



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

**MAGISTRATE DR.
CONSUELO-PILAR SCERRI HERRERA**

Sitting of the 9 th October, 2007

Number. 723/2003

**Police
Superintendent Carmelo Bartolo
Vs**

MARCO CHRISTOPH MARTINZ ET

The Court;

Having seen the application of the accused Marco Christoph Martinz dated 11th October 2007 wherein the same accused stated that:-

“These proceedings were put off sine die after the failure of the prosecution to conclude its evidence on account of various difficulties relating to the analysis of a blood sample.

Informal Copy of Judgement

That notwithstanding the lapse of several months and indeed more than three (3) years since the institution of these proceedings, which proceedings have not been definitively concluded.

That on the 26th September 2003, the accused had deposited the sum of one thousand Malta liri (LM1,000) to serve as a partial guarantee for the observance of the bail conditions.

That moreover on the 21st January 2004, the accused deposited a further five hundred Malta Liri (LM500) in order to be able to go abroad.

That the accused humbly submits that there is no reason why these proceedings should remain in a constant stage of abeyance.

That the non-termination of these proceedings is a breach of the right of the accused to be heard within a reasonable time.

That applicant has every interest to have his innocence confirmed.

That moreover in view of these proceedings there is no further scope to have his bail secured by means of a deposit.

Thus the accused humbly requested the Court to:-

1. Reappoint these proceedings and declare closed the stage where the prosecution can bring forward further evidence and proceed to hear the case for the defence.
2. Or, alternatively authorise applicant or the depositary on his behalf to withdraw all monies deposited on his behalf in the acts of these proceedings and consequently vary the bail decree accordingly.”

Having seen its own decree dated 13th October 2006 whereby the Court upheld the request of the applicant to have his case reappointed and in fact appointed same for

the 23rd October 2007 and ordered the Commissioner of the Police and the Defence Lawyer be notified with its same decree.

Having seen its decree of the 30th July 2007 wherein the Court ordered that the parties to this case are to deal with this same application at the next sitting which was ascheduled for the 10th September 2007.

The Court saw that during the sitting of the 10th September 2007, the prosecution declared that:-

“It is still insisting upon having a court expert to examine the exhibited samples for conclusion as already requested earlier on during these proceedings. Now since, it seems that the prosecution did not manage to furnish the requested assistance to the Court to find a cost effective court expert capable of doing these examinations, humbly requests that this Honourable Court communicates these submissions to the Court Registrar and/or to the pertinent authorities to identify a cost effective expert capable of doing this task, as so far, neither the prosecution nor the officers in charge of the local science laboratory neither the hospital authorities and neither non governmental organizations have so far managed to find a laboratory, local or overseas, capable of doing this task. The only person capable of doing these examinations was Mario Mifsud who has already testified to this effect. Following his testimony ,the Court ordered that prior to considering what was suggested by the court expert, Mario Mifsud is to inform the Court with an exact estimate regarding expenses incurred including the to and fro travel to the Maltese Islands of the expert to deliver his evidence... The prosecution thus humbly requested that such an estimate be exhibited in these proceedings via an official note, in order that in the immediate future, the Court can decide whether to appoint this expert, or whether to appoint no one, but the prosecution holds firm its request to have an expert nominated.”

The Defence submitted that:-

“For the same reasons explained throughout the course of these proceedings, on the basis of which the relative court experts have already given evidence, maintains with respect that such a request is going to be a useless costly exercise.”

The Court thus examined the proceedings in the light of the above requests.

The Court took note of the evidence given by Court expert, toxicologist Doctor Michael Sammut, wherein he stated that he had been nominated on the 24th August 2004, by the Inquiring Magistrate to carry out toxicological investigations on the blood and urine taken from the person of Anastasiou Konstantin since it was alledged that some days prior to his appointment the said Konstantin was injected by some toxicological substance. He carried out a test to see if drugs were present in the system of Konstantin but this gave a negative result. Asked if he carried out a test for the presence of anabolic steroids, the witness answered in the negative. He said that such tests are usually carried out on athletes and not in toxicological laboratories where he works. He said he was not equipped to carry out such tests.

Asked if he knows of any substance which if injected in the body could give a disastrous effect to the body a hundred hours after its injection, the witness answered in the negative and said that there are many red poisons that if injected could cause harm but harm deterioration occurs immediately. He said that if a person is injected with a wrong amount of steroids he could be potentially dead, and if not dead harm on the body function such as the kidney, brain or liver. If on the contrary the person is injected with a small amount of steroids this would not be poisonous.

From an examination of the report document MS, presented by this same expert it transpires that no presence of drugs of abuse and medicinal indicated in document B attached to his report were detected in the

blood and urine sample handled over to him of Anastasiou Konstantin.

The Court also examined the report presented by Doctor Mario Cachia, specialist in internal medicine dated 30th August 2003 marked as document AG exhibited at fol. 569.

From an examination of this same document it transpires that he was nominated by the Inquiring Magistrate by a decree of the 24th August 2003 to examine Anastasiou Konstantin for signs of a needle stick injury and poisoning. He stated that Konstantin claimed he was given an injection at the base of his neck as he was held from the back with an arm around his neck. He then felt a sharp pain at the base of his neck and was told that the injection will take effect after one hundred hours at which time his blood cells would swell up and he would die from a heart attack. He was also told that the chemical injected would be undetectable in any laboratory world wide. Allegedly this took place thirty six hours prior to his examination. The doctor stated that Konstantin was not dizzy not flushed or feeling unwell. His papillary reflexes were normal and of normal size for the particular lighting conditions. Examination of the neck area did not allow any signs of bruising from the use of an arm to hold him back, Closer examination especially to the back of the neck did not reveal any needle marks. He only had one superficial abrasion which in his opinion was a fingernail scratch mark possibly caused by the subject himself.

On the 24th April 2004, the prosecution once again asked for the blood sample taken by Doctor Michael Sammut, be examined by another expert so that a test is carried out to see if the steroid sample exhibited in court is indicated in the blood sample of Konstantin. However it was not in a position to name any expert. It however bound itself to present a note in these proceedings to inform the court where such test could take place and who could carry it out.

On the 26th May 2004 the prosecution presented a note with all this information and suggested that the test be carried out in the Institut Fur Doping Analytik und Sportbiochemie.

On the 2nd June 2004, the Court was informed verbally by Doctor Michael Sammut that the blood sample, taken from the person of Konstantin, was kept in the fridge with different coagulants and are not good to be submitted for further test. In the same sitting the prosecution together with the defence stated that they would formulate a request to the authorities in Dresden, the same authorities suggested by the prosecution in its note of the 26th May 2004 with an aim to establish whether the samples could still be tested for the presence of steroids due to the condition of the blood.

From an examination of the document exhibited in court a fol. 591, the prosecution and defence wrote a letter to the laboratory and enquired whether such a test could be carried out since various coagulants were added to the sample and sample was kept in a fridge not freezer for the period of one year.

From a reply sent to the parties dated 28th August 2004 from Professor R.K. Muller it appears that in principle the analysis of a blood sample for steroids is possible but with the mentioned conditions there could only be an attempt.

Thus on the 6th September 2004, the Court ordered Doctor Michael Sammut to give evidence once again and describe the conditions of how the sample was kept.

On the 12th October 2004 Doctor Michael Sammut appeared in Court and gave evidence in this regard. He stated that he had three blood samples with liquid heparin and fluoride oxidant. He stated that these were the remains he had after carrying out the tests he was ordered to do. He explained that originally there were frozen then were kept in a fridge and have been held so for a year (thus today they have been for four years in a fridge assuming they are still there). He stated that no one

told him to keep these samples they were only the leftovers. He said that these are biological samples so by time they **deteriorate. He explained that deterioration in floroxide starts within a few days.**

The Court, on the 1st November 2004 then ordered that this evidence is communicated to the foreign laboratory above mentioned in view of the reply given by the laboratory to the request of the parties above mentioned. This was done on the same day as evidenced by the receipt of fax fol. 107.

From an examination of the reply of Professor R.K. Muller it results that storing a blood sample in fluoride does not cause harm to the sample as long as it was kept frozen at a temperature of 4 degrees Celsius. A further communication was sent to the Professor and with a subsequent letter he confirmed that the test could be carried out.

On the 2nd February 2005, the Court upheld the request of the prosecution to carry out the test on the blood sample and nominated Dottor Stephen Farrugia Sacco to act as a courier to Germany to take with him the sample for its examination and ordered the same Dottor Stephen Farrugia Sacco to inform her about the expenses involved prior to his departure so that same could be communicated to the Director of Courts.

In a letter dated 2nd February 2005 exhibited fol. 625 Dottor Stephen Farrugia Sacco was informed that the German Laboratory was no longer interested in carrying out the test. This same letter was communicated to the commissioner of Police and to the defence lawyer on the 4th April 2005.

On the 29th April 2005, there appeared the prosecuting officer Superintendent Carmelo Bartolo who informed the Court that he was still interested in carrying out these tests and that they should be done in another laboratory. The prosecution bound itself to inform the Court of another Laboratory.

Today, two and a half years later the Court is still waiting for this information.

Thus in view of the circumstances in particular that the blood samples were taken more than four years ago, that they are the leftovers, that they were not stored in ideal conditions and having seen that the prosecution has dragged its feet in this regard objects to the carrying out of such tests.

Thus with regards to the request of the prosecution to nominate a person to carry out the test, **the Court objects to same and orders prosecution to conclude its evidence in the next sitting.**

With regards to the request of the defence to reappoint this case, such request at this stage is superfluous since the case is sub judice and also at this stage, objects to its second request so that the accused withdraws his monies deposited according to his bail decree.

The Court orders continuation of this case so that the prosecution finalises its evidence and hopefully subsequently the defence may start with its witnesses.

< Partial Sentence >

-----END-----