9th January, 1998

Judge:-

The Hon. Vincent DeGaetano LL.D.

The Police

versus

Omissis
Gisela Feuz

Dangerous Drugs Ordinance - Importation

By bringing a drug into Malta, one is "importing" a dangerous drug for the purposes of the Ordinance. Section 22 in this Ordinance is a general section dealing with offences and penalties; this provision distinguishes, for the purposes of punishment, between those offences which it considers the more serious (where the punishment of imprisonment is mandatory and the court cannot apply a punishment below the minimum established by law or otherwise suspend the term of imprisonment, and those which it considers less serious. The former category includes, among others, all acts which consist in "selling or dealing in a drug" contrary to the provisions of the Ordinance in question. Prior to 1986 the law did not provide a definition of the word "dealing" and such term was therefore subject to interpretation. However, by Act VIII of 1986 and, furthermore, by Act VI of 1994, the legislator gave a specific meaning to the word dealing which

included, amongst other things, importation.

The Court:-

Having seen the charges, originally preferred by the Executive Police against Mario Trullini and Gisela Feuz, to wit the charges of having in these Islands, on the 18 of October, 1997: (1) imported or caused to be imported or taken steps preparatory to importing or exporting, a dangerous drug (the whole or any portion of the plant *cannabis*) into Malta in breach of section 15A of Chapter 101; (2) been in possession of the whole or any portion of the plant *cannabis* in breach of section 8 (d) of Chapter 101; the First Court was also requested to make an order in terms of section 533 of the Criminal Code and also to declare the said Trullini and Feuz prohibited immigrants and to make the relative removal order against them in terms of the Immigration Act (Chapter 217);

Having seen the judgement of the Court of Magistrates (Malta) of the 30th October, 1997, whereby that Court acquitted Mario Trullini of all the charges preferred against him, but found Gisela Feuz guilty as charged and sentenced her to six months imprisonment (from which is to be deducted the period spent in preventive custody in connection with this case) and to a fine (*multa*) of two hundred liri (Lm200); that court also declared the said Feuz an illegal immigrant in terms of sections 14 and 15 of Chapter 217 and ordered her removal from these Islands on expiration of punishment; finally that Court also ordered the destruction of the drugs in question;

Having seen the application of appeal filed by the same said Gisela Feuz on the 11th November, 1997 whereby she requested this Court to vary the abovementioned judgement;

Having seen the record of the case and heard counsel for appellant and for the prosecution; considers:

Appellant's grounds of appeal may be restated as follows: although the law states that importation of a dangerous drug into Malta amounts to drug trafficking, the legislator intended that for a person to be convicted of importation it had to be proved "that such importation occurred for trafficking purposes". She contends that the legislator "made an implied distinction between the importation of dangerous drugs for trafficking purposes on the one hand and for personal use on the other". She further contends that for importation to amount to trafficking there must be the intention to traffic in that drug. As a subsidiary argument appellant states that the law in its present state is vague and that there is therefore room for judicial interpretation based on logic. Finally, she contends that the legislator has granted a margin of discretion to the Courts in the sense that the Courts are allowed not to impose imprisonment where the importation of a dangerous drug is for personal use;

What appellant seems to forget, in the flurry of the convoluted language of her appeal application, are the rules of legal hermeneutics, which are themselves based on logic, that is on the discipline of discourse and reasoning. One such rule, a cardinal rule, is that when the law is clear, that is when the legislator has made his intention clear in the statute, the court must apply that law and not try to avoid it or evade its rigours under the pretext of interpretation. Appellant does not contest the fact that she brought with her into Malta a small amount - 5.97 grams - of *cannabis* (incidentally the Court observes that according to Dr. Anthony Abela Medici the *cannabis* in question had come from seeds that had been genetically altered to give an unusually high quantity of tetrahydrocannabinol, fol. 25). Section 2 (1) of the Dangerous Drugs Ordinance (Cap. 101) provides that in the said Ordinance, unless the context otherwise

requires:

""import", with its grammatical variations and cognate expressions, in relation to Malta, means to bring or cause to be brought into Malta in any manner whatsoever";

Section 15A, introduced in 1994 with a view to doing away with the distinction, at least for certain purposes, between "bringing into Malta" and "bringing into Malta in transit", provides as follows:

"(1) No person shall import or export, or cause to be imported or exported, or take any steps preparatory to importing or exporting, any dangerous drug into or from Malta except in pursuance of and in accordance with the provisions of this Ordinance.

(2) For the purposes of this section the words "import" and "export" and their grammatical variations and cognate expressions shall have the meaning assigned to them in subsection (1) of section 2 of this Ordinance";

It is clear, therefore, that by bringing into Malta the *cannabis* in question, however small the amount, appellant was "importing" a dangerous drug for the purposes of the Ordinance. Section 22 of the Ordinance is the general section dealing with offences and penalties. In paragraph (b) of subsection (2) thereof, the law distinguishes, for purposes of punishment, between those offences which it considers the more serious (where, by operation of subsections (8) and (9), the punishment of imprisonment is mandatory and the court cannot apply a punishment below the minimum established by law or otherwise suspend the term of imprisonment) and those which it considers less serious. In the former category are included, among others,

all acts which consist in "selling or dealing in a drug" contrary to the provisions of the Ordinance in question. Now, up till 1986 the law did not provide a definition of the word "dealing", and it was therefore arguable that whenever that word appeared in such expressions as "sells or otherwise deals" in paragraphs (b) and (e) of section 8, it had to be interpreted by applying the *eiusdem generis* rule. By Act VIII of 1986 the legislator gave a separate and specific meaning to the word dealing. Subsection (1B) introduced by the Act provided:

"For the purposes of this Ordinance the word "dealing" includes importation, manufacture, exportation and distribution";

Henceforth, therefore, importation was to be construed as "dealing" for all the purposes of the Ordinance, including punishment. This definition of "dealing" was further expanded by Act VI of 1994. By this Act subsection (1B) was made to read as follows:

"For the purposes of this Ordinance the word "dealing" (with its grammatical variations and cognate expressions) with reference to dealing in drug, includes cultivation, importation, manufacture, exportation, distribution, production, administration, supply, the offer to do any of these acts, and the giving of information intended to lead to the purchase of such a drug contrary to the provisions of this Ordinance";

The import of all this is clear: the legislator wanted to ensure that all these activities would be visited with the more severe punishment provided for in sub-paragraph (i) of paragraph (b) of subsection (2) rather than the less severe punishment in sub-paragraph (ii) (and the same applies in the case of paragraph (b), that is, in the case of a conviction by the

Criminal Court). And there is nothing illogical or absurd in all this, as appellant seems to imply; after all the importation into Malta of even small quantities for one's own use (like the cultivation or the production of a drug for one's own use) increases the risk of the availability of the drug within the community, since no guarantee can be given that the drug thus imported, cultivated or produced will not be shared with others;

The First Court, therefore, correctly applied the law to the resulting facts when it held that the importation of a drug into Malta (against the provisions of the Ordinance) even for the agent's personal use amounts to dealing in that drug. And this interpretation is consonant with that given in several other judgements both of this Court and of the Inferior Courts. Of course, if from all the circumstances of the case, the Court is satisfied that the drug thus imported was for the agent's personal (i.e. exclusive) use, it may adjust the punishment within the parameters allowed by law. The Court finally observes that appellant should reasonably have suspected that by importing the drug into Malta she was committing a criminal offence since, as she admits both in her statement to the police (fol. 13) and in her evidence (fol. 51) *cannabis* is illegal, even if tolerated, in her country. Moreover, as she admits in her evidence, she was prepared to share the *cannabis* with her travelling partner, Mario Trullini. If any criticism can be levelled at the First Court's judgement, it is that the punishment was too lenient;

For these reasons the Court dismisses the appeal and confirms the judgement of the First Court.