



The Republic of Malta

Criminal Court

Hon. Madame Justice Dr. Edwina Grima LL.D.

Admission Nr: 6/2017

The Republic of Malta

Vs

Carine Rose-Marijke Donckers

Johnny Jos Haest

Today the 8th November, 2017,

The Court,

Having seen the charges brought against Carine Rose-Marijke Donckers holder of Belgian Identity Card number 592-1332074-54 and Johnny Jos Haest holder of Belgian Identity Card number 592-1332059-39, accused in front of the Court of Magistrates (Malta) of having:

On the 18th June, 2017 and/or in the previous months in these islands:-

1. Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other persons to import, sell or deal in drugs (cocaine), in these Islands, against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the

Laws of Malta, or promoted, constituted, organised or financed the conspiracy.

2. Imported, or caused to be imported, or took any steps preparatory to import any dangerous drug (cocaine) into Malta in breach of section 15A of Chapter 101 of the Laws of Malta.
3. Supplied or distributed, or offered to supply or distribute the drug (cocaine), specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, to persons, or for the use of other persons, without being licensed by the President of Malta, without being fully authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939), or by other authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 6, of the Ordinance and when they were not duly licensed or otherwise authorised to manufacture or supply the mentioned drug, when they were not duly licensed to distribute the mentioned drug, in pursuance of the provisions of Regulation 4 of the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;
4. Had in their possession the drugs (cocaine) specified in the first Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation 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 authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs 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.292/1939) as subsequently

amended by the Dangerous Drugs Ordinance Chapter 101 , of the Laws of Malta which drug was found under circumstances denoting that it was not intended for their personal use.

And also charged with having during the month of April 2017 and/or in the previous months in these islands:-

5. Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other persons to import, sell or deal in drugs (cocaine), in these Islands, against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy.
6. Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other person/s to import, sell or deal in drugs (Cannabis Grass), in these Islands, against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy
7. Imported, or caused to be imported, or took any steps preparatory to import any dangerous drug (cocaine) into Malta in breach of section 15A of Chapter 101 of the Laws of Malta.
8. Imported, or caused to be imported, or took any steps preparatory to import any dangerous drug (Cannabis Grass) into Malta against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.
9. Supplied or distributed, or offered to supply or distribute the drug (cocaine), specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 , of the Laws of Malta , to persons, or for the use of other persons, without being licensed by the President of Malta, without being fully authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939), or by other authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorisation issued by

the Chief Government Medical Officer in pursuance of the provisions of paragraph 6, of the Ordinance and when they were not duly licensed or otherwise authorised to manufacture or supply the mentioned drug, when they were not duly licensed to distribute the mentioned drug, in pursuance of the provisions of Regulation 4 of the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

10. Produced, sold or otherwise dealt with the whole or any portion of the plant Cannabis in terms of Section 8 (e) of the Chapter 1 01 of the Laws of Malta.
11. Had in their possession the drugs (cocaine) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation 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 authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs 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.292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101, of the Laws of Malta which drug was found under circumstances denoting that it was not intended for their personal use.
12. Had in their 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 the Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for their personal use.

The Court was humbly requested to attach in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused,

and further to prohibit the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property in terms of Article 120E of Chapter 31 of the Laws of Malta, Article 22A of the Dangerous Drugs Ordinance Chap 101 of the Laws of Malta and of Article 23A of the Criminal Code Chapter 9 of the Laws of Malta

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

Having seen the minutes of the proceedings held in front of the Court of Magistrates of the 20th June, 2017, whereby the accused admitted all charges brought against them and confirmed such guilty plea even after that Court solemnly warned them of the legal consequences of the said admission and allowed them a period of time for them to consider their decision.

Having seen the note of the Attorney General of the 13th July, 2017, whereby it was declared that:

1. The Attorney General received the acts of the Inquiry in the names the Police vs Carine Rose-Marijke Donckers and Johnny Jos Haest on the twenty first (21) day of the month of June of the year two thousand and seventeen (2017), and this after that the Court of Magistrates (Malta) as a Court of Criminal Inquiry ordered that the Acts of the said Inquiry be sent to the Attorney General in terms of Article 392B(1)(a) of Chapter IX of the Laws of Malta, and this in view of the fact that the persons charged, Carine Rose-Marijke Donckers and Johnny Jos Haest, in the sitting held on the twentieth (20) day of the month of June of the year two thousand and seventeen (2017), confirmed their guilty plea with regards to the offences with which they stand charged, which offences are liable to a punishment exceeding twelve (12) years imprisonment,
2. Whereas, in terms of Article 392B(2) of Chapter IX of the Laws of Malta, the charges proffered against the said Carine Rose-Marijke Donckers and Johnny Jos Haest before the Court of Magistrates (Malta) as a Court of Criminal

Inquiry, to which the accused registered the aforementioned guilty plea, should be considered as a Bill of Indictment for all the purposes and effects of Law.

3. And whereas, in terms of Article 392B(4) of Chapter IX of the Laws of Malta, the Attorney General requests that he brings forward evidence relevant for the purposes of punishment, amongst which the *proces verbal*, the statements released by the accused, the appointed expert to testify with regards to the quantity and quality of the drugs and the prosecuting officers Inspector Kevin Pulis and Inspector Frank Anthony Tabone.

Having seen the decree of this Court of the 13th July, 2017.

Considers,

That in view of the declaration of guilt filed by both the accused before the Court of Magistrates in the 20th June 2017, which admission of guilt was reaffirmed by them after having been given due time according to law to re-consider the same.

Declares the accused Carine Rose-Marijke Donckers and Johnny Jos Haest guilty of having:

On the 18th June, 2017 and/or in the previous months in these islands:-

1. Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other persons to import, sell or deal in drugs (cocaine), in these Islands, against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy.
2. Imported, or caused to be imported, or took any steps preparatory to import any dangerous drug (cocaine) into Malta in breach of section 15A of Chapter 101 of the Laws of Malta.
3. Supplied or distributed, or offered to supply or distribute the drug (cocaine), specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101

of the Laws of Malta, to persons, or for the use of other persons, without being licensed by the President of Malta, without being fully authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939), or by other authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 6, of the Ordinance and when they were not duly licensed or otherwise authorised to manufacture or supply the mentioned drug, when they were not duly licensed to distribute the mentioned drug, in pursuance of the provisions of Regulation 4 of the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

4. Had in their possession the drugs (cocaine) specified in the first Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation 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 authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs 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.292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 , of the Laws of Malta which drug was found under circumstances denoting that it was not intended for their personal use.

And also charged with having during the month of April 2017 and/or in the previous months in these islands:-

5. Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other persons to import, sell or deal in drugs (cocaine), in these Islands, against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy.
6. Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other person/s to import, sell or deal in drugs (Cannabis Grass), in these Islands, against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy
7. Imported, or caused to be imported, or took any steps preparatory to import any dangerous drug (cocaine) into Malta in breach of section 15A of Chapter 101 of the Laws of Malta.
8. Imported, or caused to be imported, or took any steps preparatory to import any dangerous drug (Cannabis Grass) into Malta against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.
9. Supplied or distributed, or offered to supply or distribute the drug (cocaine), specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101, of the Laws of Malta , to persons, or for the use of other persons, without being licensed by the President of Malta, without being fully authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939), or by other authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 6, of the Ordinance and when they were not duly licensed or otherwise authorised to manufacture or supply the mentioned drug, when they were not duly licensed to distribute the mentioned drug, in pursuance of the provisions of Regulation 4 of the Internal Control of Dangerous Drugs



Regulations (G.N.292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

10. Produced, sold or otherwise dealt with the whole or any portion of the plant Cannabis in terms of Section 8 (e) of the Chapter 101 of the Laws of Malta.
11. Had in their possession the drugs (cocaine) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation 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 authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs 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.292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101, of the Laws of Malta which drug was found under circumstances denoting that it was not intended for their personal use.
12. Had in their 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 the Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for their personal use.

Having seen the acts of the proceedings both in front of the Court of Magistrates and those in front of this Court.

Having heard the evidence with regards to punishment;

Having heard the oral submissions of the defence and the prosecution.

Considers,

That in this case the amount of drugs found in the possession of the accused was substantial, the accused facing charges of conspiracy, importation and drug trafficking for two separate consignments which took place in April and June of this year, although they were only apprehended during the second consignment in June. In fact according to court appointed expert pharmacist Godwin Sammut the 9.1 kilogrammes of cocaine found in the possession of accused and which was to be trafficked in the Maltese market had an average level of purity of 55%, the accused admitting to a further importation of five kilogrammes of cocaine and one kilogramme of cannabis during the April consignment. This latter consignment although being monitored by the Drug Squad, did not however lead to any arrests, since according to Inspector Kevin Pulis investigations were still ongoing at the time and therefore this consignment was unfortunately not intercepted by the Police and therefore ended up in the Maltese drug market. Although there is no indication as to the type of drug imported in April or the quantity thereof, however, as already pointed out the accused himself Johnny Haest indicates that the consignment was of about five kilogrammes of the drug cocaine, and one kilogramme of cannabis. For this consignment the accused pocketed a total of €10000, a similar amount was to have been received for the June consignment had they not been apprehended.

Although it is not being contested that the role played by both the accused was that of drug couriers, their participation, therefore being limited to the actual transportation of drugs from their place of origin to the traffickers in Malta, however the Court cannot ignore the fact that they both accepted to participate in this drug chain in full knowledge that their actions were illegal and that they were accepting to transport drugs for onward trafficking. The remuneration for services rendered by them was not negligible having as already pointed out cashed the amount of €10000, and were about to pocket a further €10000.

Now it is true that both accused fully co-operated with the police to the extent that they are to benefit from the effects of Section 29 of Chapter 101 of the Laws of Malta to its maximum meaning by two degrees, since the information given by them to the

police has led to the apprehension and prosecution of third parties involved in this drug chain. It is also true that the accused were enticed into committing the crimes with which they are being accused in order to have sufficient funds for accused Donckers to be able to receive life-saving treatment for her serious medical condition. This, however, in the opinion of this Court is not a sufficient reason at law for them to benefit from a further reduction in punishment.

The Court cannot ignore the fact that both accused on two separate occasions had agreed to transport dangerous drugs into Malta and this in large quantities, without taking into account the damage to be inflicted on Maltese society, mainly young people who are led into drug addiction and will therefore find the drug readily available for sale on the market thanks to people like accused who for their own personal gain agree to bring drugs to Malta. This Court cannot agree with submissions by the defence that the role played by the accused in this drug chain was a lesser one within the parameters laid out in the the Fourth Schedule to the Dangerous Drugs Ordinance, the level of participation of both the accused was in fact a significant one in that they were “motivated by the prospect of financial or other advantage, irrespective of whether the accused was acting alone or with others” and that they “appeared to be aware and to understand the scale of the operation”, with the high level of purity of the drug being taken into consideration according to the said Schedule as an aggravating circumstance. That these guidelines established by law with regard to the discretion to be applied by the Attorney General when considering whether a person is to be tried by the inferior courts or the superior courts thus facing a heftier punishment, were based on the Drug Sentencing guidelines in the United Kingdom.

Thus in considering the punishment to be inflicted the Court will take into consideration the following aggravating circumstances:

1. The amount of drugs involved being 9.1 kilogrammes of cocaine in June 2017, together with around 5 kilogrammes of cocaine and one kilo of cannabis in the April 2017 consignment bringing a total of around 14 kilogrammes of cocaine together with the kilogramme of cannabis.

2. The significant role played by the accused in this drug chain, being fully aware of their participation and having the intention of making a financial gain of €20000 of which €10000 had already been received.
3. This was not an isolated incident, having admitted to transporting drugs to Malta on two separate occasions.
4. The high purity of the drug relating to the second consignment being that of 55%.

The Court will also take into account the following mitigating circumstances:

1. The voluntary assistance of both the accused in the investigations leading to the apprehension and prosecution of third parties involved in the drug chain, thus leading to the application of section 29 of Chapter 101 of the Laws of Malta by two degrees.
2. Their early admission of guilt upon arraignment.

Now the punishment for the offences with which Haest and Donckers are being accused of carry a term of imprisonment for life. However in the circumstances of this case, the Court deems that the punishment of life imprisonment would not be appropriate and this when taking into account the mitigating circumstances surrounding the facts in issue, and most notably the early admission of guilt by the accused and their full co-operation in the investigations triggering the application of Section 29 of Chapter 101 by two degrees. The punishment however, cannot be meted out in its minimum taking into consideration the aggravating circumstances outlined above.

Consequently the Court after having seen articles 2, 8, 9, 10(1), 12, 13, 14, 15, 15A, 16, 17, 18, 22(1)(a)(d)(f)(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A, 26 and 29 of the Dangerous Drugs Ordinance and of Regulations 2 and 9 of the Government Notice 292 of 1939 and of articles 17, 23, 23A, 23B, and 23C of the Criminal Code condemns the said Carine Rose-Marijke Donckers and Johnny Jos Heast to a term of imprisonment of nineteen (19) years and the imposition of a fine of thirty-five

thousand Euros (€35,000), which fine (multa) shall be converted into a further term of imprisonment of one year according to Law, in default of payment;

Moreover, orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which they have been found guilty and other moveable and immovable property belonging to the said Donckers and Haest.

Finally, orders the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out by the Assistant Registrar of the Criminal Court, under the direct supervision of the Deputy Registrar of this Court who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days declaring that said drugs are required in evidence against third parties.

(ft) Edwina Grima

Judge

True Copy

Franklin Calleja

Deputat Registratur