



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

MAGISTRATE NATASHA GALEA SCIBERRAS B.A., LL.D.

Case Number: 168/2016

Today, 4th August 2016

**The Police
(Inspectors Gabriel Micallef and
Frank Anthony Tabone)**

vs

Sisto Akaouch

The Court,

After having seen the charges brought against the accused Sisto Akaouch, 25 years, son of Sisto and Martina nee` Corleonesi, born in Germany on 30th August 1990, with no fixed address in Malta, with no official documents;

Charged with having on 16th July 2016 and in the previous days before this date in the Maltese Islands:

- a. Produced, sold or otherwise dealt with the whole or any portion of the plant cannabis in terms of Section 8(e) of Chapter 101 of the Laws of Malta;
- b. Produced, sold or otherwise dealt in the resin obtained from the plant cannabis or any preparation of which such resin formed the base, in terms of Section 8(b) of Chapter 101 of the Laws of Malta;

- c. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
- d. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant cannabis, or any other preparation of which such resin formed the base, in terms of Section 8(a) of Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
- e. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta;
- f. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant cannabis, or any other preparation of which such resin formed the base, in terms of Section 8(a) of Chapter 101 of the Laws of Malta;
- g. Committed these offences in, or within 100 metres of the perimeter of a school, youth club or centre, or such other place where young people habitually meet in breach of Article 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

The Court was requested to apply Section 533(1) of Chapter 9 of the Laws of Malta as regards the expenses incurred by court appointed experts.

Having seen the records of the case, including the order of the Attorney General in virtue of subsection two (2) of Section 22 of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), for this case to heard by this Court as a Court of Criminal Judicature;

Having heard the accused plead guilty to the charges brought against him during the sitting held on 29th July 2016, which guilty plea he confirmed even after the Court, in terms of Section 453(1) of Chapter 9 of the Laws of Malta, warned him of the legal consequences thereof and allowed him sufficient time to reconsider his reply and retract it;

Having heard the parties' oral submissions regarding the punishment to be inflicted.

Considered that:

In view of the guilty plea filed by the accused, the Court cannot but find him guilty of the charges brought against him.

For the purpose of the punishment to be inflicted, the Court took into consideration the early guilty plea filed by the accused and that he cooperated with the police during its investigation.

The Court also took into consideration the serious nature of the charges brought against the accused and that the motive provided by him for dealing in drugs – namely, that he has to provide a monthly maintenance of €600 to his child - certainly cannot be deemed as a justification to mitigate the punishment to be inflicted. The Court also took into account that although the amount of drugs found in possession of and attributed to the accused was not substantial, yet neither can it be considered as negligible.¹

Furthermore, the Court took into account that although the criminal record of the accused has not been exhibited by the Prosecution, yet in his statement the accused stated that he fled the British authorities and absconded to Malta after being convicted to “*a three year suspended sentence, community services and compensation and ... a three year ban from driving and 585 hours community service*”.²

For the purpose of the punishment to be inflicted, the Court applied the provisions of Section 17(h) of Chapter 9 of the Laws of Malta with respect to the offences contemplated in charges (a) and (c) on the one hand, and with respect to the offences contemplated in charges (b) and (d) on the other hand. The Court also deemed the offence of simple possession in charge (e) as being comprised in the offence in charge (c) and the offence of simple possession in charge (f) as being comprised in the offence contemplated in charge (d). Furthermore, the Court applied the provisions of Sections 17(b) and (f) of Chapter 9 and the increase in punishment contemplated in the second proviso to Section 22(2) of Chapter 101 of the Laws of Malta with respect to the offences in charges (a) and (b).

¹ In his deposition, Inspector Frank Anthony Tabone stated that the cannabis grass weighed circa 3 grams, whilst the cannabis resin weighed circa 10.948 grams.

² *Vide* statement of accused.

Conclusion

For these reasons, the Court after having seen Sections 8(a), 8(b), 8(d), 8(e), 22(1)(a), 22(2)(b)(i) and (ii) and the second proviso to Section 22(2) of Chapter 101 of the Laws of Malta, Regulations 4 and 9 of Subsidiary Legislation 101.02 and Sections 17(b), (f) and (h) and 31 of Chapter 9 of the Laws of Malta, finds the accused guilty of the charges brought against him and condemns him to a term of **twelve (12) months effective imprisonment** – from which term one must deduct the period of time, prior to this judgement, during which the person sentenced has been kept in preventive custody in connection with the offences in respect of which he is being found guilty by means of this judgement – and **a fine (multa) of nine hundred and fifty Euro (€950)**.

Since no experts were appointed in the course of these proceedings, the Court is not taking any further note of the prosecution's request to condemn the person sentenced in terms of Section 533 of Chapter 9 of the Laws of Malta.

Furthermore, since the prosecution has declared that the substances exhibited in this case as Documents FT and FT1, are required by said prosecution to be exhibited in separate proceedings, the Court is not ordering the destruction thereof.

Finally, since it has not been proved that the mobile phone exhibited as Document FT4 has been utilised in the commission of the offences of which the person sentenced is here being found guilty and indeed no request was made for the Court to appoint an expert in order to download the content of the said phone, the Court orders the release of the mentioned phone in favour of Sisto Akaouch.

Natasha Galea Sciberras
Magistrate