



COURT OF CRIMINAL APPEAL

JUDGE

The Hon. Dr. Antonio Mizzi LL.D., Mag. Juris (Eu Law)

Appeal no. 2/2014

**The Police
(Inspector Dennis Theuma)**

Vs

Mihaita Emil Grigoras

son of Igorgu, born Galatai, Romaina, on the 14th February, 1982, holder of Romanian identity card number GL548660

This, twenty-fifth day of April, 2017

The Court,

Having seen the charges brought against the appellat Mihaita Emil Grigoras before the Court of Magistrates (Malta) :

On the Maltese Islands, on the 21st October 2012 and in the preceding weeks:

1. Conspired with another one or more persons on these Islands, or outside Malta, for the purpose of selling or dealing on these Islands the dangerous drug (Cocaine) in breach of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, or financed such conspiracy for the importation of the dangerous

drug (heroin) in breach of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

2. Having imported or caused to be imported, or took steps preparatory to import the dangerous drug (Cocaine) in Malta, in breach of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

3. Having had in his possession the drug (Cocaine) specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292 of 1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drug was supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (G.N. 292 of 1939), as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, which drug was found under the circumstances denoting that it was not for his personal use.

In case of guilt, the Court was requested to apply the provisions of section 533 of the Criminal Code.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 10th December, 2013, by which, the Court, besides the early admission entered by the accused at the early stage of the examination, the Court has no difficulty to find accused guilty as charged after having seen 4th Part of the Medical and Kindred Ordinance, Chapter 101 of the Laws of Malta, sections 22(1)(f), 22(1A), 22(1B), 22(2)(b), Chapter 101 of the Laws of Malta.

With regards to the punishment to be meted out the Court condemned the accused Mihaita Emil Grigoras to an effective term of imprisonment of 3 and a half years(3½) and to the payment of a fine of five thousand Euros (€5,000), this after considering the

amount of cocaine carried by him – 211.21 grams, and its value - €16,897 and the damage that such amount could have caused to our society.

Having seen section 533 of Chapter 9 of the Laws of Malta condemned the accused to the payment of all the expert expenses incurred to the amount of €1,496.83.

Having seen the application of Attorney General filed on the 2nd January, 2014, wherein they humbly pray this Court to reform the decision being appealed by confirming that part wherein the Court found the accused guilty of the charges brought against him and by varying the punishment by imposing a more proportionate and adequate punishment according to the merits of this case and in view of the case-law cited.

That the grounds of appeal of Attorney General consist of the following:

That the Commissioner of Police declared his intention to appeal on the 17th December 2013. The Attorney General received the records of these proceedings and felt aggrieved by the aforesaid judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature. The Attorney General is by means of the present application appealing from the said judgment on the basis, *inter alia*, of section 413(1)(c) of the Criminal Code, and this due to the fact, that in the humble opinion of the Attorney General, the Court did not impose a proportionate punishment in this case when taking into account the serious offences with which the accused was convicted of.

That the reason due to which the appellant Attorney General feels aggrieved by the aforesaid judgement of the Court of Magistrates (Malta) abovementioned is clear and manifest and consists in the fact that **the punishment imposed on the accused is not proportionate to the offences he was convicted of.**

That, the Attorney General is aware of the constant jurisprudence stating that if a Court could have reached its final decision in a reasonable manner, then such decision should not be overturned. However, in this particular case it is felt that the punishment imposed was grossly disproportionate and unjust when taking into account the seriousness of the offences in question.

That the accused was found guilty of conspiracy, importation and aggravated possession of 211.21 grams of cocaine and therefore there should be no doubt that such offences are serious ones. One must remember that such offences are some of the commonest methods by virtue of which dangerous drugs are imported to Malta and that the people involved in such offences make a considerable amount of profit, all to the detriment of drug-abuse victims. Thus the punishment imposed in such cases *must* reflect the gravity of such offences, as has been done by our Courts in the past years, as will be illustrated as follows:

That, in the case of “**Ir-Repubblika ta’ Malta kontra Christian Grech**”¹, the accused was charged with conspiracy and aggravated possession of *200 grams* of cocaine. Following a plea-bargaining exercise, Christian Grech admitted to the charges brought against him and was condemned to a term of **imprisonment of eight years together with a fine multa of €23,000.**

A similar case is that of “**Ir-Repubblika ta’ Malta vs Candelaria Vasques Carvajal**”², wherein the accused was charged with conspiracy, importation and aggravated possession of *254.9 grams* of cocaine. Following a plea-bargaining exercise, Candelaria Vasques Carvajal admitted to the charges brought against him and was condemned to a term of **imprisonment of seven years together with a fine (multa) of €16,300.**

That, another case which however involved a lower amount of drugs, even lower than the amount present in this case, is that of “**Ir-Repubblika ta’ Malta vs Sofiya Georgieva**”³, where the accused was charged with conspiracy, importation and aggravated possession of *185.05 grams* of cocaine. Following a plea-bargaining exercise, Sofiya Georgieva admitted to the charges brought against her and was condemned to a term of **imprisonment of six years together with a fine (multa) of €15,000.**

¹ 10th October, 2012, Criminal Court, presided by the Hon. Mr. Justice Michael Mallia.

² 21st March 2011, Criminal Court, presided by the Hon. Mr. Justice Lawrence Quintano.

³ 24th October 2011, Criminal Court, presided by the Hon. Mr. Justice Lawrence Quintano.

That, furthermore, in the case of “**The Republic of Malta v. Yahye Ceesay**”⁴, the accused was charged with conspiracy, importation and aggravated possession of **227 grams** of cocaine. The accused in this case pleaded guilty to the charges brought against him and was served with a term of **imprisonment of ten years together with a fine (multa) of €20,000.**

That, lastly, in the case of “**The Republic of Malta vs. Mike Diala**”⁵, the accused was charged with conspiracy, supply and aggravated possession of **30.88 grams** of cocaine. The accused, in this case, pleaded guilty to the charges brought against him and was served with a term of **imprisonment of seven years together with a fine (multa) of €20,000.**

That, therefore, as can be seen from the case-law above cited, the punishment inflicted in recent years for offences similar to the ones in this case are a far cry from the punishment actually inflicted in this case, and, moreover, in all cases such term of imprisonment was accompanied by a hefty fine. Thus, it appears quite clearly that the punishment inflicted in this case, that of three and a half years and a €5,000 fine, was manifestly unjust and well below the parameters that are usually inflicted by the Courts in similar circumstances, thus rendering it a grossly disproportionate punishment when compared to the offences of which the accused was convicted of.

Having seen the records of the case.

Having seen the updated conviction sheet of the defendant.

Now therefore duly considers,

The appeal of the Attorney General is limited to the fact that the punishment imposed by the Court of Magistrates is not proportionate to the offences of which he was convicted. The Attorney General concedes that if the first Court could have reached its final decision in a reasonable manner than it is not up to this Court to overturn such judgement. It has

⁴ 23rd February 2010, Criminal Court, presided by His Honour The Chief Justice Vincent De Gaetano.

⁵ 18th October 2010, Criminal Court, presided by the Hon. Mr. Justice Michael Mallia.

to be pointed out that on the 7th October, 2013, the Attorney General filed in the first Court a counter order indicating that the Court of Magistrates is to decide this case as a Court of Criminal Judicature. He could have decided that this case ought to have been tried by a trial by jury. The Attorney General chose the first option. The effect of this is that the maximum penalty which can be applied by law is far less severe than had he opted for a trial by jury. As a matter of fact all the judgements quoted by the Attorney General in his application of appeal refer to judgements decided by the Criminal Court.

The first Court decided this case in full respect of the law. One can argue that the Court was lenient in its approach to punishing the accused. However, it gave its reasons and the punishment meted out is according to the parameters laid down in the law. There is no need to add any further comments as they would be superfluous.

Consequently, for these reasons this Court does not uphold the appeal filed by the Attorney and confirms in its entirety the judgement of the first Court.