



Criminal Court

Hon. Judge Consuelo Scerri Herrera, LL.D., Ph.D.

The Republic of Malta

vs

Anuschka Arlette Halman

Today, 31st October 2023

Having seen the charges brought against **Anuschka Arlette Halman**, 44 years of age, d/o unknown father and Elsa Halman, born in Curacao, on the 19th of March 1977, with no fixed address in Malta and holder of Dutch Passport No. NR361DFo8.

Charged with having in these islands on the 22nd of November 2021 and also during the previous days and months:

1. Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organized or financed the conspiracy with other person/s 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, organized 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 person/s, or for the use of other person/s, without being licensed by the

President of Malta, without being fully authorized 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 expert authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 6, of the Ordinance and when she was not duly licensed or otherwise authorized to manufacture or supply 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 Drug Ordinance, chapter 101 of the Laws of Malta.

4. Had in her possession the drugs (cocaine) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when she was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when she 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 Drug Regulations (G.N.292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned 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 her 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 22A of the Dangerous Drug Ordinance Chapter 101 of the Laws of Malta and of Article 23A of the Criminal Code of Chapter 9 of the Laws of Mala, and Article 36 of Chapter 621 of the Laws of Malta, and Chapter 373 of the Laws of Malta.

The Court was requested that in the case of guilt, in addition to inflicting the penalties laid down in the Law and in addition to the said punishment, to order the confiscation of all the exhibited goods, of the *corpus delicti* and the instruments which served or were intended to be used to commit the crime, and of all that has been obtained by the crime, as well as order the confiscation in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds as well as of all the property of the accused in terms of Article 22A of Chapter 101 of the Laws of Malta, Chapter 373 as well as article 23B of the Criminal Code, and the Proceeds of Crime Act Chapter 621 of the Laws of Malta.

The Court was being asked that, in the event of guilt, in addition to the penalties established by Law, to order the confiscation of all exhibited objects.

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.

The Court took note of the admission of the accused in relation to all the charges brought forward against her as registered in the sitting held before the Court of Magistrates (Malta) as a Court of Criminal Inquiry on the 25th April, 2023,¹ in other words seventeen (17) months after her arraignment. The Court also noted that in that same sitting the accused was given chance to reconsider her guilty plea in the presence of her lawyer after the Court explained to the accused the type of punishment which was applicable in this case and the consequences of her guilty plea.

The Court took note of the note filed by the Attorney General before this same Court dated 30th May, 2023 wherein in terms of Article 392B(2) of the Criminal Code that the charges proffered against the said accused Anusechka Arlette Halman before the Courts 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.

The Court took note of the request of the defence to the appointment of a probation officer to carry out a pre-sentencing report and also of the no objection of the Attorney General, where

¹¹ Fol. 264 of the acts of the proceedings.

after the Court ordered that the Director of Probation and Parole Services is to nominate the ideal candidate in this regard. During the same sitting of the 14th September, 2023, the Court also upheld the request of the defence to hear two (2) witnesses in the defence of the accused, namely a representative of CCF and Dr Arthur Azzopardi.

The Court took note of the testimony given by Helenio Galea as a representative of Corradino Correctional Facility where he confirmed that the accused gave twenty-one (21) urine samples to be tested for the presence of illicit drugs and these all gave a negative result apart from four results which tested positive for medical reasons. It also resulted that she had no reports registered in her regard for misbehaviour in prison.

The Court heard the probation officer Joanne Farrugia give evidence during the sitting of the 19th October, 2023 wherein she also presented her pre-sentencing report. From an examination of this report it results that the accused had a difficult upbringing and was subject to domestic violence at home. It results that she had to leave school at a young age on account of her mother's insistence. Subsequent to her mother's separation she lacked stability and moved from place to place and was not allowed to continue her studies. At a young age she became pregnant, has eight children in all from different partners, most of her children are adults and live in Holland with the exception of one who lives with her mother in Curacao, whilst the three (3) youngest live with her sister in Holland.

Under arrest she fell sick a lot and had several stays at Mater Dei Hospital. Medical tests revealed that she suffers from Lupus, amongst many other medical conditions. She also suffered from a heart attack a few months ago. The probation officer concluded her report and suggested that the Court should go towards the minimum in its application of punishment and inform the Court that the accused would like to be extradited to Holland so that she does her sentence close to her family.

The Court also heard Dr Christopher Cremona testify and confirm that he works full-time as a Medical Practitioner at Corradino Correction Facility. He confirmed that the accused suffered from fibromyalgia, anxiety, panic attacks, anaemia and high blood pressure prior to her incarceration on the 23rd November, 2021. Upon admission, she was also diagnosed that on the 6th October, 2023 she had retinal detachment of the right eye which led to blindness. She also had surgery. On the 1st November, 2022, in view of her health deterioration she was

transferred to the emergency department and was diagnosed with Lupus and viral pneumonia. She spent sixteen (16) days in hospital undergoing investigation. On the 19th May, 2023 she sustained a heart attack which necessitated a coronary intervention with an insertion of a stent. She was followed by cardiologists and attended heart failure clinics. Today, her heart does not function well. On the 15th June, 2023 she was diagnosed with an inflammatory condition of both kidneys which led to kidney and heart failure. She attends a lot of ophthalmic clinics for her eye condition, namely cataract of the right eye.

The Court heard both parties make their oral submissions during the sitting of the 19th October, 2023. The Attorney General contends that the accused pleaded guilty to all charges, namely importation, association, attempted trafficking of the drug cocaine and possession which was not destined for personal use. He also stated that it resulted from the report carried out by the expert Gilbert Mercieca that the accused was found in possession of 2081.8grams of cocaine and levamisole at an estimated value of €133,235. The purity of the drug cocaine was 44%. He acknowledged that the accused pleaded guilty before the issuance of the Bill of Indictment, however, stated that this could not be considered as an early admission since it was registered seventeen (17) months after her arraignment. He also made reference to the fact that this was her second time to Malta in a short span of three (3) months. He stated that the amount of drugs found, being that of in excess of two (2) kilos was a serious amount and if dispatched on the local market would have caused grave problems. With regards to the appropriate punishment, he made reference to two (2) judgments delivered by this Court, namely the **Republic of Malta vs Nicolas Gabriel King Jimenez**² and **Ir-Repubblika ta' Malta vs Omissis u Darren Charles Desira**.³ In the Jimenez case the accused was carrying a pocket in his luggage containing circa 2045.5grams of the drug cocaine with its purity calculated at 43% (as determined by the Court expert). He was found guilty and sentenced, following a plea bargaining agreement in terms of Article 453A(1) of the Criminal Code to fourteen (14) years and six (6) months imprisonment and to the payment of a fine/multa of €30,000 apart from the order to pay the relevant expenses relating to court appointed experts. In the Desira case, the accused was carrying 1.941grams of cocaine and was found guilty and condemned to eighteen (18) years imprisonment and the payment of a fine/multa of €46,800 apart from the order to pay the relevant expenses relating to court appointed experts.

² Decided on the 17th June, 2013.

³ Decided on the 27th November, 2012.

The Attorney General concluded in his submissions by inviting the Court to take note of the circumstances indicated by him prior to moving forward to award punishment.

On the other hand, the defence states that there has been no similar case to the case under examination due to the bad health of the accused. He stated categorically that the facts of this case cannot equiperate with the cases cited by the Attorney General as the facts are different despite the quantity of the drugs found being similar. He said that the Court should take note of the fact that the accused offered to participate in a control delivery, in which case she would be entitled to the application of Article 29 of Chapter 101 of the Laws of Malta but this could not be taken up by the prosecution due to the fact that the accused had spent a lot of time at the airport, prior to her going to the hotel to hand over the drugs. The defence made reference to the judgment given by this Court in the names **ir-Repubblika ta' Malta vs Anna Spiteri** whereby the Court applied failed also to apply Article 29 of Chapter 101 of the Laws of Malta. In this latter case, the accused was found guilty of trafficking 3,444.9gramms of the drug heroin with a purity of 32% and which had a street value of apart from the order to pay the relevant expenses relating to court appointed experts €158,465.40 which amount indicated that it was not destined for personal use. He also made reference to the statement released by the accused wherein it resulted that she was only a drug mule who was going to receive the sum of €1250 for her service. Dr Azzopardi also made reference to the Fourth Schedule of Chapter 101 of the Laws of Malta, in that the accused should be considered as having had a minor role in the organisation of this drug deal with the lowest rank of responsibility. He concluded his submissions by stating that in Malta, the punishments that are being awarded by the Courts for drug importation and trafficking are very high and not in synch with other judgments given in EU Member States, despite there being harmonisation of laws.

Considers,

The Court once again reiterate that comparisons to other judgments are odious since the facts of each case are different to one another. However, in awarding punishment the legislator has provided a wide threshold to award punishment and this was done purposely so that it could analyse the individual circumstances of each accused person. This Court however, feels that it cannot disregard established case-law with regards to the quantity and purity of the drugs and this purposely for sentencing policy. The Court therefore together with the judgment mentioned by the Attorney General took note of other judgments delivered by this Court, all

dealing with similar charges: namely association; importation; attempt to traffic and possession not for personal use; relating to the drug of cocaine, wherein the accused was also a drug mule:

1. **Repubblika ta' Malta vs Mayco Tulio Gutierrez Cachay** – 22nd November, 2008. In this case the amount of drugs was 971.1grams of cocaine of 42.83% purity and street value of €47,779.90. Wherein, the accused was found guilty and with the application of Article 29 of Chapter 101 was condemned to eight (8) years imprisonment and to a fine/multa €25,000 apart from the payment of all court expenses;
2. **Repubblika ta' Malta vs Belkins Mildred Marquez del Toro et** – 26th November, 2019. In this case the amount of drugs was 774.2grams of cocaine of 35% purity and street value of €52,64560. Wherein, the accused was found guilty and the Court embraced the plea bargaining agreement and condemned him to six and a half (6 1/2) years imprisonment and to a fine/multa of €7,000 apart from the payment of all court expenses;
3. **Repubblika ta' Malta vs Patryk Henryk Stawicki** –5th March, 2009. In this case the amount of drugs was 957grams of cocaine. Wherein, the accused was found guilty and the Court embraced the plea bargaining agreement and condemned him to nine and a half (9 1/2) years imprisonment and to a fine/multa of €23,000 apart from the payment of all court expenses;
4. **Republic of Malta vs Shaibu Mohamad** – 1st March 2022. In this case the amount of drugs was more than three (3) kilos of cocaine with a purity of 22%.Wherein, the accused was found guilty and with the application of Article 29 of Chapter 101 was condemned to nine (9) years imprisonment and to a fine/multa €20,000 apart from the payment of all court expenses;
5. **Repubblika ta' Malta vs Geraldine Mora Huizi** – 9th March 2021. In this case the amount of drugs was 1020.71grams of cocaine with a purity of 38% and a street value of €69,408.28. Wherein, the accused was found guilty and the Court embraced the plea-bargaining agreement and condemned him to ten (10) years imprisonment and to a fine/multa of €25,000 apart from the payment of all court expenses;
6. **Repubblika ta' Malta vs Alberto de Silva** – 25rh May, 2021. In this case the amount of drugs was 1.5 kilo grams of cocaine with a purity of 50% and a street value of between €27,594-€122,640. Wherein, the accused was found guilty and the Court embraced the plea-bargaining agreement and condemned him to twelve and a half

years (12 1/2) years imprisonment and to a fine/multa of €28,000 apart from the payment of all court expenses;

Considers,

In this case, the accused registered a guilty plea seventeen (17) months after her arraignment before the Courts of Magistrates and subsequently confirmed this guilty plea once again before this Court. The quantity of the drug cocaine found in the possession of the accused was 2081.8 grammes with an estimated value of €133,235 and a purity of 44%. The Court considers this amount to be a considerable one and this drug was only not dispatched on the local market because of the due intervention of the Executive Police. It is evident from an examination of this case that Article 29 of Chapter 101 of the Laws of Malta is not applicable. The Court also noted that this was not the accused's first time to Malta within a very short time-frame.

The Court on the other hand takes note of the fact that the accused is a drug mule and was only earning as she stated €1250 for her service. The Court took note of her very sad upbringing and also of her very poor health as explained by Dr Christopher Cremona when he testified before this Court. It is evident from the acts of this case that unlike the Jimenez case abovementioned, the accused played a very minor role in the organisation of this drug deal. In the Jimenez case where we are speaking of a guilty plea of importation of 2045.5 grammes with a purity of 43%, the Court was faced with a plea-bargaining agreement of fourteen and a half (14 1/2) years imprisonment and a fine of €30,000. In this current case, the Court is faced with a guilty plea relating to the importation of a similar number of drugs, namely, 2081.8 grammes cocaine with a purity of 44% but with a drug mule who has a very minor role in the organisation and who happens to be in a **very poor state of health**. Thus, in these latter circumstances the Court after having seen **Article 2,9,10(1), 12, 14, 22(1)(a)(f)(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22A, 24A and 26 of Chapter 101 of the Laws of Malta and of Articles 17,23,23A,23B, 23C and 533 of the Criminal Code declares the accused guilty of all offences and condemns her to a term of imprisonment of eleven (11) years and to the payment of a fine/multa of €25,000** which fine shall be converted into a further term of imprisonment of twelve (12) months according to law in default of payment.

Furthermore, condemns her to pay the expenses incurred in the appointment of court experts in this case in terms of section 533 of the Criminal Code.

Moreover, orders the forfeiture in favour of the government of Malta of all the property involved in the said crimes of which she has been found guilty and other movable and immovable property belonging to the said Anuschka Arlette Halman.

And finally orders the destruction of all 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 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 (15) days declaring that said drugs are required in evidence against third parties.

Consuelo Scerri Herrera
Judge

Maria Grech
Deputat Registratur