



QORTI KRIMINALI

**ONOR. IMHALLEF
JOSEPH GALEA DEBONO**

Seduta tal-11 ta' Dicembru, 2006

Numru 18/2006

The Republic of Malta
Vs
Kamil Kurucu

The Court,

Having seen the bill of indictment no. 18/2006 against the accused Kamil Kurucu wherein he was charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that in the month of March 2005, Kamil Kurucu met a person in turkey who asked him to import illegally a large quantity of Ecstasy pills into Malta. He agreed with a certain Yasar that he had to carry the pills in his luggage which was to be provided by Yasar on his flight to Malta and that he was to be paid 3000 US\$ for so doing. In fact, he was given a down

payment of 1500 US\$ and the balance had to be paid later after he would have delivered the pills in Malta to a person who would be indicated to him on arrival by Yasar who had to phone him up from Turkey. In execution of this agreement, Kamil Kurucu arrived in Malta on the 31st March, 2005 carrying 10,006 ecstasy pills and was apprehended by the Police at the Airport.

By committing the above mentioned acts with criminal intent, Kamil Kurucu rendered himself guilty of conspiracy to trafficking in dangerous drugs in breach of the provisions of the Medical and Kindred Professions Ordinance.

Wherefore, the Attorney General, in his aforesaid capacity, accused Kamil Kurucu 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 Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta) and specifically of dealing illegally in any manner in Ecstasy pills and of having promoted, constituted, organized and financed such conspiracy.

Demanded 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 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 120A(1)9f), 120A(2)(a)(I), (2A), (2B), and 121A(1)(2) of Chapter 31, and in sections 20, 22, 23 and 533 of the Criminal Code, 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 under the circumstances indicated in the First Count of the Bill of Indictment and specifically on the 31st March, 2005, Kamil

Kurucu imported illegally into Malta 10,006 Ecstasy pills from Turkey as had been agreed with his counter-part in Turkey. In fact, the Police on searching his luggage on his arrival at the Airport in Malta from Turkey via Milan found the pills in his possession. These pills were intended to be dealt with and sold in Malta.

Ecstasy pills, or rather the designer drug known as MDMA (methylenedioxymethamphetamine), are a dangerous drug restricted and controlled under the provisions of Part A, third Schedule, of the Medical and Kindred Professions Ordinance. Kamil Kurucu was not in possession of any valid and subsisting import authorization granted in pursuance of said law.

By committing the above mentioned acts with criminal intent, Kamil Kurucu rendered himself guilty of the offence of importation of a dangerous drug into Malta.

Wherefore, the Attorney General, in his aforesaid capacity, accused Kamil Kurucu guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (Ecstasy), being a drug restricted and controlled under the provisions of Part A, Third Schedule, of the Medical and Kindred Professions Ordinance, when not in possession of any valid and subsisting import authorization granted in pursuance of said law.

Demanded that 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 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 stipulated and laid down in sections 2(1), 120A(2)(a)(1), (2A)(2B), and 121A(1)(2) of Chapter 31 and in sections 20, 22, 23 and 533 of the Criminal Code, or to any other punishment applicable according to law to the declaration of guilty of the accused.

3) And after having premised in the third Count of the Bill of Indictment that under the circumstances indicated in the First Count of the Bill of Indictment and specifically on the 31st March, 2005, Kamil Kurucu imported illegally into Malta 10,006 Ecstasy pills from Turkey as had been agreed with his counter-part in Turkey. In fact, the Police on searching his luggage on his arrival at the Airport in Malta from Turkey via Milan found the pills in his possession. These pills were intended to be dealt with and sold in Malta and were not for the personal use of accused but intended to supply the locals illegally.

Ecstasy pills, or rather the designer drug known as MDMA (methylenedioxymethamphetamine), are a dangerous drug restricted and controlled under the provisions of Part A third Schedule, of the Medical and Kindred Professions Ordinance. Kamil Kurucu was not in possession of any valid and subsisting import authorization granted in pursuance of said law.

By committing the above mentioned acts with criminal intent, Kamil Kurucu rendered himself guilty of the offence of possession of a dangerous drug (Ecstasy pills), with intent to supply.

Wherefore, The Attorney General, in his aforesaid capacity, accused Kamil Kurucu guilty of knowingly having been in possession of a dangerous drug (Ecstasy pills), being a drug restricted and controlled under the provisions of Part A, Third Schedule, of the Medical and Kindred Professions Ordinance, when not in possession of any valid and subsisting import 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 offender.

Demanded that 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 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 stipulated and laid down in sections 120A(2)(a)(1),(2A)(2B), 120A(1)(f)(2)(a)(1) and 121A(1)(2) of Chapter 31, Legal Notices 22/85 (regulation 10(2)), 70/88 and 183/99 as well as sections 22A, 22B, 22E, 27, 28 and 30 of the Dangerous Drugs Ordinance Chapter 101, and in sections 20, 22, 23 and 533 of the Criminal Code, or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen that in the sitting of the 4th. December, 2006, the accused, in reply to the question as to whether he was guilty or not guilty of the charges proffered against him under the three counts of the Bill of Indictment, stated that he was 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 him a short time to retract it, according to Section 453 (Chap. 9);

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

Declares the accused, Kamil Kurucu guilty of all three counts in the Bill of Indictment, namely of:

1. Having, during the month of March, 2005, 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 Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta), and specifically of dealing illegally in any manner in ecstasy pills and of having promoted, constituted, organized and financed such conspiracy, as stated in the first count of the Bill of Indictment;

2. Under the circumstances indicated in the First Count of the Bill of Indictment and specifically on the 31st.March, 2005, at Malta International Airport, meaning to bring or causing to be brought into Malta

in any manner whatsoever a dangerous drug (ecstasy), being a drug restricted and controlled under the provisions of Part A, Third Schedule, of the Medical and Kindred Professions Ordinance, imported such drug when he was 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. Under the circumstances indicated in the First Count of the Bill of Indictment and specifically on the 31st.March, 2005, at Malta International Airport, knowingly, having been in possession of a dangerous drug (Ecstasy Pills) being a drug restricted and controlled under the provisions of Part A, Third Schedule, of the Medical and Kindred Professions Ordinance, when he was not in possession of any valid and subsisting import authorization granted in pursuance of said law; so, however, that such offence was under such circumstances that indicate that such possession was not for the exclusive use of the offender, as stated in the third count of the Bill of Indictment;

Having seen the minute entered by Prosecution and Defence Counsel whereby they declared that, for purposes of punishment, the charges contained under the first and second counts of the Bill of Indictment should be absorbed in the charge under the Third Count in terms of Section 17 (h) of the Criminal Code.

Having heard the evidence of Inspector Nezren Grixti and Catherine Kurucu, summoned to testify by the defence on the plea in mitigation

Having heard submissions of Defence Counsel regarding the plea in mitigation of punishment;

Having considered ALL submissions made by defence counsel which are duly recorded and in particular – but not only – the following, namely that the convicted person should benefit from any reduction in punishment as contemplated in Section 29 of Chapter 101 of the Laws of Malta as rendered applicable to the offences under

Chapter 31 by virtue of section 120A(2B) of Chapter 31 and this because of the full co-operation he extended to the police in the course of the investigation, where he provided all the information regarding the person who sent him from abroad by the name of Yasar and regarding the phone call he was meant to receive on his mobile phone telling him to whom he had to deliver the drug in Malta, as resulted also from the convicted person's statement to the police. He also handed over his mobile phone to the police who could have taken up the matter from then onwards.

In addition from the four finger prints lifted by the police from the container of the pills, which did not match those of the convicted person, the Police could eventually have been able to match these with those of the person who had given the drugs to accused in Turkey.

Having considered the submissions made by prosecuting counsel, namely that no proceedings could be taken against third parties as a result of the information given by the convicted person to the police, as no person could be identified as a result of that information. Therefore the convicted person could not benefit from any reduction of punishment under section 29 of Chapter 101 as rendered applicable to Chapter 31 of the Laws of Malta.

Prosecuting Counsel also stressed that in this case a considerable quantity of ecstasy pills was involved, which at a value of five Malta Pounds (LM5) per pill, added up to a total value of some fifty thousand Malta Pounds (LM50,000). It was also of significance to the Prosecution that on the convicted person's previous five visits to Malta between the 11th. March, 2004 and the 28th. February, 2005, he had always stayed in expensive hotel accommodation and not in his then girl friend's house, when he himself admitted in his statement that he had big financial problems.

On the other hand however, the Prosecution agreed that the convicted person should benefit from his

early declaration of guilt. The Prosecution was therefore requesting the Court to sentence him to a minimum of twelve years imprisonment in lieu of a life sentence, in addition to any fine (multa) the Court would be imposing according to law.

Having seen that the offences under the first and second 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 third count of the Bill of Indictment, for the purpose of and 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” and others);

Having considered that the punishment laid down by law for the offences of which the convicted person has been declared guilty is imprisonment for life together with a fine multa of not less than LM1000 and not more than LM50000.

Having also considered however that according to section 492 (1) of the Criminal Code, whenever, at any stage prior to the empanelling of the jury, the accused pleads guilty to an offence attracting the punishment of life imprisonment, the Court may, instead of said punishment, award a sentence of imprisonment for a period ranging between eighteen and thirty years.

Having also considered that according to the proviso (aa) of section 120A(2)(a)(i) of Chap. 31 of the Laws of Malta, when the Court is of the opinion that, having regard to the offender’s age, his previous conduct, the quantity of the medicine and the quality of the equipment or material involved and all the other circumstances of the offence, life imprisonment is not warranted, the Court may sentence the person so convicted to a term of imprisonment of not less than four years and not more than thirty years together with the fine above mentioned.

Having considered the convicted person's clean criminal conduct sheet at least in Malta;

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) ;

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 that from the evidence tendered by Inspector Nezren Grixti it resulted that the only details given by the convicted person regarding the person from whom he had obtained the drugs were that his name was YASAR, *"who may live some where (Sic!) at Tarlabasi at Taksim in Istambul. He is about fifty years of age and normally he is always found in a certain restaurant by name (Sic!) of Asmalimescit.."* and that this information did not lead to the identification of this Yasar or of any potential consignee of the drugs in Malta. The Inspector also testified that convicted person's mobile phone had been turned off by a police officer and that no call to accused had therefore come through.

Having considered that according to Section 29 of Chapter 101, as rendered applicable to Chapter 31 of the Laws of Malta, for the person convicted of an offence under the Ordinance, to benefit from the appropriate reduction in punishment, it is necessary for the prosecution to have declared in the records of the proceedings that the convicted person has helped the

Police to apprehend the person or persons who had supplied the convicted person with the drugs in question, or else that said convicted person proves to the Court's satisfaction that it had so helped the Police.

Having also considered that the person convicted cannot benefit from the provisions of Section 29 of Chapter 101 of the Laws of Malta as rendered applicable to offences under Chapter 31 by virtue of section 120A (2B) of said Chapter 31 of the Laws of Malta, as the information given was obviously insufficient to enable the police to identify the supplier of the drugs in Turkey, even if it had pursued such sketchy information with investigations in Turkey. Nor, for all that it matters, was it possible to identify the consignee of the drugs in Malta, if ever there was one. The Prosecution in fact not only failed to make the declaration required under Section 29 of Chapter 101, but actually opposed its application in this case. The Court is likewise not satisfied that the convicted person had helped the police to a degree which renders said section 29 applicable in this case.

Having also considered the considerable quantity amounting to 10006 tablets containing the substance 3,4 Methylenedioxymethamphetamine (MDMA), according to the report of the Court Expert, Godwin Sammut B.Sc., M.Sc., imported into Malta by the convicted person;

Having considered the havoc that the importation and distribution of such a considerable amount of drugs would have caused on the local market had it not been intercepted by Customs and the Police and that the convicted person abused of the hospitality extended to him by Maltese society as a visitor to this Island by using his visit to further his criminal ends and to make a considerable profit thereby ;

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 120A (2)(a)(i)(aa)(I), (2A)(2B), 121A (1)(2), and 120A (1)(f),(2)(a)(I), and Part A of the Third schedule of the Medical and Kindred Professions Ordinance, (Chapter 31), Sections 22A, 22B, 22E, 27, 28 and 30 of the Dangerous Drugs Ordinance (Chapter 101), Sections 17(h), 20, 22, 23, 492 (1) and 533 of the Criminal Code, as well as Legal Notices 22/85 (regulation 10(2)), 70/88 and 183/99.

Condemns said Kamil Kurucu to a term of imprisonment of twelve (12) years and to a fine *multa* of twelve thousand Maltese Liri (LM12,000) which fine shall be automatically converted into a further term of imprisonment of eighteen (18) months according to law if it is not paid within fifteen days from today and further orders that he should pay the sum of eight hundred and three Maltese Liri and seventy one cents (LM 803.71c) being the court expenses incurred in this case 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 the person convicted should be confiscated in favour of the Government of Malta;

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 also to be preserved for the purposes of other criminal proceedings against other 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.

Kopja Informali ta' Sentenza

< Sentenza Finali >

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