



CRIMINAL COURT

Hon. Mr. Justice Dr. Neville Camilleri
B.A., M.A. (Fin. Serv.), LL.D., Dip. Trib. Eccles. Melit.

Bill of Indictment Number 44/2024

The Republic of Malta

vs.

Bogdan Ionut Iosub
Cosmin Constantin Iosub

Today 20th. of February 2025

The Court,

Having re-seen the application of the accused i.e. the applicant **Cosmin Constantin Iosub** (holder of Romanian Identity Card Number XT 833097) filed on the 7th. of October 2024 in which he requested the following:

"Therefore, for all the above reasons, applicant humbly requests this Honourable Court to order, in terms of Article 22(2A)(b) of Chapter 101 of the Laws of Malta, that he be tried summarily before the Court of

Magistrates (Malta) as a Court of Criminal Judicature instead of before the Honourable Criminal Court."

Having seen the decree of the 11th. of October 2024 in terms of which the Court ordered notification of the application to the Attorney General who was given time within which to file a Reply.

Having seen the Reply of the Attorney General filed on the 21st. of October 2024 where he objected to the requested contained in the application.

Having seen all the acts of the proceedings, including those in front of the Court of Magistrates.

Having seen what has been minuted during the sitting of the 23rd. of January 2025.

Considers

That in his application the applicant Cosmin Constantin Iosub requests that this Court orders that he be tried in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature instead of the Criminal Court and this on the basis of Article 22(2A)(b) of Chapter 101 of the Laws of Malta. The applicant complains that at the time of the arrest he was only nineteen (19) years of age and that his involvement in the offence was at best minimal. He refers to the role played by his brother, i.e. the other accused Bogdan Ionut Iosub, who he says was just a drug mule with no connections with those above him in the illicit chain. He refers to the fact that he was dragged along in this event. The applicant says further that he admitted in his statement that he was aware that his brother was actually doing something illegal but that he had no involvement with little knowledge of what was actually going on. He reiterates that he was not aware of the extent of the operation or the quantity of illicit substances that was being imported and that thereby this shows he had no real control over the illicit substances concerned.

That the applicant continues by stating he was in the wrong place at the wrong time while accompanying his brother. He clarifies that he had no links to the source of the drugs and no involvement in the sophisticated nature of the concealment of the drugs and that furthermore he generated no financial gain. He refers to the testimony of the representative of Virtu Ferries who confirmed that in the previous trips he was not present and it was only his brother who was involved. Reference is also made to the relatively low level of purity of the illicit substances imported which in the words of the applicant should be taken into consideration within the context of the Fourth Schedule to Chapter 101 of the Laws of Malta. He makes reference to a number of decrees given by this Court as diversely presided.

That the applicant maintains that today cannabis is a legalised drug in Malta and that punishment parameters for trafficking in cannabis have been reduced in the past months and years. Apart from this, the applicant points out that despite not being involved in this operation and despite the fact that he had very little knowledge, he was very honest and collaborative in his voluntary declarations released to the Police. He says that when compared to his brother he also went as far as to mention a name which in his opinion was of interest to the Police. The applicant also points out that none of the aggravating circumstances set out in the law are present in this case. Finally the applicant states that the delay in the proceedings is tantamount to a violation of his rights. He says that in the light of the huge backlog of trials preceding this case, and as the law stands until this case is decided *res judicata* by the superior courts, he has surely another waiting time of five (5) years whilst if handled by the Court of Magistrates, in all probability the case would be decided in under a year.

That the Attorney General objects to the request put forward by the applicant in his application. In particular, the Attorney General disagrees with the applicant's statement that cannabis drug is today a legalised drug in Malta. He points out that ultimately the applicant was found to have imported twenty-four kilograms (24kgs) of cannabis grass which are well beyond the

three hundred grammes (300g) threshold, irrespective of its purity. Regarding the reference to the testimony of the representative of Virtu Ferries, the Attorney General states that this is no proof that the applicant did not accompany his brother in previous voyages. The Attorney General concludes that considering the presence in the importation and the amount of cannabis in question, the case deserves to be tried in front of this Court.

Considers

That before proceeding any further, this Court makes reference to Article 22(2) of Chapter 101 of the Laws of Malta which states the following:

“Every person charged with an offence against this Ordinance shall be tried in the Criminal Court or before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the Attorney General may direct, and if he is found guilty shall, in respect of each offence, be liable –

[...].”

That the Fourth Schedule of Chapter 101 of the Laws of Malta establishes guidelines on how the Attorney General is to exercise his discretion when this is based on the above-quoted Article 22(2) of Chapter 101 of the Laws of Malta. These guidelines establish the following:

“Guidelines on the exercise of discretion

These guidelines apply to all accused persons aged 16 and over.

In determining the court in which a person accused of an offence against this Ordinance is to be tried the harm or the potential harm caused by the offence charged shall be the principal consideration.

The quantity of the drug is a principal consideration in assessing harm. The purity need not necessarily be taken into account at the initial stage but it may be considered in determining whether a person initially referred for trial before the Criminal Court is to be referred for trial before the Court of Magistrates at a later stage.

The role played by the accused in the crime shall, if sufficient information is available, also be taken into consideration.

In such cases a distinction should be made between persons who played a leading role, a significant role or a lesser role in the commission of the offence.

A leading role in the commission of the offence may be indicated by the following:

- that the accused organized or directed buying and selling of a drug on a commercial scale;
- that the accused had substantial links to and significant influence on other persons in a chain;
- that the accused had close links to the original source of the drugs;
- that the accused made substantial financial gain or had an expectation of substantial financial gain;
- that the accused used a legitimate business as a cover for buying or selling drugs;
- that the accused has abused a position of trust or of significant responsibility in the commission of the

offence, for example when the accused is a prison employee or a legal or medical professional.

A significant role in the commission of the offence may be indicated by the following:

- that the accused had an operational or a management function within a chain;
- that the accused involved others in the operation either by exerting pressure or influence upon them or by intimidation or offer of reward;
- that the accused was motivated by the prospect of financial or other advantage, irrespective of whether the accused was acting alone or with others;
- that the accused appeared to be aware and to understand the scale of the operation;
- that the accused, not being a person abusing a position of trust or responsibility, supplied the drug to a prisoner for gain but without coercion.

A lesser role in the commission of the offence may be indicated by the following:

- that the accused has performed a limited role in the commission of the offence and has acted under the direction of others;
- that the accused was engaged by others to commit the offence by pressure, coercion or intimidation;
- that the accused got involved in the commission of the offence because of his naivete or because he was exploited by others;

- that the accused had no influence on those above him in a chain;
- that the accused had very little, if any, understanding of the scale of the operation;
- that taking all circumstances into account it is reasonable to conclude that the accused was involved in the commission of the offence solely for the purpose of obtaining drugs for his own use;
- that the accused made no financial gain from the offence, for example in cases involving a common purchase of a minimal quantity for no profit or the sharing of a minimal quantity between friends on a non-commercial basis.

Aggravating factors resulting from the law shall be taken into consideration.

Other aggravating factors that may be taken into consideration may include:

- the sophisticated nature of concealment of the drug and the nature of any attempt to avoid detection;
- any attempts made to conceal or to dispose of evidence;
- the exposure of others to exceptional danger such as when a drug is cut with harmful substances;
- high purity of the drug;
- that the accused has targeted places intended to locate vulnerable persons or has sought to supply drugs to minors;

- that others, especially children and non-users were present when the accused committed the offence.

The following amounts involved in the offence, when the said amounts are known, can be taken as indicative that a person should not be referred for trial before the Criminal Court:

- heroin and cocaine: less than 100 grams
- cannabis: less than 300 grams

Assistance which the accused may have rendered to the Police or to the prosecution may also be taken into account.”

Considers

That from the acts of the case it results that the applicant Cosmin Constantin Iosub together with his brother the other accused Bogdan Ionut Iosub had been arraigned under arrest in front of the Court of Magistrates (Malta) as a Court of Inquiry on the 6th. of September 2019 where they were charged with importation and aggravated possession of the illicit substance cannabis. It transpires that on the 4th. of September 2019 the Police had confidential information regarding a particular vehicle which was travelling to Malta and was transporting drugs. The Police intercepted the car in question when it got off from the Virtu Ferries catamaran. The driver of the vehicle was Bogdan Ionut Iosub whilst the passenger was the applicant Cosmin Constantin Iosub. Upon investigation the Police found that hidden in secret compartments there were around 173 packets which were suspected to contain cannabis (Doc. “AB” – *a fol. 302 et seq.*).

That on the 5th. of September 2019, the applicant released a statement wherein he confirmed that this was not the first trip he had done with his brother i.e. the other accused. The applicant rather says that he accompanied his brother another time. He also confirms that his brother had promised him five hundred Euro

(€500) for this trip, whilst for the first trip he had received the sum of five hundred Euro (€500) from his brother. From the same statement it is also clear that the applicant was aware that they were carrying drugs even though at first he says he thought they were cigarettes. The applicant also says that he was not aware of the quantity and where the drugs were hidden. He says that he thought the package was in the luggage booth of the car.

That from the report (Doc. "ES 1") drawn up by Forensic Court expert Profs. Emmanuel Sinagra as well as from the testimony of the same expert given on the 25th. of February 2020 (*a fol. 73 et seq.*) it transpires that in all the amount of cannabis found was 24.6 kilograms with a purity of nine percent (9%).

That bearing in mind all the facts mentioned above, primarily the main element to be taken into consideration is the quantity of drugs imported in this event. In this case the drugs imported weigh a total of 24.6 kilograms. As indicated by the Attorney General this amount is obviously by far superior to the amount indicated in the guidelines contained in the Fourth Schedule of Chapter 101 of the Laws of Malta. Even if one were to consider the argument of the applicant regarding the fact that if one were to evaluate the purity and condense the quantity to a 100% purity one would still arrive to a weight exceeding the amount included in the guidelines.

That this Court does not agree with the argument brought forward by the applicant in relation to the legalisation of cannabis. Whereas the law has been amended to allow for the use of small quantities of cannabis so as not to prejudice persons who make personal use of the said substance, the law nonetheless still punishes the trafficking of the said substance.

That furthermore this Court is of the opinion that the applicant had a close connection to the person who ordered the importation of the drugs given that he was working for him. This will have a bearing on the decision of this Court. On the other hand, this Court has also considered that the compensation that the applicant

was expecting to receive for this trip was not that substantial and that such a factor is in favour of the request being made by the applicant.

That another element that this Court will have to take into consideration in its deliberation is the sophisticated nature of the concealment and the modifications that were made to the vehicle in order to accommodate the illicit substances in question. Given that the applicant knew that they were transporting something illegal, it cannot be stated that he was not aware of the nature of the operation. This Court notes that from the statement released by the applicant he states that he believed that the drugs were in their luggage. This Court deems that in order to store the drugs in a luggage the quantity of drugs need be of a certain degree. You would not need a luggage if you were to import three hundred (300) grams of cannabis. Hence this Court deems that the applicant was well aware that the amount of illicit substance was of a considerable amount albeit maybe he was not aware of the exact amount.

That finally, this Court has weighed the fact that the applicant has admitted in his statement and also accepted that, if necessary, he was willing to repeat this statement in front of a Magistrate in terms of Chapter 101 of the Laws of Malta. However, this Court also notes that when pressed to do this he said that he was afraid. The giving of the name of the person who seems to have ordered the importation of the illicit substance militates in favour of the applicant.

That after taking the above factors into consideration, this Court is of the belief that the collaboration demonstrated by the applicant still falls short of the level requested when opposed to the amount of cannabis imported. This Court could have decided otherwise had the applicant confirmed his statement under oath in terms of Chapter 101 of the Laws of Malta. However, this was not the case.

That in his application, the applicant makes reference to, amongst others, a decree given on the 28th. of July 2022 by this Court as

diversely presided in the names **Ir-Repubblika ta' Malta vs. Paul Cachia** (Number 12/2022 – Hon. Madame Justice Consuelo Scerri Herrera) in which decree the mentioned Court ordered that the accused be tried in the Court of Magistrates (Malta) as a Court of Criminal Judicature. This Court notes that facts of the case in that case find no comparison to the facts surrounding the case under examination and hence what the Court stated in that decree cannot apply to this case. In fact in the decree of the 28th. of July 2022 here above-mentioned, the following was stated:

“Din il-Qorti tinnota illi minkejja l-fatt li l-Avukat Ġenerali isemmi l-ammont ta' għaxar (10) kilos kannabis, dan ma jaffigura mkien mill-atti. Oltre minn hekk jidher illi l-Prosekuzzjoni qegħda temmen lill-akkużat fil-verżjonijiet tiegħu speċjalment rigward l-involvement tiegħu u dan stante li kienet iddikjarat¹ li l-akkużat jibbenifika mill-Artikolu 29 tal-Kap. 101 tal-Liġijiet ta' Malta. Din il-Qorti hi tal-fehma illi l-Prosekuzzjoni ma kienitx tiddikjara dan kieku ma kienitx qegħda temmen lill-akkużat f'dak li qal, inkluz fejn dan qed jiċċad l-involvement tiegħu mal-ixkora tas-siment u l-hamsin (50) sapuna li allegatament kien hemm fiha.”

Apart from this, this Court makes reference to another decree given by this Court as diversely presided on the 23rd.of October 2024 in the names **Ir-Repubblika ta' Malta vs. Ivan Cachia** (Number 25/2022 – Hon. Madame Justice Natasha Galea Sciberras), in which decree the mentioned Court also ordered the accused be tried in the Court of Magistrates (Malta) as a Court of Criminal Judicature. In this decree the following was stated:

“Madankollu, f'dan il-każ, mill-atti kumpilatorji ma tirriżultax l-kwantita' speċifika ta' droga li giet moħbija fir-razzett ta' Paul Cachia għewwa l-Aħrax tal-Mellieħa.”

Later, in the same decree the Court stated the following:

¹ “Issir riferenza għax-xhieda tal-Ispettur Jesmond Borg a fol. 497 tal-proċess.”

“Għaldaqstant, għall-fini tal-linji gwida ndikati fir-Raba’ Skeda, din il-Qorti tqis illi s-sehem tal-akkużat f’dan l-uniku episodju li għalih issir referenza fl-atti proċesswali, kien wiehed tassew minuri, minimu għall-aħhar u limitat, bl-akkużat jaġixxi taħt id-direzzjoni ta’ oħrajn u taħt pressjoni fid-dawl tal-insistenza ta’ missieru illi kellu bżonn il-flus għall-kura ta’ ommu. Lanqas ma jirrizulta illi l-akkużat kellu xi influwenza fuq dawh ta’ fuqu fiċ-ċirku, jew illi kellu xi għarfien rigward l-operazzjoni jew il-kobor tagħha, u finalment lanqas ma għamel jew kien se jagħmel gwadann finanzjarju mill-istess reat. Ma’ dan il-Qorti tqis ukoll illi l-Uffiċjal Prosekutur iddikjara wkoll illi l-akkużat għandu jibbenefika mill-Artikolu 29 tal-Kapitolu 101 tal-Liġijiet ta’ Malta, stante illi kkollabora bis-shiħ mal-Pulizija.²”

That not even what has been stated in the above-quoted decree finds any application whatsoever to the case under examination since the facts of both cases were completely different.

That considering what has been outlined above it transpires that the request of the applicant Cosmin Constantin Iosub in his application should be rejected.

Decide

Consequently, for all the above-mentioned reasons, the Court rejects the request of the applicant Cosmin Constantin Iosub in his application filed on the 7th of October 2024 as a consequence of which the mentioned Cosmin Constantin Iosub should be tried by the Criminal Court.

Dr. Neville Camilleri
Hon. Mr. Justice

Alexia Attard
Deputy Registrar

² “Ara a fol. 37 tal-atti proċesswali.”