomy games online, watching TV and reading both scientific-fiction and humoristic books.

He built his professional background around several countries, having been a researcher at the University of Pisa, Italy, since January 2006 to January 2007. In 2008 he arrived in Portugal as a PhD student, to work at GIAN – Atomic and Nuclear Instrumentation Group at the University of Coimbra.

Given that the University had failed to comply with the payment agreed to in return for his work as researcher/PhD student at GIAN, he endured a permanent precarious situation in Portugal.

In January 2013 his PhD scholarship was to be suspended due to health issues allegedly preventing him to properly conduct his researching work at his work environment, along with his colleagues and both lab and University staff.

In 2013 he was admitted to a psychiatric ward at the Hospitals of the University of Coimbra from the 15th of March to the 11th of April. Following his hospitalisation, the defendant's father came to Portugal and took him to Ireland. He was then clinically re-assessed, his medication having been suspended until today.

On his mind, giving up the research work he had been conducting was never a possibility thus, while in Ireland, he never ceased to pay his rent nor his water and energy bills, cherishing the idea of coming back to Portugal which eventually happened.

He returned to his house at São Martinho do Bispo, Coimbra engaging in a difficult daily life, again focusing on his research work outside of the academic environment, as he was still deprived of his scholarship. The defendant eventually could not cope with this situation, which he perceived as a “revenge”, having therefore triggered feelings of insurgence against the heads of the faculty’s department.

Following the events in the origin of this case, the defendant still managed to live in S. Martinho until the social alarm caused by the media, combined with the fear of the population due to his conduct and the lack of means to pay the rent and other expenses, eventually predisposed the landlord to suggest him an alternative and free accommodation located in Anobra.

The defendant living in a place that fell below the set standard of decency, drew the attention of the President of Anobra’s Parish Council to highlight his situation, in 04-01-2016, near the Health and Social Security Services of the City Council of Condeixa-A-Nova. The defendant lives in Condeixa in a temporary accommodation, belonging to the City Council of Condeixa. RSI is granted to him since 2015, his Social Insertion Contract having been yearly renewed, receiving EUR183,84/monthly.

His daily routine evolves between his home and the City Library, where he has been granted access to computers and internet and he is able to read scientific papers and actively search for jobs.

The defendant has refused any indication regarding the health services, rejecting these type of needs and not taking any sort of medication. There are no indicators of inadequate behaviour, although persisting also in Condeixa in living an isolated life, with no initiative on interpersonal relations, his sociability being extremely limited.

In Condeixa-a-Nova, most of the population does not relate the defendant to the facts he has been indicted of, this having had no impact whatsoever.

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The defendant’s criminal record shows no information.

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FACTS NOT PROVEN:

No other relevant facts were found proven in view of this cases’ fair trial, namely:

As *per* the bill of indictment

1. The offended Maria Filomena requires further surgical interventions.

As *per* the civil claim by the plaintiff Maria Filomena Figueiredo

2. The offended has not yet been medically certified.
3. The offended will still undergo hospitalisation, post-surgery, requiring medical and medication assistance in order to mitigate the (physical) injuries she still endures.
4. The offended will go through a period of sick leave (convalescence and recovery period) and will experience pain.
5. The offended will have to spend, along her lifetime, a certain amount with medication that may be recommended for her scars by physicians or pharmacists.

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Court's conviction

Evidence is assessed as *per* the rules of experience and the judge's personal conviction (article 127 of the Criminal Procedure Code), a freedom that shall not mean discretion nor a "purely impressionist" irrational, emotional decision, backing away, in an unconditional subjectivism, from due reasoning and communication" (Prof. Castanheira Neves, cited by Prof. Germano Marques da Silva, Curso de Processo Penal, I, 43).

On the contrary, the free assessment of the evidence requires a critical and rational assessment, based, of course, upon the rules of experience, but also on logics and science as to originate an objectified and justifiable judge's conviction, these being the only features that allow it to be enforced on third parties.

This intellectual operation is not a mere voluntary option about the certainty of a fact and against doubt, nor a forecast based upon verisimilitude or likelihood, but rather an intellectual conformation of the knowledge of the fact (objective data) with the certainty of the achieved truth (non-objectified data); to it concurring the statutory rules, such as experience, the deponent's personality – the principles of oral proceedings and immediacy hereby found especially relevant – and the principle of evidence beyond reasonable doubt, which is reflected on "*in dubio pro reo*" (see Judgement of the Constitutional Court as of 03/24/2003, DR. II, no. 129, de 02/06/2004, 8544 e ss.).

About the defendant's criminal intent, on his voluntary conduct and awareness of unlawfulness, given that *mens rea* belongs to each individual's inner life and it is, thus, of subjective nature and not directly apprehended, its existence is only possible to capture through common material facts; facts from which it can be inferred, such as the elements of the offense, according to presumptions connected to the principle of normality or to the general rules of experience. In this case, evidence by judicial presumption is legitimate, because evidence unforbidden by law is admissible within criminal proceedings (article 125 of the Criminal Procedure Code) (on this matter see, among others, Judgement of the Higher Court of Évora., as of 09. 27.2011 in www.dgsi.pt).

Legal presumptions ultimately result out of the rules of experience. The judge by recourse to a certain fact and to the rules of experience is able to ascertain that the said fact gives rise to another. Consequently, the presumption allows that in face of the known facts (or one specific fact), an undemonstrated fact can be found, based upon the conviction, on the grounds of the rules of experience, that normally and typically some facts are consequent to others.

During trial, the facts were essentially admitted by the defendant, him mentioning however that he did not intend to kill the offended, because that being his real intent, he would have used the hatchet against her back; his intent was rather cutting her arm off. He said he used the hatchet against one of her arms, in an attempt to make justice, by punishing her, as to making her feel remorseful and therefore experience a pain similar to the one he was enduring; he also mentioned she was the one to blame for him having had been submitted to compulsory internment in 2013.

Nevertheless, he also mentioned that when wielding the hatchet in front of the witness Filipa Machado, he already bore in mind he might eventually use it.

About the interrogation recordings at policia judiciária [portuguese criminal police], although him having admitted to the recordings assuming no authorisation was required as it happens in Ireland, his statements were not reliable because when confronted by the investigator Sandra Roxo, whose authorisation was not given, he said he "might" be recording, therefore being aware that it was forbidden.

Concerning the defendant's *mens rea*, the facts were found proven, essentially due to the statement of the offended Maria Filomena; in a coherent, logical and absolutely trustworthy description, she explained how the events unfolded, spontaneously mentioning that when the defendant withdrew the hatchet from inside his jacket, she tried to escape as much as she could, until getting trapped on a desk, at the same time that the defendant directed blows with the hatchet, in an upwards to downwards movement. She managed to defend herself with her hands, otherwise she would be hit on her head, having had the perception that he intended to kill her.

She has furthermore described her injuries and the psychiatric therapy she is still submitted to.

This Court has therefore found her statement trustworthy, not having any doubts as to her having told the truth.

Her deposition, which has convinced the Court, was corroborated by the testimony of Sharif Hasan Mahmoud Ghithan, heard through statements for future use played during the trial, him having confirmed that the offended was defending herself with her arms from the defendant's assault, him [this witness] having managed to seize the hatchet from the defendant.

In addition to this statement, witness Paulo Crespo, professor at the Department of Physics of the University of Coimbra, mentioned that when he got to the scene, the defendant was directing blows onto the offended at the same time as he was being grabbed by the witness Sharif; despite being grabbed he still persisted in trying to hit the offended with the hatchet.

Furthermore, witness André Cortez, who was at the scene, also mentioned that the defendant wielded the hatchet, in an upwards to downwards movement, directed at the offended's head.

About the defendant's conduct, and according to the offended's statement, the defendant had already been working there for a few years when there was this episode of him starting to break the lab computers; at that point she said the police should have been called as to find the defendant liable for what he had done; the defendant was aware of her opinion, so this might well have been the reason behind the assault.

The testimony of the witness Filipa Machado was also relevant as to ascertain the lack of security within the faculty's facilities, this having been corroborated by witness Rui Curado, researcher at the Department of Physics and the defendant's former supervisor; As *per* his statement, the defendant was not a student at the time of the events – yet he could still re-enroll if he paid his past due tuition fees; it was also mentioned that the Department of Physics has areas of public access, with no security control at that time; At present security does exist, as concurred by witness João Manuel Campos Gil, Professor at the Department of Physics.

Consequently, the Court was convinced that the defendant's aim was to take the offended's life, due to the blows having been directed at her chest, her having to protect herself with her arms crossed in front of that body part to prevent it; the defendant yet succeeded in wounding both her arms, for several times, this showing his clear intent to take her life.

In fact, if killing was not his intent, the defendant would not have carried a hatchet on him, nor directed blows onto the chest of the offended on such a short distance. By doing so he had to have represented the possibility of that happening.

Having in regard the proximity between the defendant and the offended, as well as the body part he directed the blows onto, the defendant necessarily had to represent that he could wound her, as it indeed happened, eventually causing her death. Despite this, he did not refrain from striking blows on a reiterated manner.

Critically appreciating the overall statements and depositions, interconnecting them as to check their compatibility, the Court hereby finds the version of the offended trustworthy.

Consequently, the defendant armed himself with a lethal device, a hatchet, concealed it on his waist and used it to direct several blows onto the offended. These reiterated blows having been directed at the chest of the offended, in an upwards to downwards movement, hence with great energy and revealing of the defendant's intent.

Thus, the special force used by the defendant, his reckless attack onto the body of the offended, combined with the device used, which despite him being grabbed did not prevent his continuous efforts to hit the victims' chest, where vital organs are lodged, makes us conclude that the defendant shall hereby be found guilty of an attempted homicide, him having acted with direct intent to kill.

The above mentioned depositions interrelated between them and namely with the documental evidence and forensic reports included in the paper trial, allowed the Court to build grounds for this conviction.

Therefore: Seizure records of pgs. 8; Photo records of pgs. 9 to 11; Hatchet examination of pgs. 14; Medical examinations and clinical records of pgs. 192 to 211, 240 to 242, 423; Search and seizure records of pgs. 275; Reconstitution records of pgs. 293 to 306 and 348 to 359; Forensic report on DNA criminalistics of pgs. 342, 430, 431; Measurement and examination of the Tablet of pgs. 441 a 448.

As *per* the moral damages sought by the plaintiff, the Court took into account the plaintiff's deposition Maria Filomena as well as the witnesses, Hugo Figueiredo, her husband, and Dr. Manuel Quartilho, psychiatrist, who has been monitoring the offended, all of them having credibly reported as to her physical and psychological status, conjugated with the clinical report on pgs. 658.

Furthermore, as to assess the defendant's personality and his socio-economic conditions, the social report herein was found relevant together with the testimony of the witnesses João Paulo Cardoso and Patricia Kok da Silva, heard during this trial.

As *per* the criminal records, the Court took into account the defendant's respective criminal certificate.

The forensic-psychiatric report herein (pgs. 969 to 971) was of the utmost relevancy as to learn of the defendant's mental capacity, as well as the psychological report (pgs. 1047 to 1050), which allowed the Court to determine the exact limits to his impairment and its influence on his conducts. These reports having, thus, been the starting point towards building the criminal sentence's legal grounds by this Court.

The deposition of Dr. Pedro Alves, the defendant's psychologist, was likewise taken into account interrelatedly.

As *per* the compensation claim by the Hospitals of the University of Coimbra, the Court took into account the invoices on pgs. 737 to 749.

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About the facts found not proven, namely the offended' surgical needs, that resulted out of the lack of evidence contemporary to the trial, as the plaintiff herself mentioned that she was unaware of another surgical intervention being required, rather she was waiting for an assessment; therefore the clinical information of pages 461 of the records shall hereby be found outdated.

Regarding every other fact found not proven, there was no reliable and consistent evidence, neither by testimony nor documents, which could lead this Panel Court as to sustaining a different understanding, those facts being therefore found not proven.

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LEGAL REASONING

Given the proven facts set out herein, its legal qualification is now required to find the defendant criminally liable.

The defendant was indicted as a material author of two concurrent separate crimes:

- **one count of attempted aggravated homicide**, p. and p. [provisioned and punishable] under articles 22, 23, 131 and 132(2) (l), all of the P.C. [Penal Code].
- **one count of illicit recordings** p. and p. under art. 199(1). a) of the P.C.

Regarding the crime of aggravated homicide:

As provisioned under article 131 of the Penal Code, whoever kills another person commits homicide.

The protected legal interest within that provision is obviously human life, its objective element consisting in killing another person; as for the subjective element of homicide, *mens rea* is required in any of the types provisioned under article 14 of the Penal Code — direct, necessary or eventual *mens rea*.

Article 132 of the referred code aggravates homicide "If death is produced in circumstances that reveal particular blameworthiness or wickedness" 132(1) — therein being listed under 132(2), the circumstances, "among others", which are likely to reveal that special blameworthiness or wickedness.

(2) - It is likely to reveal special blameworthiness or wickedness referred to in the previous paragraph, among others, the circumstance of the agent:

(...)

(1) "Practising the fact against a (...) teacher (...) during the exercise of their duties or because of them";

(...)

Only the relevant aggravating circumstance to this case is hereby transcribed.

About article 132, Prof. Jorge de Figuciredo Dias wrote (in *Comentário Conimbricense ao Código Penal*, pages 25, Tomo 1) that "the Portuguese lawmaker of 1982 was driven through a single, and even original, method as far as aggravated homicide is concerned" (...): "by combining a general criterion, which determines a special type of guilt, with the so-called technique of standard examples" (...) "In other words, the aggravation results of the verification of an aggravated type of guilt, based upon an extensive general clause built with resource to undetermined concepts: "a special blameworthiness or wickedness" of the agent referred in (1); that verification following the circumstances or elements either related to the fact or the agent, as set out in (2). Therefore, not only the verification of these elements is not enough to account for the type of guilt and consequent aggravation; but also the lack of verification does not prevent other elements substantially analogue (the word "analogue" should not be feared) to those entailing the aggravating type of guilt. Consequently, the type of guilt takes for granted the elements of the guiding type" (...) "which result of an overall aggravated image of the fact, corresponding to the special content of the guilt as *per* article 132(2)" (...)

"About article 132 no other doctrine than that above referred to can otherwise be advocated as to finding the constitutive elements of the guilt" (...). It is true "that many of the elements set out in article 132(2), *a se*, do not interfere directly with an unworthy attitude of the agent, but rather with a greater unworthiness of his action or conduct, with the way the offense is committed. Notwithstanding these situations, however, it is not the unworthiness of the conduct that determines the aggravation, but rather an increasingly unworthy attitude: the special blameworthiness or wickedness of the agent, that is, the special type of guilt within aggravated homicide. This is the reason why there are circumstances where those elements are present and yet the aggravation ends being discharged. All of this taken into full account, there are no objections as to advocating that the aggravation of the guilt is always based upon (or necessarily reflected in) a corresponding aggravation (gradual — quantitative) of the offense's content."

The special type of guilt within aggravated homicide is verified through the special blameworthiness or wickedness of the agent.

Teresa Serra, in *Homicídio Qualificado*, Almedina, 1990, page 63, states that "*It is widely understood that the decision whether death was caused in circumstances likely to reveal the agent's special blameworthiness or wickedness, requires a global ponderation of the external and internal circumstances concurring to the specific fact*", when referring to the need of an overall analysis of the circumstances in relation with both the fact and the author in the actual case, pages 56, 105 and 106.

In regard of point (1) of article 132(2) of the Penal Code, homicide against public or private "authorities", such as a teacher of a private school during the exercise of their duties or because of them, reveals an attitude of special contempt against the victim's duties (Paulo Pinto de Albuquerque, in *Comentário do Código Penal*, p. 405, 2^a ed.).

Pursuant to article 22(1) of the Penal Code, "attempt exists when the agent performs acts for the execution of a crime he has decided to perpetrate, which he failed to consummate".

Under the terms of point (2) of the cited article execution acts comprise:

- "a) Those that fulfil a constituent element of a type of crime;
- b) Those that are proper to produce a typical result; or
- c) Those that, according to common experience and excepting unexpected circumstances, are of a nature as being expected to be followed by acts of the types named in the previous paragraphs."

Given that the objective type of both aggravated and simple homicide are the same, there is nothing to add in regard of the necessary classification of the attempt acts as execution acts, pursuant to article 22, nor regarding its innate *mens rea*— as *per* Professor Figueiredo Dias (pages 43 *op. cit.*). "Rather the question is whether or not — taken the overall facts as the agent represented it — the execution acts reveal a special blameworthiness of the agent. If the answer is positive, then he shall be punished of attempted aggravated homicide; if it is otherwise negative, of attempted homicide".

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Given the above said and the facts already set out herein, we must now verify if the defendant is to be found guilty, as author, of attempted aggravated homicide.

As *per* the facts set out herein, the defendant although suffering from an autism spectrum disorder, is not mentally impaired as *per* the concept's strict and more precise sense. Such a condition does not prevent him, nor did at the time of the events, of evaluating his lawful or unlawful conduct or otherwise determining himself; therefore, in as far as forensic psychiatry is concerned there are no grounds as to his imputability resulting diminished or excluded.

However according to the international classification of diseases-10 (ICD-10) Asperger Syndrome is a disorder characterized by the same qualitative abnormalities of reciprocal social interaction featured within autism, together with a restricted, stereotyped, repetitive repertoire of interests and activities. It differs from autism primarily in the fact that there is no general delay or retardation in language or in cognitive development. Psychotic episodes occasionally occur in early adult life.

On the level of personality development, significant situational pressures can be pointed out; his control ability and tolerance to stress being thus compromised, as well as his ability to process new information. Problems regarding ideation and emotional control give place to impulsive behaviours, especially in situations perceived as poorly structured.

There are significant issues on the level of cognitive and emotional structuration, which seriously prevent him from organising and managing situations in a balanced way, with substantial consequences on his behaviour. To deal with these issues, it is of the utmost importance that he can be monitored on a weekly basis through psychotherapy and cognitive/neuropsychological (re)education.

At the time of the events, the defendant was capable of understanding the unworthiness of his conduct. However, that unworthiness may vary according to the type and modes of executing the fact, this being a base towards the measurement of unlawfulness, thereby affecting the measure of the penalty.

The report does not declare the defendant non-imputable. The defendant's disease, "Asperger Syndrome" does not affect him at the conscience level, nor at the level of understanding the seriousness of the facts nor its unworthiness.

However, the defendant shows "significant issues on the level of cognitive and emotional structuration, which seriously prevent him from organising and managing situations in a balanced way, with substantial consequences on his behaviour", showing greater vulnerability to lose control and perceive reality as it is, hence his mitigated culpability.

Therefore, given that aggravated homicide assumes a special aggravated type of guilt and that imputability accounts for the agent's ability, at the time of the practice of the fact, to evaluate his lawfulness and determine himself accordingly, the significant issues on the level of cognitive and emotional structuration shown by the defendant are one of the circumstances preventing the special blameworthiness or wickedness required to aggravate homicide, hence discharging him of the circumstances under point (2) of that legal provision.

This being the reason to dismiss the special blameworthiness or wickedness, thus preventing this Court of analysing the standard examples the defendant has been charged of herein.

It is therefore found that the defendant's proven conduct does not entail special blameworthiness or wickedness, it being accountable under the crime of [simple] homicide, p. p. under article 131 of the P.C.

The defendant acted with direct *mens rea*.

Given all the above mentioned, and despite finding the defendant's conduct not especially blameworthy, he is hereby found guilty as a material author of one count of attempted homicide under article 131 of the Penal Code, against the offended Maria Filomena.

And because the (attempted) homicide's *mens rea* is hereby found proven, the criminal count of assault to which the defendant has pleaded guilty shall be discharged.

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Regarding the crime of illicit recordings

Article 199

Recordings and illicit pictures

1 - Whoever without consent:

(a) Records words uttered by someone else and not intended for the public, despite being addressed at; or
(...)

shall be punishable with a prison term up to 1 year or with a fine of up to 240 days.

The article entails two different types of offenses: illicit recordings and illicit photographing and filming. The former protects the right to speak and the latter the right to image. These legal assets, although privacy related, are not to be mistaken for it. Therefore, word and image are protected despite not concerning the privacy of the offended (Paulo Pinto de Albuquerque, in *Comentário do Cód. Penal*, p. 614, 2ª ed.).

On the other hand, the protection given to words is wider than that of image, because the former requires the consent of the speaker, whereas the latter only protects the will of the offended when it is not contradicted (*op. cit.*, p. 614).

The offenses of illicit recordings and photographing entail damage (*as per* the degree of injury caused onto the legal interest) as well as mere activity (*as per* the type of execution against the object of the action) (*op. cit.*, p. 614).

The objective type of illicit recordings consists in recording, through a technical device, the words uttered by another person, and not intended to the public, even though those words are directed at the agent; or, furthermore, it entails the use or the authorisation to use those recordings by a third party (*op. cit.*, p. 614).

The type only protects the words uttered by another person. Unspoken words or verbal communication not put in words are irrelevant. The content of the uttered words is also irrelevant as to making sense of a logic speech or a personal thought of the speaker, and if those words are clear to the understanding of the agent. It is furthermore irrelevant the way in which the word is uttered (Paulo Pinto de Albuquerque. P. 614)

Words not intended to the public are words that according to its author are uttered towards a determined and restricted group of listeners, such as those in a private or restricted access meeting, in a classroom, in a job interview, or in a conversation between friends on the street or in public transports. On the other hand, words are intended to the public when uttered in a public meeting, even though an entrance fee is required. Words uttered through a radio system broadcasted in an open frequency are also public.

The recordings made by the speaker himself is atypical. The recordings made by one of the interlocutors without the consent of the other is otherwise typical (op. cit. p. 615).

About the type of subjective offense, any form of *mens rea* may apply, whether direct, necessary or eventual *mens rea* (following Paulo Pinto Albuquerque, in *Comentário do Código Penal*, p. 616(2ª ed.)).

In this case it was found proven that on January the 20th, 2015, in pursuit of investigations relating to the proper clarification of the facts, at the premises of P.J. [Criminal Investigation Police] - Board of Coimbra, Inspector Sandra Roxo proceeded with the defendant's additional interrogation, during which she realised the accused was recording the interrogation. A switched on "TOSHIBA" tablet, model AT300SE, with an active application for recording was found in his possession and thereby seized. As a result of the forensic examination conducted on the above mentioned tablet, thereby seized from the defendant, an audio file was identified matching the recording of the additional interrogation the accused was being subject to.

Lastly, the defendant recorded the interrogation he was being subject to without authorisation and against the will of the inspector who carried it, knowing not only was she unaware that her words were being recorded, but also that the content of the investigation was not intended for the public; and moreover that the investigation was under the secrecy of legal proceedings. In fact, the defendant did not inform he was recording the interrogation, nor did he request the required authorisation to do so, and therefore he was aware that such conduct was unlawful.

As for the defendant's assumption of his recordings being allowed due to that conduct being held licit in Ireland, it shall be noted that the defendant is living in Portugal since 2008, having been assisted by counsel throughout the case and therefore being aware not only of his rights and duties, but also of the secrecy of the legal proceedings during the stage of the police interrogation.

In face of the circumstances above described, a "normal" individual aware of both ethical and social standards would feel compelled to seek information from the police authorities conducting the interrogation – since he was facing a foreign legal system on his eventual punishment according to the Portuguese law, the defendant's conduct being therefore unworthy.

Terms under which, as *per* the facts set out herein, both the objective and subjective elements within the offense of illicit recordings are hereby found proven, p. and p. under article 199(1)(a) of the Penal Code.

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REGARDING THE PENALTY MEASURE

The legal qualification of the defendant's conduct having been made, the nature and the measure of the criminal penalty applicable onto the defendant must be determined.

First, we must determine the legal framework corresponding to each of the criminal offenses sentenced onto the defendant.

Homicide is punished with a penalty of **8 to 16 years imprisonment (article 131 of the Penal Code)**.

According to article 23 of the Penal Code the attempt is punishable with the penalty applicable to the consummated crime, specially mitigated, as *per* the special mitigation terms set out under article 73 of the same Code, as follows:

" 1- Whenever the special mitigation of the penalty takes place, the following occurs relatively to the limits of the applicable penalty:

- a) The maximum limit of the imprisonment penalty is reduced by one third;
- b) The minimum limit of the imprisonment penalty is reduced to one fifth if it is equal or superior to 3 years, and to the legal minimum if it is inferior;
- c) The maximum limit of the fine penalty is reduced by one third and the minimum limit to the legal minimum;
- d) If the maximum limit of the imprisonment penalty is not superior to 3 years, it may be replaced by a fine, inside the general limits.

2- The specially mitigated penalty that has been concretely fixed is susceptible of replacement in general terms, including suspension."

Considering this case, the abstract penal framework for attempted homicide ranges from **1 year 7 months and 6 days to 10 years and 8 months imprisonment**.

As for the crime under article 199 of the Penal Code, it is punished with imprisonment **ranging from 1 month up to a year or a fine ranging between 10 to 240 days**.

As stated under article 70 of the Penal Code, and as it so happens with one of the criminal offenses herein, if custodial and non-custodial penalties are alternatively applicable to the crime, the Court prefers the second whenever the execution of the latter is adequate and sufficient for punishment.

In casu, it is clearly impossible to opt for a fine in regard of illicit recordings (punishable alternatively with a fine), considering that the defendant, besides that criminal offense has committed an attempted homicide, therefore raising both general and special prevention needs.

Imprisonment is hereby found adequate.

Pursuant to article 40(1) of the Penal Code, the application of a penalty aims at the protection of legal assets and the agent's reintegration in the society, provided that the penalty should in no case exceed the extent of the guilt. This clearly reflects the principle of the guilt, according to which there is no penalty without guilt, this latter determining the measure of the former, as its maximum limit (articles 1, 13(1) and 25(1) of CRP [the Portuguese Constitution]).

Consequently, the penalty shall be determined (within the statutory minimum and maximum limits) through legal criteria, such as, firstly, the agent's guilt, which determines the maximum limit of the penalty; secondly (at the same level) the prevention needs, special and general (the so-called freedom margin) (Judgement of the STJ, 5/24/95, CJSTJ, T.II, p. 210 and Judgement of the Higher Court of Coimbra, 1/17/96, CJ, T. I, p.40). The penalty's minimum limit shall be given by the need to protect the legal assets, in view of the actual case, it ultimately being determined by the socialisation's special prevention (cf. Ac. STJ, 24/5/95, CJSTJ, T.II, p.210).

As per the Judgement of STJ as of 04.01.98, "When the community's expectations are broken, the confidence on legal rules tends to fade away, as the dissuader element becomes but a mirage if the penalty measure is not rigorously determined as to protect the legal assets and the agent's reintegration into society, according to his guilt's limit".

Unlawfulness and guilt are thus measurable concepts taken as offenses' elements. This meaning, among others, that the damage's intensity, the fact's execution, the disturbance of the legal peace, overall give shape to the degree of unlawfulness. The measurement of the legal violation is taken by the magnitude of the damage, both the material and psychic consequences of the offense being weighed, either as attenuating or aggravating. Furthermore, the degree to which the legal asset is put in danger shall also be considered, not only in attempted offenses but also regarding the crimes of danger. The execution of the offense also affects the measurement of the legal violation. The intent, or the effort put on the committal of the offense moreover entail a subjective element of the execution of the fact, thus contributing to its individualisation (see Jeschck, Tratado de Direito Penal, Spanish ed., page 780).

The legally relevant guilt within criminal law does not account for a «*se* guilt», but rather «a censorship directed at the agent in view of an unworthy conduct documented through a certain fact, hence, a specific type of offense» (Jorge de Figuciredo Dias, in *Direito Penal*, II, 2005, page 239).

Such an understanding does not prevent the judge from resorting to factors unrelated to the fact (*strictu sensu*), yet unarguably necessary towards a correct determination of the penalty measure, namely, those concerning the agent's personality and all the remainder pursuant to article 71(2) of the Penal Code. However, the guilt judgement is always a judgement as to the unworthiness of the agent in face of his behaviour in a certain event, this being the committal of the typical offense (see Judgement of the Higher Court of Coimbra, 1/17/96, CJ, T. I, p.40).

Given these considerations, the following circumstances should be considered herein:

- The defendant admitted in essence the objective facts.
- The defendant used a hatchet to commit the homicide.
- The place where the events took place.
- That the reason behind the practice of the facts is unlawful (to punish the offended to make her feel remorseful).
- The lack of protection of the offended, not related in any way to the defendant because she was not his PhD supervisor.
- The physical injuries caused to the victim and its respective time of recovery.
- The defendant's personality as *per* the proven facts is a matter of concern, because his behaviours resulting of temporary lose control require special caution as to determine the specific measure of the penalty.
- General prevention needs are furthermore relevant given the community disturbance caused by these type of offenses where the utmost value of life resides. It is imperative that the community can be certain that the violation of the most basic bonds of social relationship is not to be taken lightly but otherwise punished adequately and in such a way as to allow life to be perceived as an untouchable value.

In casu, the general prevention needs are high in view of the crime's seriousness, as the ultimate legal interest (life) is at stake.

In homicide offenses, even though merely attempted, the needs of general positive prevention are intensely felt, because the violation of the fundamental or ultimate legal interest—life—is, as a rule, strongly repudiated by the community.

Consequently, in order to stabilise the community's expectations as to the affirmation of law, a strong reaction of the justice administration system is claimed through a penalty able to restore the legal peace stolen away by the criminal offense and to ensure the community's confidence in the primacy of law (See Judgement of STJ as of 6.21.2012 in www.dgsi.pt).

Regarding the defendant's personal conditions and his conduct before and after the facts, the defendant's criminal record shows no information.

Given all of the above mentioned, it is hereby found proportionate, adequate and sufficient to sentence the defendant to the following penalties:

- **7 (seven) years and 6 (six) months imprisonment** under one count of attempted homicide.

- **3 (three) months imprisonment** under one count of illicit recordings.

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Concurrent crimes:

Pursuant to article 77(1) of the Penal Code "When someone has perpetrated several crimes before the sentence for any of them has become definite, (s)he will be sentenced to a single penalty. For determination of the penalty, the acts and the personality of the agent shall be jointly considered."

Number (2) of cited article states that " The applicable penalty has the sum of the penalties concretely applied to the various crimes as maximum limit, without exceeding 25 years in case of imprisonment and 900 days in case of fine; and as minimum limit the higher of the penalties concretely applied to the various crimes "

In casu, the abstract legal framework regarding the concurrent criminal offenses herein ranges between **7 (seven) years and 6 (six) months to 7(seven) years and 9(nine) months imprisonment**.

In determining the measure of the penalty, the acts and the personality of the agent shall be jointly considered. (article 77(1) of the Penal Code).

In casu, overall, the nature of the offended legal assets, the chronological proximity of the conducts, the defendant's personality evidenced in his conducts must be jointly considered, also echoing the living standards reflected by the defendant's social report.

All of this considered, the Court finds it fair, proportionate and adequate to determine a single penalty of **7(seven) years and 7 (seven) months imprisonment**.

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Regarding the execution of imprisonment:

It was found proven herein that the defendant suffers from Asperger Syndrome: a disorder characterized by the same qualitative abnormalities of reciprocal social interaction featured within autism, together with a restricted, stereotyped, repetitive repertoire of interests and activities, showing significant issues on the level of cognitive and emotional structuration, thus seriously preventing him from organising and managing situations in a balanced way, with substantial consequences on his behaviour. In view of dealing with these issues, it is of the utmost importance that he can be monitored on a weekly basis through psychotherapy and cognitive/neuropsychological (re)education.

Presently, in view of the resocialisation of the defendant, we find it more adequate that his custodial sentence shall be executed through internment in an institution for cure and treatment of non-imputables.

Such internment (which does not require the defendant's consent – as *per* Prof. Paulo Pinto de Albuquerque, “Comentário do Código Penal”, page 307), during the time of the deprivation of liberty hereby determined, shall not, however, prevent the eventual grant of parole under the general terms of criminal law, nor the defendant's placement in a regular prison, for the remainder time, as soon as the decisive motive for internment ceases (article 104(2) P.C.); Furthermore, there shall be a compulsory revision of the internee situation pursuant to article 93(1)(2) (*ex vi* article 107 P.C.)

Given all the above, and pursuant to article 104(1) P.C., the defendant's internment is hereby ordered in an institution (of specific psychiatric nature) for non-imputables, during the length of the penalty of **7 (seven) years and 7 (seven) months** imprisonment to which he was sentenced herein (without prejudice to article 104(1)(2) and article 93, this latter *ex vi* article 107, of the P.C.).

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CIVIL CLAIM

Maria Filomena Figueiredo claimed a civil compensation, seeking from both the defendant and the University of Coimbra the joint and several liability of EUR100.000,00 as *per* moral damages, plus interest at the legal rate, calculated on the amounts referred to since summons and up to full payment.

She has furthermore petitioned the estimated costs with the surgical intervention(s) required to overcome (or at least mitigate) injuries caused by the defendant's criminal conduct to be relegated for settlement within the final ruling's execution, as well as an adequate compensation for financial damage (due to the pain suffered in relation with the convalescence and recovery period) that shall also be paid by both the defendant and the University of Coimbra.

Pursuant to article 71 of the Criminal Procedure Code, the civil claim lodged within a criminal case must be based upon a criminal offense.

Article 129 of the Penal Code states that "the compensation for damages resulting from crime is ruled by civil law."; this meaning that, in principle, liability within a criminal case results of a criminally typical fact unlawful and culpable.

Within criminal proceedings, the relevant damage compensation must be based upon a criminal offense, contractual liability thus being excluded. This being pursuant to article 71 of the Criminal Procedure Code (as decided by judgement no. 7/99, published on DR-I as of the 3rd of August 1999).

Pursuant to article 483 of the Civil Code "whoever, with *mens rea* or recklessly, unlawfully violates another person's right or a provision meant to protect others' interests, shall be due to compensate the offended for the inflicted damages"; therefore the duty to compensate requires the cumulative verification of the following: a voluntary unlawful fact, that is, harmful to personal or financial legal assets; a causal subjective link between that fact and the offender, either with *mens rea* or recklessly; damages; and a causal link between the fact and the damages.

The plaintiff Maria Filomena furthermore claims a compensation from the University of Coimbra, invoking its liability for the control access to the department where the offended was; that the events herein could have been prevented if unauthorised persons' access control did exist, the University of Coimbra having acted recklessly and thereby having concurred, by omission, to the events referred herein.

Pursuant to article 73 of the Criminal Procedure Code:

"1-The civil claim may be lodged against people with sole civil liability, them being allowed to participate voluntarily in the criminal proceedings."

(...)

This provision determines the legitimacy of non-subjects within the criminal proceedings. The civil claim may be lodged against people with sole civil liability, meaning that they might be accountable for damage caused to the offended and resulting of the fact entailing the criminal offense.

The civil action's grounds are "(...) the same facts underlying the criminal liability of the defendant." – Judgement of STJ as of 12-10-2008, case no 08P3638.

The facts within civil liability must be the same as those underlying the criminal liability. The accountable subjects may however be different.

In casu, the University of Coimbra is not criminally liable.

On the other hand, civil liability shall be pursuant to a law which was not invoked, nor did it derive from the Articles of Association of the Faculty of Sciences and Technology at the University of Coimbra (DR. II série, no. 110 as of 6/8/2009), not even from the Articles of Association of the University of Coimbra itself (DR. II série, no. 168 as of 9/1/2008).

The plaintiff holds as grounds for her claim the liability of the University of Coimbra, the duty as to ensure security conditions having been breached; there is not, however, any causal link between the University's conduct of invoked omission and the sought damages.

The civil claim against the University of Coimbra is therefore found legally inadmissible and thereby it shall be dismissed.

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In view of this case, given the proven facts herein and besides finding the defendant guilty of attempted homicide on grounds of a typical, unlawful and culpable conduct, this Court shall also find his conduct unlawful and culpable on civil liability grounds.

The requirements for civil compensation are verified *in casu*, as the plaintiff's personal rights were clearly offended.

Pursuant to article 563 of the Civil Code, the duty to compensate only exists as to damages the victim probably would not have sustained, were it not for the injuring event, covering not only damages provisioned under article 564(1) (inflicted damages), but also the benefits ceased to receive because of the injury; the financial damage being also compensated if serious and worthy of law protection - *vide* article 496(1) of the cited Code.

As *per* Pires de Lima and Antunes Varela (in Código Civil Anotado, Vol 1, pages 499) "The seriousness of the damage shall be appreciated through the light of an objective pattern (although considering the circumstances of the actual case), instead of subjective factors (out of a rather special or elaborated sensitivity).

The type of injury is of moral nature, serious and worthy of law protection and, as such, it shall be compensated, its amount to be determined.

It is however worth noting that the compensation amount, when moral damages are concerned, shall always be calculated on the basis of considerations of equity – namely attending the degree of culpability of the responsible, his financial situation and that of the injured – as well as proportionate to the seriousness of the damages.

As *per* the case law of the [Portuguese] Supreme Court of Justice: "*given that the payment of damages is due to offer the injured a compensation for the harm (s)he has endured, its amount shall be significant and not merely symbolic, the judge having to determine it on the basis of considerations of equity, in view of a fair degree of "compensation"*" (see as an example Judgement of STJ as of 12.18.2007 in www.dgsi.pt/stj).

In casu, the acts conducted by the defendant caused the fear of him acting in similar or even worst ways against the offended; she has been submitted to hospitalisation, having undergone several surgical interventions; she has had need of medical support and medication, as well as psychological monitoring; she is sad, showing fear when strolling on the street, revealing periods of distress, easily tearful, lacking emotional control, with feelings of insecurity and social withdrawal.

An adequate compensation is, therefore, due, in the light of the criteria set out under article 496(3) of the C.C., in view of equity, as *per* the damages caused, the degree of culpability, both his and the offended's financial situation and the overall circumstances relevant to the actual case.

It is hereby found adequate that the actual compensation shall amount to EUR50.000,00 (fifty thousand euros).

Legal interest at the legal rate shall be charged on top of those moral damages.

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As *per* the claim of the plaintiff as to the amount of financial and moral damages being determined within execution of ruling, invoking to the effect she still has not been medically certified and does not know how many surgical interventions will still be required; and that she will endure pain, furthermore being unaware of the respective expenses and inflicted damages. Given that the eventually required surgical interventions were found not proven and because it is not certain that her clinical situation will deteriorate, this being a future unpredictable damage, the claim shall be necessarily dismissed on this account.

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Civil Claim by the Hospitals of the University of Coimbra EPE:

As *per* the Civil Claim by the Hospitals of the University of Coimbra EPE, article 495(2) of the C.C. states that in case of physical injury, those who assisted the injured are entitled to compensation, as well as hospitals, physicians or other entities that provided treatment or assistance to the victim.

On this case, the injuries of the offended Maria Filomena Figueiredo, were a result of the unlawful, culpable and harmful conduct of the defendant, the plaintiff Hospital thus being entitled to the expenses with the assistance she was provided with, i.e., 5.482,10€.

The civil claim thus proceeds against the defendant.

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On top of moral damages, interest at the legal rate shall be paid, pursuant to articles 804, 805(1) e 806(1) of the Civil Code (vide article 559(1) of the Civil Code), since civil claim having been summoned to the defendant and until payment in full.

Regarding the amount as to compensate for moral damages, legal interest shall only be due as of this judgement.

Given that the criterion to determine compensation for moral damages must be referred to the present moment, legal interest shall be due as of the present date — in this sense see fixed case law following judgement no. 4/2002, of the Supreme Court of Justice, published on *Diário da República* as of 27th June 2002: "Whenever the pecuniary compensation due for illicit facts or risk is updated under the terms of article 566 of the Civil Code, interest shall be due pursuant to articles 805(3) (restrictively interpreted) and 806(1), also of the Civil Code, since the updating decision, rather than as of summons".

Therefore, legal interest on top of moral damages are only found due as of this judgement.

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The seized hatchet is hereby reported lost in favour of the State pursuant to the terms of article 109(1) of the Penal Code.

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VERDICT

Given all the above, the judges taking part in this Panel Court hereby agree to:

1. Find the defendant **Colin Paul Gloster** not guilty of the count of attempted aggravated homicide p. and p. under articles 22, 23, 131 e 132 (f), all of the Penal Code, acquitting him of this crime.

2. Find the defendant **Colin Paul Gloster** guilty of the count of attempted homicide p. and p. under articles 22, 23, 131 of the Penal Code, sentencing him to **7 (seven) years and 6 (six) months imprisonment**.

3. Find the defendant **Colin Paul Gloster** guilty of the count of illicit recordings p. and p. under article 199(1)(a) of the Penal C., sentencing him to **3 (three) months imprisonment**.

4. Operate the joint sentencing of penalties onto the defendant **Colin Paul Gloster** and sentence him to the sole penalty of **7 (seven) years and 7 (seven) months imprisonment**.

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5. Pursuant to article 104 (1) of the P.C., issue a Hospital order onto the defendant **Colin Paul Gloster** in an institution (of specific psychiatric nature in view of cure, treatment or security) for the mentally ill, throughout the length of the penalty of **7 (seven) years and 7 (seven) months imprisonment** to which he was hereby sentenced to (notwithstanding the provisions under article 104 (2) and article 93 (1) and (2), this latter *ex vi* article 107, of the P.C.

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6. Consider partially admissible the civil claim demanded by the plaintiff **Maria Filomena de Osório Pinto dos Santos Figueiredo** and sentence the defendant **Colin Paul Gloster** to pay her the amount of EUR50.000.00 (fifty thousand euros) as *per* moral damage, plus interest at the legal rate since today and up to payment in full, acquitting the defendant in regard of the remainder therein pleaded for.

7. Acquit the University of Coimbra from the civil claim demanded by the plaintiff **Maria Filomena de Osório Pinto dos Santos**.

8. Consider admissible the civil claim demanded by **the Hospitals of the University of Coimbra EPE** against the defendant **Colin Paul Gloster** and sentence him to pay the amount of EUR5.482.10 (five thousand, four hundred and eighty-two euros and ten cents), plus interest at the legal rate calculated since the summons of the civil claim up to the payment in full.

9. The seized hatchet is hereby reported lost in favour of the State pursuant to the terms of article 109(1) of the Penal Code.

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Find the defendant liable for 4 UCs of Court fees, as well as hold the plaintiff **Maria Filomena de Osório Pinto dos Santos Figueiredo** accountable for the civil claim fees proportionate to her defeat.

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Inform the criminal record authorities as soon as this judgement has become definite.

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Order the translation of this Judgement into English.

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Comply with the terms of article 372(5) of the Criminal Procedure Code.

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Coimbra, the 8th of March 2018