



**In the Criminal Court**

**Hon. Judge Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)Ph.D**

**The Republic of Malta**

**Vs**

**Tiberiu-Mihail Miculescu**

**Bill of Indictment: 21/2021**

**Today, the 23<sup>rd</sup> of November 2023**

Having seen the charges brought against **Tiberiu-Mihail Miculescu**, 34 years of age, son of Vasile and Viorika nee' Axinte born in Botosani, Romania on the 22<sup>nd</sup> of October 1987 holder of Romanian Identity Card XT 866742.

Charged by the Attorney General, in the name of the Republic of Malta for:

**The First Count:**

**The facts of the case:**

That on the eleventh (11th) day of September of the year two thousand and nineteen (2019) Tiberiu-Mihail Miculescu, hereinafter referred to as the accused, decided to illegally import drugs into the Maltese Islands.

In fact, on the abovementioned date, at around quarter to noon (11.45), during a search conducted by the Drug Squad Police Officers, aided by Customs officials, on various vehicles and passengers arriving from Pozzallo, Sicily aboard the Virtu Ferries Catamaran, at the Marsa Sea Port Terminal, the accused was stopped due to the fact that the dog of the Custom's

canine unit showed particular interest in the vehicle that the accused was driving, a black BMW X5 bearing registration number HD-TM 1087. When spoken to by the police and given his rights in English, the accused answered and acknowledged that he understood the implication. A search was conducted on sight but nothing illegal was retrieved. As the accused was informed that another intensive search needed to be carried out at the Police garage he told the police that he had to leave Malta that same day at 15 hours by plane. This search was performed by PC 258 John Lee Howard in the presence of the accused whereby a foreign and hidden compartment was noticed at the rear of said vehicle. On drilling a hole into the chassis, a smell of Cannabis grass was noted. On such outcome the duty Magistrate was immediately notified whereby a number of experts were nominated to assist, preserve all the evidence extracted from the crime scene and to carry out all the necessary examination thereof.

On further analysis it transpired that in all there were four (4) foreign compartments built next to the fuel tank. Eventually a total of forty-seven (47) packets were elevated from said vehicle. All the procedure was photographed, and the substance extracted from the compartments were sealed by the scene of the crime officers, always in the presence of the accused. During the interview the accused confirmed that the vehicle in question was his and that it was not the first time he came to Malta.

From further analysis carried out by one of the Court nominated experts, namely forensic scientist Godwin Sammut it was established that the green substance elevated from the vehicle in question contained tetrahydrocannabinol (THC) confirming that the substance was in fact cannabis. The total weight of the cannabis grass was seven kilograms and two hundred grams (7.2 kgs) with a purity of circa 28% and a value, at that time, of between seventy-two thousand (72,000) euro and two hundred and one thousand and six hundred (201,600) euro.

The plant cannabis or any portion thereof is scheduled under part III of the Dangerous Drugs Ordinance.

### **The consequences**

By committing the abovementioned acts with criminal intent, Tiberiu-Mihail Miculescu rendered himself guilty of importing, or caused to be imported, any dangerous drug (Cannabis) into Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

### **The accusation**

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses Tiberiu-Mihail Miculescu of being guilty of having, on the eleventh (11th) day of September of the year two thousand and nineteen (2019), with criminal intent, imported, or caused to be imported any dangerous drug (cannabis) into Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

### **The punishment demanded:**

and demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in articles 7, 12, 14(1), 15A, 22(1)(a)(1B)(2)(a)(i) (3A)(d), 22A, 24A and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, and of articles 23 and 533 of the Criminal Code, Chapter 9 of the Laws of Malta, or to any other punishment applicable according to law to the declaration of guilt of the accused Tiberiu-Mihail Miculescu.

<b><u>The Second Count</u></b>
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### **The facts of the case:**

That during the same period of time mentioned in the preceding count of this bill of indictment, and within the same circumstantial context, that is to say on the eleventh (11<sup>th</sup>) day of September of the year two thousand and nineteen (2019) **Tiberiu-Mihail Miculescu**, was knowingly in possession of seven kilograms and two hundred grams (7.2kgs) of cannabis buds in the Maltese Islands and thus the amount itself and the circumstances in which it was found denotes that it was not intended for his exclusive personal use. Moreover, he was not authorized to be in possession of such drugs in terms of Law.

### **The consequences:**

Consequently by committing the abovementioned acts with criminal intent, **Tiberiu-Mihail Miculescu** rendered himself guilty of being in possession of the plant cannabis or any portion thereof (cannabis buds) as specified under part III of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he 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 he was not licensed or otherwise authorized to manufacture or supply the mentioned drug, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drug, 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. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his exclusive personal use.

### **The accusation:**

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses **Tiberiu-Mihail Miculescu** of being guilty of having, on the eleventh (11<sup>th</sup>) day of September of the year two thousand and nineteen (2019) of being in possession of a dangerous drug (cannabis) with criminal intent, as specified in the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he 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 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. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were 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 on 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 and which drug was found under circumstances denoting that it was not intended for his exclusive personal use;

### **The punishment demanded:**

and demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in articles 2, 8(d), 10(1), 12, 20, 22(1)(a)(2)(a)(i)(ii), (3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of regulations 9 and 16 of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilt of the accused **Tiberiu-Mihail Miculescu**.

### **Considers,**

Having seen that the accused has understood the importance of this joint application and punishment therein mentioned as stated by him during the sitting of the 10<sup>th</sup> of October 2023<sup>1</sup> and thus re-confirmed his guilt.

Having seen the updated conduct sheet of the accused, which is pristine without the registration of any offence.

### **Considers,**

Having seen the case-law of this Court, specifically in connection with charges of importation and aggravated possession of the drug cannabis.

Having seen the testimony of the Court-appointed expert Dr Godwin Sammut who exhibited his report marked as Dok GS exhibited in the acts of these proceedings (Dok fol.197) in front of the Court of Magistrates as a Court of Criminal Inquiry, wherein he concluded that the alleged substance is tetrahydrocannabinol, the total weight of the green buds was seven point

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<sup>1</sup> Fol. 86 of the acts of the proceedings

two kilos (7.2kg) and the purity of THC in the buds was approximately twenty-eight per cent (28%).

Having seen the case-law regarding punishment inflicted when the accused registers an early admission of guilt, particularly: **Ir-Repubblika ta'Malta vs. Nicholas Azzopardi**<sup>2</sup>; **Ir-Repubblika ta' Malta vs. Mario Camilleri**<sup>3</sup> , **Il-Pulizija vs.Emmanuel Testa**<sup>4</sup> (kif ukoll il BLACKSTONE'S CRIMINAL PRACTICE (Blackstone Press Limited 2001 edit);

The Court, in this particular case, adheres to the request of the Attorney General and the accused Tiberiu-Mihail Miculescu in their joint application of the 26th July 2023 and subsequently, after having seen articles 2, 7, 8 (d), 10 (1), 12,14 (1) 15A, 20, 22(1)(a) (1B)(2)(a)(i) (3A) (d)(7), 22A, 24A, 26 and 29 of the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, regulations 9 and 16 of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) and of articles 23, and 533 of the Criminal Code, condemns **Tiberiu-Mihail Miculescu to twelve (12) years imprisonment together with a fine multa of twenty five thousand Euros (Euro 25,000)** which in default of payment will be converted to a further term of imprisonment according to law in terms of article 11 of the Criminal Code.

Moreover, in terms of article 533 of the Criminal Code condemns Tiberiu-Mihail Miculescu to pay the following expenses namely: -

1. The sum of three hundred and thirteen euros and seventy-four-euro cents (**€313.74**), which sum represents the expenses incurred for the Court nominated expert **Dr Godwin Sammut**<sup>5</sup>.
2. The sum of one hundred and thirty-eight euros and seven euro cents (**€138.07**) which sum represents the expenses incurred for the Court nominated expert **PS 169 Jurgen Schembri**<sup>6</sup>.
3. To pay the sum of sixty-two euros and fifteen euro cents (**€62.15**), which sum represents the expenses incurred for the **Recovery Asset Bureau**.<sup>7</sup>
4. To pay the sum of one thousand, one hundred and eighty six euros and fifty eight euro cents (**€1,186.58**), which sum represents the expenses incurred for the Court nominated expert **Dr Martin Bajada**.
5. To pay the sum represents the expenses incurred for the Court nominated expert **Dr Marisa Lautier Mifsud**, to pay the sum sixty eight euros and ten euro cents (**€68.10**),

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<sup>2</sup> Decided by the Criminal Court of Appeal on the 24th February 1997

<sup>3</sup> Decided by the Criminal Court of Appeal on the -5th July 2002

<sup>4</sup> Decided by the Criminal Court of Appeal on the 17th July 2002

<sup>5</sup> Fol. 197 tergo of the proceedings

<sup>6</sup> Fol. 222 of the proceedings

<sup>7</sup> Fol. 240 of the proceedings

6. To, to pay the sum of two hundred and nine euros and twenty-five euro cents (**€209.25**), which sum represents the expenses incurred for the Court nominated expert **PS 385 Emanuel Dalli**,

**Thus, in total the accused has to pay the Court the sum of €1,977.89 representing court expenses.**

The Court could not condemn the accused to pay the expenses of the Court appointed expert Dr Marisa Caruana as it does not result from the acts of the proceedings what her fees where.<sup>8</sup>

If the expenses are not paid within a year from the date of this judgment, they will be converted to a term of additional imprisonment according to law.

Moreover, orders the forfeiture in favor 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 Tiberiu-Mihail Miculescu.

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) Consuelo Scerri Herrera

Judge

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<sup>8</sup> Vide report exhibited at page 303 et seq dok MC