



MALTA

CRIMINAL COURT

**HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 31 st May, 2004

Number 9/2004

The Republic of Malta
Vs
Kandemir Meryem Nilgun
And
Kucuk Melek

The Court,

Having seen the bill of indictment no. 09/2004 against the accused Kandemir Meryem Nilgun and Kucuk Melek wherein they were charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that Kandemir Meryem Bilgun and Kucuk Melek had been coming to, and going from, Malta since March of the year two thousand and three. Up to the fifteenth April of the year 2003, they had been to Malta on at least two separate occasions.

That it did not transpire that during such period they abused of any drug in any manner. It did transpire, however, that during the same period they made a number of local and foreign acquaintances at Saint Julians. Some of those acquaintances were somehow and somewhat in the know of, and directly involved in drug dealing and trafficking. With time, Kandemir Meryem Nilgun and Kucuk Melek became increasingly aware of the quick and easy profit which drug trafficking could net. Unfortunately, also with time, they both fell into the temptation of directly involving themselves and associating with drug dealers and traffickers, with the professed aim of making rich gains, spurred on by the dire financial straits they found themselves in.

That during the first months of 2003, they intrinsically befriended a certain Kamir who was also regularly coming to, and going from Malta. Kamir was, during this period, very much involved in trafficking of heroin, constituting, promoting and financing the bulk importation thereof into Malta. Kandemir Meryem Nilgun and Kucuk Melek knew all this. Indeed, they specifically and voluntarily accepted Kamir's offer to be his associate, both in Malta as well as outside Malta, and help him import into Malta a substantial quantity of heroin. In return, Kamir was to reward and compensate them to the amount of at least seven hundred American Dollars each. Not only, but it was agreed between them that Kamir and a certain Mario Borg were to foot all travelling expenses, including Passport expenses, incurred by them in order to be able to go to Turkey, take possession of the heroin and come back to Malta with it. Such was the mode of action planned or agreed upon between the four of them.

That the realization of such association between Kandemir Meryem Nilgun and Kucuk Melek, on the one hand and Kamir and Mario Borg, on the other hand, was at the stage of almost reaping full dividends when, fortunately, it was abruptly and timely disrupted by members of the Maltese Police Corp.

By committing the above mentioned acts with criminal intent, Kandemir Meryem Nilgun and Kucuk Melek rendered themselves guilty of conspiracy to trafficking in dangerous drugs in breach of the provisions of the Dangerous Drugs Ordinance.

Wherefore, the Attorney General, in his aforesaid capacity, accused Kandemir Meryem Nilgun and Kucuk Melek of being guilty of having, with another one or more persons in Malta, and outside Malta, conspired for the purpose of committing an offence in violation of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), and specifically of importing and dealing in any manner in heroin, and of having promoted, constituted, organized and financed such conspiracy.

Demanded that each of the accused be proceeded against according to law, and that they be sentenced to the punishment of imprisonment for life and to a fine of not less than one thousand Maltese Liri (LM1000), and of not more than fifty thousand Maltese Liri (LM50,000), and the forfeiture in favour of the Government 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 sections 9, 10(1), 12, 14(1)(5), 15A, 20, 22(1)(a)(f)(1A)(1B)(2)(a)(i)(3A)(c)(d), 22(f) and 26 of the Dangerous Drugs Ordinance (Chap. 101) and in sections 20, 22, 23 and 533 of the Criminal Code, including the issue of a Removal Order with respect to accused in terms of sections 5(2)(b) and 15 of the Immigration Act, or to any other punishment applicable according to law to the declaration of guilty of the accused.

2) And after the Attorney General premised in the Second Count of the Bill of Indictment that in pursuance and execution of the association and conspiracy alleged under the first count, Kandemir Meryem Nilgun and Kucuk Melek had gone to Istanbul, Turkey, some time in the beginning of February of the year 2003. There, as planned and agreed upon between them, they came into contact with

Kamir. Kamir had, in the meantime, bought as much heroin as could be bought in Istanbul with a substantial amount of money.

That some time between the period of March and April of said year 2003, Kamir made one final contact with Kandemir Meryem Nilgun and Kucuk Melek in order that the latter take material possession of the heroin with the ultimate aim of importing it into Malta. Such contact took place in Istanbul. It was there that the two meticulously packed and placed the heroin into different capsules, some fifty six in all, which were then stowed within the linings of their stomachs by swallowing them.

That Kandemir Meryem Nilgun and Kucuk Melek were, on the third March of said year 2003, on the flight covering a scheduled route from Istanbul to Malta. They arrived in Malta carrying normal luggages and proceeded out of the Airport with the heroin in their possession. This particular heroin consignment had somehow managed to find its way into the local and illegal street market, thanks mainly to the intervention of local associate Mario Borg who operated within the vicinities of Saint Julians.

That this same operation was carried out by them on the fourteenth April of same year 2003. This time they imported into Malta a large number of capsules in the same manner as on the previous occasion. There were almost a hundred capsules in all. They then proceeded to Saint George's Park Holiday Complex, Saint Julians where they had to arrange an encounter with a certain Mario Borg to whom they were instructed by Kamir to surrender possession of the drug. However, the Malta Police were hard on their tracks due to information received and investigated upon and eventually foiled any further attempts by them to import and traffic in heroin.

That heroin is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Kandemir Meryem Nilgun and Kucuk Melek were not in possession of any valid and

subsisting import authorization granted in pursuance of said law.

That by committing the above mentioned acts with criminal intent, Kandemir Meryem Nilgun and Kucuk Melek rendered themselves guilty of the importation of a dangerous drug into Malta.

Wherefore, the Attorney General, in his aforesaid capacity, accused Kandemir Meryem Nilgun and Kucuk Melek of being guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (heroin), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance, when they were not in possession of any valid and subsisting import authorization granted in pursuance of said law.

Demanded that each of the accused be proceeded against according to law, and that they be sentenced to the punishment of imprisonment for life and to a fine of not less than one thousand Maltese Liri (LM1000), and of not more than fifty thousand Maltese Liri (LM50,000), and the forfeiture in favour of the Government 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 sections 10,12,14,15A, 22(1)(a)(1B)(2)(a)(l)(3A)9d) and 26 of the Dangerous Drugs Ordinance (Chap. 101) and in sections 20, 22, 23, 17(b)(h) and 533 of the Criminal Code, including the issue of a Removal Order with respect to accused in terms of sections 5(2)(b) and 15 of the Immigration Act, or to any other punishment applicable according to law to the declaration of guilty of the accused.

3) And after the Attorney General premised in the Third Count of the Bill of Indictment that having, on two different and separate occasions, during the period of the end of February and the fifteenth of April of the year 2003, imported into Malta the dangerous drug heroin in breach of the provisions of Chapter 101 of the Laws of Malta, as described under the second count, Kandemir Meryem

Nilgun and Kucuk Melek, consequent to a raid carried out by Malta Police officials, were physically and personally searched by said officials. From such search, Kandemir Meryem Nilgun and Kucuk Melek were found to be carrying clandestinely an amount of almost a kilo of heroin of high purity tucked away in capsules inside their respective bodies.

That it subsequently resulted that they were in possession of approximately two hundred capsules of heroin with an above average percentage of purity. Such quantity was capable of fetching a somewhat extraordinary high price on the street market, what with the high level of demand for heroin there was at the time on the local market.

That heroin is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Kandemir Meryem Nilgun and Kucuk Melek were not in possession of any valid and subsisting import or possession authorization granted in pursuance of said law.

That by committing the above mentioned acts with criminal intent, Kandemir Meryem Nilgun and Kucuk Melek rendered themselves guilty of the offence of possession of a dangerous drug (heroin) with intent to supply.

Wherefore, the Attorney General, in his aforesaid capacity, accused Kandemir Meryem Nilgun and Kucuk Melek of being guilty of knowingly having been in possession of a dangerous drug (heroin) specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance, when not in possession of any valid and subsisting import or possession authorization granted in pursuance of said law; so, however, that such offence was under such circumstances that such possession was not for the exclusive use of the offenders.

Demanded that each of the accused be proceeded against according to law, and that they be sentenced to

the punishment of imprisonment for life and to a fine of not less than one thousand Maltese Liri (LM1000), and of not more than fifty thousand Maltese Liri (LM50,000), and the forfeiture in favour of the Government 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 sections 9, 10(1), 12, 14(1)(5), 20, 22(1)(a)(2)(a)(i)(ii), 22(2)(b)(i) and 26 of the Dangerous Drugs Ordinance (Chap. 101) and Regulation 8 of the 1939 Regulations for the Internal Control of Dangerous Drugs (Legal Notice 292/39), and in sections 20, 22, 23, 17(b)(h) and 533 of the Criminal Code, including the issue of a Removal Order with respect to accused in terms of sections 5(2)(b) and 15 of the Immigration Act, or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen the Notes filed by the said accused respectively on the 18th and 19th May, 2004, whereby they declared that they were filing a guilty plea to the charges put forward in their regard in the said Bill of Indictment;

Having seen the Minute whereby both accused declared that they were renouncing to any time limit in their favour and that they had no objection to their case being heard and decided today;

Having seen that in today's sitting the accused, in reply to the question as to whether they were guilty or not guilty of the charges preferred against them under the three counts of the Bill of Indictment, stated that they were pleading guilty thereto;

Having seen that this Court then warned the accused in the most solemn manner of the legal consequences of such statement and allowed them a short time to retract it, according to Section 453 (Chap. 9);

Having seen that the accused being granted such a time, persisted in their statement of admission of guilt;

Declares both accused, namely Kandemir Meryem Nilgun and Kucuk Melek guilty of all three counts in the Bill of Indictment, namely of:

1. having, during the first months of 2003, with another one or more persons in Malta, and outside Malta, conspired for the purpose of committing an offence in violation of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), and specifically of importing and dealing in any manner in heroin, and having promoted, constituted, organized and financed such conspiracy as stated in the first count of the Bill of Indictment;

2. meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (heroin), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance, on the third March, 2003 and on the fourteenth April, 2003 , when they were not in possession of any valid and subsisting import authorization granted in pursuance of said law as stated in the second count of the Bill of Indictment;

3. knowingly, between the end of February and the fifteenth of April, 2003, in Malta, having been in possession of a dangerous drug (heroin) specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance, when not in possession of any valid and subsisting import or possession authorization granted in pursuance of said law; so, however, that such offence was under such circumstances that such possession was not for the exclusive use of the offenders and this as stated in the third count of the Bill of Indictment;

Having heard the evidence of both Kandemir Meryem Nilgun and Kucuk Melek as well as that of Inspector Nezren Grixti, Muhittan Kucuk and Anna Vella supervisor female section, Corradino Corrective Facility, Paola;

Having seen the authentic and genuine translations of both convicted persons' criminal conduct sheet in Turkey exhibited by the defence in agreement with the prosecution;

Having heard submissions of Defence Counsel and of Counsel for the Prosecution regarding the plea in mitigation for the purposes of punishment;

Having seen the minute entered in the records of today's sitting whereby the Prosecution and Defence agreed that the first and third counts of the Bill of Indictment are, for purposes of punishment, to be considered as having served as a means for the commission of the offence under the second count of the Bill of Indictment , according to Section 17 (h) of Chapter 9 of the Laws of Malta (vide "Ir-Repubblika ta' Malta vs. Mansour Muftah Nagem" [30.10.2002] ; "Ir-Repubblika ta' Malta vs. Ahmed Esawi Mohamed Fakri")

Having considered both local and foreign case law regarding the plea in mitigation of punishment when the accused person files an early plea of guilt and in particular **"Ir-Repubblika ta' Malta vs. Nicholas Azzopardi"** [24.2.1997] (Criminal Court); **"Ir-Repubblika ta' Malta vs. Mario Camilleri"** [5.7.2002] (Court of Criminal Appeal); **"Il-Pulizija vs. Emmanuel Testa"** [17.7.2002] (Court of Criminal Appeal) and others) as well as **BLACKSTONE'S CRIMINAL PRACTICE** (Blackstone Press Limited 2001 edit) ;

Having considered that in this case both persons convicted had actually admitted their guilt in their respective statements to the Police made on the 16th April, 2003 (pages 15 et seq. and 19 et seq. of the record) and even confirmed their statements on oath before the Inquiring Magistrate (Pages 86 and 87 of the records). And although in the course of their arraignment before the Court of Magistrates on the 17th April, 2003 (Page 8-9 of the records) they reserved their position when asked how they were pleading to the charges preferred against them, in the course of their second appearance before that

Court on the 21st April, 2003 (Page 10) they filed a plea of guilty. Furthermore on the 18th and 19th May, 2004, they respectively filed a note admitting their guilt on all counts of the Bill of Indictment immediately after they were served with said Bill of Indictment – a plea which they confirmed in the course of today's sitting.

On the other hand having considered that, as stated in BLACKSTONE'S,
“Where an offender has been caught red handed and a guilty plea is inevitable, any discount may be reduced or lost (Morris [1998] 10 Cr. App. R. (S) 216; Landy [1995] 16 Cr. App. R. (S) 908)”

Having considered **all** the submissions made by defence counsel of both convicted persons which have been duly recorded and in particular - but not only - the following, i.e. the filing of a timely and early plea of guilt; the fact that their criminal conduct sheets in Malta and in Turkey was without blemish ; the fact that they had identified the person to whom the drugs they had imported were to be delivered and contributed in bringing him to justice ; that they had given very detailed statement to the Police and mentioned various names; that the Prosecution agreed that in this case Section 29 of Chapter 101 was applicable in favour of both persons convicted; that the suffering of both accused by being imprisoned in a foreign country with a different culture and language was of a graver nature than if they were imprisoned in their own country; that the convicted persons, as couriers, were victims of stronger people and had even exposed themselves to great risk when ingesting the capsules containing dangerous substances, that they had done all this because they found themselves in a difficult financial situation in Turkey where they were both single mothers of a child; that they had apologized to Maltese society and that although they had repeated the drug smuggling operation a second time this in a way had helped the Police to discover their operation and that it was the convicted persons themselves, who on being caught on their second drug-smuggling trip to Malta informed the Police that they had done the same thing on a previous

occasion; that not all drug travelers who are caught reveal the names of their suppliers and receivers as the persons convicted had done; and that the conduct of both persons convicted in the Corradino Correctional Facility had been exemplary to date. That therefore the Court should show maximum clemency in inflicting punishment;

Having considered all the submissions made by Counsel for the Prosecution, namely : that although it agreed that section 29 of Chapter 101 applied to both persons convicted it disagreed with the submission of the defence that the fact that the convicted persons had repeated the operation a second time was “ ***a blessing in disguise***”. In fact had not the Police intervened in the course of the second operation and caught both convicted persons red handed it would have been fair to assume that the operation could have been repeated over and over again. If the persons convicted felt threatened or placed under pressure by others, how is it that they only disclosed what was happening to the Police Authorities after they were caught? The Prosecution further submitted that both convicted persons were in the operation for financial gain and that the part couriers play in such operations was not to be minimized as couriers were an indispensable link in the whole operation. In view of the frequency of such smuggling drugs operations the Court should send a message to society by awarding the right punishment. Furthermore the Court should take into account the quantity and purity of the drug imported and the fact that this had happened on two successive occasions;

Having also considered that both persons convicted are to benefit from the provisions of Section 29 of Chapter 101 of the Laws of Malta as evidenced by the minute entered into the records of the case in the course of today's sitting by both Prosecution and Defence;

Having on the other hand considered the quantity (816.06 grams), the quality (heroin) and the purity (47%) of the dangerous drugs imported into Malta by the convicted persons on the second occasion, namely on the 14th.

April, 2003 and that this operation had been preceded by a previous "run" on the 3rd. March, 2003, when, according to accused Nilgun's statement, she had imported a further 430 grams in some 56 capsules and, according to Kucuk's statement, the latter had also ingested about 40 capsules prior to flying out to Malta; Having considered the havoc that the importation and distribution of such drugs causes on the local market and that both convicted persons abused of the hospitality extended to them as visitors to this Island by using such visits to further their criminal ends ;

Having seen other cases decided by this Court where the facts of the case were somewhat similar - though obviously never identical - for the purpose of maintaining a desirable degree of uniformity in punishment;

Having seen Sections 9, 10,10(1) 12, 14, 14 (1)(5), 15A, 20, 22 (1)(a), (2) (a) (f) (1A) (1B) 2 (a) (i) (ii) (3A)(c)(d), 23, 26 and 29 of the Dangerous Drugs Ordinance (Chap.101); Regulation or Rule 8 of the 1939 Regulations for the Internal Control of Dangerous Drugs (L.N. 292/1939) and Sections 17(a)(b)(h), 20, 22, 23, 23A, 26, 31, 492 and 533 of the Criminal Code, as well as sections 5(2)(b) and 15 of the Immigration Act;

Condemns said Kandemir Meryem Nilgun to a term of imprisonment of thirteen (13) years with the reduction of any term spent in preventive custody only in connection with these offences and to a fine *multa* of twenty thousand Maltese Liri (LM20,000) and condemns said Kucuk Melek to a term of imprisonment of thirteen (13) years with the reduction of any term spent in preventive custody only in connection with these offences and to a fine multa of twenty thousand Maltese Liri (LM20,000), and , if these fines are not paid at once , orders that such fines are to be automatically converted into a further period of eighteen (18) months imprisonment according to law and further orders that each one of them should pay the sum of three hundred , thirty

nine Maltese Liri , thirty seven cents , five mils, (LM339.37c5m), being one half of the total court expenses incurred in this case which amount to LM678.75c, according to Section 533 of Chapter 9 of the Laws of Malta within fifteen (15) days from today ;

Furthermore orders that all objects related to the offences and all monies and other moveable and immovable property pertaining to both persons convicted should be confiscated in favour of the Government of Malta ;

Furthermore the Court is issuing a Removal Order against both persons convicted and both of them are to be deported from these Islands in terms of Sections 5 (2) (b) and 15 of the Immigration Act, as soon as they have served their respective terms of imprisonment and paid the said respective fines or else served the further term or terms of imprisonment, should such fine or fines be converted into a term or terms of imprisonment

Finally the Court orders the destruction of all drugs under the direct supervision of the Deputy Registrar of this Court duly assisted by Court Expert Godwin Sammut, unless the Attorney General informs this Court within fifteen days from today that said drugs are to be preserved for the purposes of other criminal proceedings against third parties and, for this purpose, the Deputy Registrar should enter a minute in the records of this case reporting to this Court the destruction of said drugs.

< Final Judgement >

-----END-----