



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

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

Case Number: 463/2021

**The Police
(Inspector Steven-Ryan Micallef)**

vs

**Szymon Wojciech Stoklosa
(Polish Identity card number 785470¹)**

Today, 28th July 2023

The Court,

Having seen the charges brought against the accused **Szymon Wojciech Stoklosa**, 21 years of age, born in Tarnowskie Gory in Poland on 17th October 1999, without a fixed address in Malta, and holder of Polish Identity card number 785470;

Charged with having:

On 24th July 2021 and the months prior, in these Islands:

1. Cultivated the plant cannabis in terms of Section 8(c) of Chapter 101 of the Laws of Malta;
2. 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

¹ From the accused's Polish Identity card, exhibited as Doc. SRM 8, it results that the number of the said identity card is DAW785470.

in terms of Section 8(d) of Chapter 101 of the Laws of Malta, which drug was found in circumstances denoting that it was not intended for his personal use;

3. Refused to produce or give to any public officer or any other person entrusted with a public service in the actual exercise of his duties, his name, surname, address and any other particulars.

The Court was 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 22A of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, Article 5(1)(a)(b) of the Prevention of Money Laundering Act, Chapter 373 and to issue orders as provided for in Articles 5(1) and 5(2) of the same Act, Article 23A of the Criminal Code and Article 36 of Chapter 621 of the Laws of Malta.

The Court was also requested, in case of guilt, apart from inflicting the punishment as prescribed by law, to order the forfeiture of all objects exhibited.

The Court was further requested to apply Article 533(1) of the Criminal Code in respect of the expenses incurred by the court-appointed experts.

Having seen the records of the case, including the Order of the Attorney General in terms of sub-article (2) of Article 22 of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) for the accused to be charged before the Criminal Court to answer to the charges against him for violation of the provisions of the said Ordinance²;

Having seen that during his examination in terms of law, the accused pleaded not guilty to the charges brought against him³;

Having seen the Order of the Attorney General, dated 11th May 2023, in terms of sub-article (2) of Article 22 and Article 31 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta for the accused to be tried before the Court of Magistrates (Malta) as a Court of Criminal Judicature with regards to the charges brought against him for the breach of the provisions of the said Ordinance. After examining the acts of the proceedings compiled by the said Court as a Court of Criminal Inquiry against the accused, the Attorney General also decided to send the

² A fol. 10 of the records.

³ A fol. 736 of the records.

accused for trial by the Court of Magistrates as a Court of Criminal Judicature, in default of any objection on the part of the accused, in terms of Article 370(3)(a) of the Criminal Code, so that this Court may decide upon the following offences in terms of the provisions of:

(1) Article 7, 17, 338(g), 23, 23A, 23B, 23C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.⁴

Having seen that during the sitting held on 15th May 2023, the accused declared that he had no objection to his case being dealt with summarily⁵;

Having also heard the accused plead guilty to the charges brought against him, which plea he confirmed after the Court, in terms of Article 453(1) of the Criminal Code, explained to him the consequences thereof and gave him sufficient time to reconsider his plea and to retract it⁶;

Having heard the submissions of the Prosecution and the defence in respect of the punishment to be meted out.

Considers that:

In view of the guilty plea filed by the accused, as duly assisted by his lawyer, 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 account that the accused registered his guilty plea at the very final stages of these proceedings, the serious nature of the offences of which he is being found guilty and the circumstances of the case.

From the records of the case, it transpires that following information obtained by the Prosecuting Officer that a substantial amount of cannabis plants was being cultivated in the back garden of an abandoned residence, ‘Villa Cini’, Triq il-Wied tal-Imsida, Msida, Drug Squad Police Officers carried out an observation on the said residence. On 24th July 2021 at around midnight, the accused was observed entering the residence, whilst carrying a Bolt Food bag⁷ and watering the plants in the back garden. Upon leaving the residence, the accused was arrested. His bag was found

⁴ A fol. 766 and 767 of the records.

⁵ A fol. 768 of the records.

⁶ A fol. 792 of the records.

⁷ In this respect, *vide* testimony of **Christopher Mercieca** in representation of BLT Food Malta Limited, a fol. 75 *et seq* of the records and a fol. 147 *et seq* of the records.

to contain several empty water bottles⁸. In the back garden of the said residence there were twenty-two (22) cannabis plants, which were seized.⁹ The accused was also found in possession of an iPhone. During a search carried out at the accused's residence at 'Peprina Court', Flat 3, Triq is-Swatar, Birkirkara on the evening of 25th July 2021, police found the accused's identity card¹⁰, seven sealable bags containing suspected cannabis grass, electronic devices, cash in the sum of one thousand, three hundred and fifty euro (€1,350)¹¹, and written notes containing names and numbers, which were deemed suspicious.¹² The accused released a statement to the Executive Police on 24th July 2021.¹³

It further results that an inquiry was held in this case by Magistrate Dr. Caroline Farrugia Frendo, who appointed several experts to assist her.¹⁴

From the report exhibited by **expert Scientist Godwin Sammut**, appointed in the course of the said inquiry¹⁵, it results that on 24th July 2021, the said expert was handed over twenty-two (22) paper bags, each containing a plant suspected to be cannabis and on 30th July 2021, he was handed over an evidence bag containing some grass, suspected to be illegal, which he documented as follows:

Laboratory code	Description
103_21_01	22 large paper bags that each contained a plant.

⁸ The Court notes that the photograph taken by Scene of Crime Officer **PS 2293 Michelle Camilleri**, a fol. 365 of the records, shows the Bolt Food bag containing the said bottles.

⁹ The said plants can be seen in the photographs taken by the said Scene of Crime Officer, a fol. 361 to 363 and a fol. 365 to 411 of the records.

¹⁰ This was exhibited by the Prosecuting Officer as Doc. SRM 8.

¹¹ This was exhibited as Doc. SRM 5.

¹² *Vide* the testimony of **Inspector Steven-Ryan Micallef**, a fol. 14 *et seq* of the records; the testimony of **PS 579 Antoine Micallef**, a fol. 21 *et seq* of the records; the testimony of **PC 2368 Shannon Azzopardi**, a fol. 24 *et seq* of the records; the testimony of **PC 1391 Etienne Spiteri**, a fol. 28 *et seq* of the records; the testimony of **PC 409 Joseph Zarb**, a fol. 54 *et seq* of the records; *vide* also the testimony of **Antonio Gauci**, a fol. 143 *et seq* of the records.

¹³ The CD containing the audiovisual statement was exhibited by the Prosecuting Officer as Dok. SRM 3. The transcript of the said statement is exhibited as Doc. MD, a fol. 117 *et seq* of the records.

¹⁴ *Vide* the *proces verbal* exhibited as Doc. OD, a fol. 132 *et seq* of the records. Also *vide* the report Doc. MCX, exhibited by **PS 2293 Michelle Camilleri**, appointed as Scene of Crime Officer, a fol. 568 *et seq* of the records and the photographs forming part of her report, a fol. 358 *et seq* of the records. *Vide* also the report Doc. CMX, exhibited by **PS 844 Carl Micallef**, appointed as Scene of Crime Officer, a fol. 546 *et seq* of the records, the report Doc. ACX, exhibited by **Alvin Cardona**, appointed as technical expert, a fol. 486 *et seq* of the records and the report Doc. JM, exhibited by expert **Joseph Mallia**, appointed in the course of these proceedings to conduct a comparative analysis between the fingerprints and palmprints of the accused and those in the report exhibited by PS 844 Carl Micallef, a fol. 581 *et seq* of the records.

¹⁵ *Vide* Doc. GSX, a fol. 728 *et seq* of the records, the examination in chief and cross-examination of the said expert, a fol. 710 *et seq* of the records and his further cross-examination, a fol. 747 *et seq* of the records.

103_21_02

Evidence bag M00567893 that contains 7 plastic sachets each containing green buds.

From the said report as well as the expert's testimony, it results that the plants (namely the leaves and buds in their dry form, without branches, roots and stems), weighed 606 grams in total, whilst the buds in the seven sachets weighed 0.74 g, 0.74 g, 0.82 g, 0.89 g, 0.82 g, 0.76 g and 0.75 g respectively, to a total of 5.52 grams.

In respect of the said documents, the expert concluded as follows:

“On extracts taken from the plants that are in the document 103_21_01 and on extracts taken from the green buds that are in document 103_21_02, Tetrahydrocannabinol (THC) was found. The total weight of the plant and buds was 611.52g and the purity was approximately 18%. The plants were all of the type *sinsemilla*. Tetrahydrocannabinol is an extract of the cannabis plant and is controlled under Part III Section 8 of Chapter 101 of the Laws of Malta.”

For the purpose of the punishment to be meted out, the Court further took into consideration the Social Inquiry Report drawn up by **Probation Officer Joanna Farrugia** in respect of the accused¹⁶ and the testimony of the said Probation Officer.¹⁷ From the said report, it transpires that the accused had a difficult childhood and adolescence and started smoking cannabis when his father passed away, when he was about thirteen years old. Urine testing upon admission at the Correctional Services Agency and throughout his time there to date, has resulted negative for illicit substances. According to the accused, he had stopped smoking cannabis weeks prior to his arrest, and did not consider this as a problem or as drug abuse at all. The Court also notes, in particular, the feedback provided to the Probation Officer by Ms. Mariah Camilleri, care plan coordinator and **Jeanette Gauci**, psychology practitioner¹⁸ in respect of the accused. According to his care plan, he will continue to engage in therapy to work on himself.

The Court is also taking into account the clean criminal record of the accused, although it also results from the records that he had only been in Malta for a few months at the time of this case.

¹⁶ This report is exhibited a fol. 771 *et seq* of the records.

¹⁷ A fol. 770A *et seq* of the records.

¹⁸ *Vide* also the testimony of psychology practitioner Jeanette Gauci, a fol. 794 *et seq* of the records.

The Court is also taking into consideration the judgements cited by the parties during final oral submissions, relating to the quantum of the punishment to be inflicted.

In the case **Il-Pulizija vs Jerken Decelis** decided by the Court of Criminal Appeal on 8th January 2020, where the cannabis resin seized amounted to 469 grams with a purity of 8%, the Court condemned the accused to two and a half years imprisonment and a fine (*multa*) of three thousand euro (€3,000), whilst considering that he was a recidivist in terms of Articles 49 and 50 of the Criminal Code, deducting the applicable punishment in terms of Article 29 of Chapter 101 of the Laws of Malta by two degrees and taking also into consideration that the appellant was leading a stable life and had rehabilitated himself. In that case the accused was found guilty of the possession of cannabis resin in circumstances denoting that this was not for his exclusive use.

In the case **Il-Pulizija vs Joseph Camilleri**, decided by this Court as differently presided on 6th October 2016, where the Police had seized 505.567 grams of cannabis resin and 8.9 grams of cocaine with a purity of circa 65%, the Court found the accused guilty of dealing in cannabis resin and cocaine, which the Court deemed as trafficking by sharing and of possession of the said drugs in circumstances denoting that these were not for his exclusive use, with the aggravating circumstance of distance, and condemned him to a term of eighteen months imprisonment and a fine (*multa*) of one thousand euro (€1,000). The Court took into consideration on the one hand, the serious nature of the offences of which the accused was being found guilty and that he had rehabilitated himself.

In the case **Il-Pulizija vs Andre` Falzon u Sean Farrugia**, decided by the Court of Criminal Appeal on 28th January 2022, Falzon was condemned to a term of four years imprisonment and Farrugia to a term of three years imprisonment, each being also condemned to pay a fine (*multa*) of four thousand euro (€4,000). Both accused were found guilty of the crimes of conspiracy, dealing in drugs and possession in circumstances denoting that the drugs were not intended for their exclusive use. Here the Court took into consideration the substantial amount of cannabis plant seized (684 grams) and the serious nature of the offences of which they were found guilty, as well as of their role as intermediaries in the relevant deal, that they had registered progress in their quest for rehabilitation and the time elapsed since the commission of the said offences. The Court also applied Article 29 of Chapter 101 of the Laws of Malta to the benefit of the accused, reducing the applicable punishment by one degree.

In the case **The Republic of Malta vs Abidemi Abigail Aborishade** decided by the Criminal Court on 6th December 2022, the accused, who had been charged with the importation of one kilogram of cannabis plant, with a purity of circa 6%, possession of the said drug in circumstances denoting that this was not for her exclusive use, and breaching the condition that she would not commit another offence whilst being under the operative period of a suspended sentence of imprisonment (six months imprisonment suspended for two years), was condemned to a term of imprisonment of five years and six months, together with the imposition of a fine (*multa*) of twenty-three thousand euro (€23,000). In this case a joint application had been filed by the Attorney General and the accused in terms of Article 453A(1) of the Criminal Code.

In the case **The Republic of Malta vs Ryan Rahiel Irfaan Naipal**, decided by the Criminal Court on 9th May 2023, the accused had been charged with importing five hundred grams of cannabis plant, and the offence of conspiracy in terms of Article 22(1)(f) of Chapter 101 of the Laws of Malta. Here the Court took into account *inter alia* the early guilty plea registered by the accused, that he was to benefit from the application of Article 29 of Chapter 101 of the Laws of Malta, that the accused was part of a group consisting of at least another person and that they worked together so that the drug could be imported into Malta, though it did not appear that the accused had the main role in this association, and that although the drug cannabis is still considered by law as a dangerous drug, on the other hand it is considered that its abuse is not one of those that most harms human health. The Court further held that:

“During the last few years there has been a development in the way Maltese society and the Maltese Legislator look at the use of this drug in the sense that with laws introduced in 2021 the Maltese Legislator took a more tolerant position towards those who use cannabis drug for their personal use. But at the same time, the same Legislator kept an iron fist with anyone who in any way deals in this drug or is caught in possession of such a drug in circumstances that show that it was not for the exclusive use of the possessor: so much so that it did not change the severe punishment for those who traffic in this drug or who possess this drug not for their exclusive use.”

Whilst referring to ample jurisprudence in relation to crimes with which the accused was charged, the Court condemned him to a term of imprisonment of two (2) years and to a fine (*multa*) of four thousand euro (€4000).

In the case, **Repubblika ta' Malta vs Marlon Apap**, decided by the Criminal Court on 27th February 2023, the accused had been charged with conspiracy to deal in cannabis resin, dealing in cannabis resin and possession of cannabis resin in circumstances denoting that the drug was not for his exclusive use, and was condemned to a term of imprisonment of two years and six months and to a fine (*multa*) of two thousand and five hundred (€2,500). In this case a joint application had been filed by the Attorney General and the accused in terms of Article 453A(1) of the Criminal Code. Here the Court took into consideration that the cannabis resin in this case amounted to 981.05 grams, that the accused was to benefit from the application of Article 29 of Chapter 101 of the Laws of Malta, the time elapsed since the commission of the offences of which he was found guilty and that the accused had reformed himself since then, that he was afflicted by a disability and that he had also registered an early guilty plea in respect of two of the charges proffered against him. The Court also considered that:

“L-Avukat Ġenerali insista wkoll li f'Malta, għalkemm ma hawnx sistema ta' “sentencing policy” formali, huwa fatt magħruf li l-Qrati jagħtu każ ta' każijiet oħra li jkunu ġew deċiżi minnhom fil-passat u fis-sentenzi tagħhom iqisu l-fatti li fuqhom Qrati preċedenti jkunu waslu li jsawru l-pieni tagħhom fuqhom. Fil-fatt f'dan il-qasam jirriżulta ċar li l-pieni mogħtija minn dawn il-Qrati fir-rigward tal-abbuż mid-droga cannabis matul dawn l-aħħar ftit snin għaddew minn tibdil sostanzjali mnejn jirriżulta li l-pieni tbaxxew. Dan huwa muri minn każijiet riċenti bħal **Ir-Repubblika ta' Malta vs. Abel Fernandez Vasquez** deċiża nhar it-28 t'April 2022 li kienet titratta każ t'importazzjoni, pussess aggravat u traffikar ta' cannabis fl-ammont ta' elf u mitejn gramma fejn f'kuntest li għalih ma kienx applikabbli l-artikolu 29 tal-Kapitolu 101 tal-Liġijiet ta' Malta il-Qorti issentenzjat lill-ħati għall-piena ta' erba' snin u tminn xhur priġunerija flimkien ma multa ta' ħmistax il-elf euro. Inolte fil-kawża **Ir-Repubblika ta' Malta vs. Abigail Aborishade** Abidemi deċiż minn din il-Qorti kif presjeduta, l-akkużata giet sentenzjata għall-piena ta' ħames snin u sitt xhur priġunerija flimkien ma multa ta' tlieta u għoxrin elf euro (€23,000) għall-akkużi ta' importazzjoni u pussess kwalifikat ta' kilogramma pjanta tal-cannabis; f'dan il-każ sitt xhur priġunerija minnhom kienu komminati lilha in segwitu għall-sejbien ta' ħtija tat-tielet kap fejn hija gie mixlija bil-kummissjoni tar-reati de quo fil-perjodu operattiv ta' sentenza ta' priġunerija sospiża ta' sitt xhur u fejn allura l-Qorti ordnat li dik is-sentenza tiġi attivata kontra l-ħatja. Anke fil-każ ta' Aborishade ma kienx hemm il-benefiċċju tal-artikolu 29 applikabbli.”

It is also worth noting that in the latter case, the Criminal Court referred to the judgement of the Court of Criminal Appeal in the names **Ir-Repubblika ta' Malta vs Carmen Butler et**, decided on 26th February 2009, where it was held that:

S'intendi, kif diga` nghad, "sentencing is an art rather than a science" u wiehed ma jistax jippretendi xi precizjoni matematika jew identita` perfetta fit-tqabbil tal-fatti ta' kaz ma' iehor jew tal-piena erogata f'kaz ma' dik erogata f'kaz iehor.

It is clear that whilst the Court is taking into consideration the jurisprudence cited by the parties, it is also taking into account the nature and the particular circumstances of the present case, as referred to above in its considerations, in meting out what it deems to be the appropriate punishment.

The Court is also applying the provisions of the Article 17(h) of the Criminal Code in respect of the first and second charges brought against the accused and the provisions of Article 17(d) of the said Code in respect of the third charge.

Conclusion

For these reasons, the Court after having seen Articles 8(c), 8(d), 22(1)(a), 22(1B), 22(2)(b)(i), 22(3A), 22(7) and 24A of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 and Articles 17(d), 17(h) and 338(g) of the Criminal Code, upon his guilty plea, finds the accused **Szymon Wojciech Stoklosa** guilty of the charges brought against him and condemns him to **a term of imprisonment of three (3) years** – from which term there must be deducted the period of time during which the accused has been held in preventive custody in connection with this case - and **a fine (*multa*) of four thousand and five hundred euro (€4,500)**, which fine, in default of payment, shall be converted into a further term of imprisonment according to law.

In terms of Article 533 of the Criminal Code, the Court condemns the accused to the payment of the expenses incurred in the appointment of experts in this case¹⁹, namely the sum of four hundred and seven euro and fifty-seven cents (€407.57) in relation to the appointment of expert Godwin Sammut, the sum of two hundred and eighty euro and sixty-five cents (€280.65) in relation to the appointment of PS 2293 Michelle Camilleri, the sum of three hundred and sixty-six euro and eighty cents (€366.80) in relation to the appointment of PS 844 Carl Micallef, the sum of two thousand, three hundred and thirty-four euro and sixty-two cents (€2,334.62) in

¹⁹ The Court is not taking into consideration any expenses incurred in translating documents from Maltese to English.

relation to the appointment of Alvin Cardona, and the sum of one thousand, seven hundred, eighty-seven euro and two cents (€1,787.02) in relation to the appointment of expert Joseph Mallia. Such expenses amount in total to the sum of five thousand, one hundred and seventy-six euro and sixty-six cents (€5,176.66).

The Court further orders the forfeiture in favour of the Government of Malta of all the property involved in the crimes of which the accused has been found guilty and other monies, moveable and immovable property belonging to the said Szymon Wojciech Stoklosa.

Finally, the Court orders the destruction of all the objects exhibited, consisting of dangerous drugs or objects relating to drug use, once this judgement becomes final and definitive, which destruction shall be carried out by the Registrar, Criminal Courts and Tribunals, who shall draw up a *proces-verbal* documenting the destruction procedure. The said *proces-verbal* shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Natasha Galea Sciberras
Magistrate

Oriana Deguara
Deputy Registrar