MALTA

QORTI CIVILI
PRIM' AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
GEOFFREY VALENZIA

Seduta tat-18 ta' Dicembru, 2006

Rikors Numru. 11/2006

Kandemir Meryem Nilgum Passaport No. 599719 and Kucuk Melek Passaport No. 0875538

Vs

Attorney General

The Court,

Having seen the **application filed by applicants** whereby they submitted:

That the applicants had been arraigned before the Court of Magistrates (Malta) as a Court of Criminal Inquiry and charged with (1) 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 or financed such conspiracy in breach of the provisions of article 22(1)(f), Chapter 101 of the Laws of Malta, (2) having imported, arranged or caused to be imported into these Islands the drug heroin or took preparatory steps to importing or exporting any dangerous drugs into Malta in breach of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, (3) also having on these Islands, on the 15th April 2003 and the previous three months had in their possession the drug heroin specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, *when they were 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 they were not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and were not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulation (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that he mentioned drugs were supplied to them for their personal use, according to a medical prescription as provided in the said regulations, and this in breach of Regulation 8, in 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, under such circumstances that such possession was not for the exclusive use of the applicants, and (4) also having on these Islands between the 3rd March 2003 and the 6th March 2003, supplied or distributed or offered to supply or distribute the drug heroin, specified in the *First Schedule of the Dangerous Drugs Ordinance, Chapter 101,* of the Laws of Malta, to person/s, or for the use of other person/s, without being licensed by the President of Malta, without being fully authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939), or by other authority given by the President of Malta to supply this drug, and without being in possession of an import and export authorization issued by the Chief

Government Medical Officer in pursuance of the provisions of paragraph 6 of the Ordinance and when they were not duly licensed or otherwise authorized to manufacture or supply the mentioned drug when they were not duly licensed to distribute the mentioned drug, in pursuance of the provisions of Regulation 4 of the Internal Control of Dangerous Drugs Regulations (G. N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

That upon their admission of guilt they had been found guilty on the 31st May 2004 by the *Criminal Court of all charges brought against them and condemned each to a term of imprisonment of thirteen 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), convertible into an additional eighteen months imprisonment. Both applicants were also sentenced to pay the court experts' fees.

That both applicants filed separate appeal applications whereby they appealed from the sentence delivered by the Criminal Court.

The first ground of appeal of applicant Melek was to the effect that the Criminal Court, in its judgment, did not explain how, in the light of the various provisions of the law regarding punishment and the equally diverse possibilities for decrease in punishment, it had computed which band the punishment fell within. Appellant humbly submitted that the first Court was in duty bound to explain how it arrived within the parameters within which punishment could be awarded and as a result of which the Court then decided the term of imprisonment of thirteen years. The appellant contended whilst she had no right to interfere in the discretion of the presiding judge as to what punishment to award from within the parameter established by law, she had a right to understand how the judge arrived to such parameter and this to ensure (1) that she could follow the build up of the punishment in view of the accepted principle that all punishments are to be clearly stipulated before hand (*nulla poena sine lege)* and

(2) that the Court made no mathematical errors in arriving at such parameter and (3) the transparency of the whole judicial process.

The appellant contended that the punishment should have been less than that effectively meted out by the first Court, especially in view of the fact that even the Prosecution agreed that Section 29 if the Dangerous Drugs Ordinance was applicable to the present case.

The second ground of appeal was to the effect that the first Court laid too much emphasis on the fact, stated by it in the judgment, that the appellant had been caught ''red-handed''. Appellant Melek contended that this was only partially true, in the sense that, without her admissions to the police, she would, at most have been charged only with the offence of possession with intent.

The third ground of appeal of appellant Melek was that the sentence passed upon her was disproportionate when compared to that passed on other persons found guilty of similar offences.

The main grievance of applicant Nilgum was to be effect that she did not deserve the punishment awarded by the first Court. Appellant stated that the Court failed to take into account certain circumstances that, properly evaluated to their minutest detail, ought to have been instrumental in the further decrease of punishment. The appellant indicated several circumstances which, according to her, should have meant a further reduction of the punishment from that actually awarded to her, which included, the fact that she was not caught ''red-handed'' as the judgment of the first Court seemed to imply, that she co-operated fully with the police and supplied them with information which they would not otherwise have had access to, and that there was no proper indication of how the punishment was calculated by the first Court.

That in its judgment of the 25th August 2005 the Court of Criminal Appeal dismissed both the applicants' appeals

and confirmed the judgment of the Criminal Court of the 31 May 2004.

That with regard to the first ground of appeal of appellant Melek the Court stated: ‘’*the Criminal Court is not obliged to give detailed reasons explaining either the nature or the quantum of the punishment being meted out, or to spell out any mathematical calculations that it may have made in arriving at that quantum.’’*

That the Court of Criminal Appeal went on to say that: ‘’The *principle nulla poena sine lege does not mean or imply that a Court of Criminal Justice has to go into any particular detail as to the nature and quantum of the punishment meted out, or, where the Court has a wide margin of discretion with various degrees and latitudes of punishment, that it has to spell out in mathematical or other form, the logical process leading to the quantum of punishment.’’*

That however, the Court further added that: “Indeed, it is highly recommendable that, when the law provides for a wide margin of discretion in the application of the punishment, reasons, possibly even detailed reasons, be given explaining how and why the court came to a particular conclusion.’’

That the Court of Criminal Appeal based itself in dealing with the grievances of appellants on the determination of whether in the light of all the circumstances of the case, the punishment awarded to the applicants was wrong in principle or manifestly excessive. Citing Blackstone Criminal Practice 2004 the Court invoked the principle that a sentence will not be reduced merely because it was on the severe side and that an appeal will succeed only if the sentence was excessive in the sense of being outside the appropriate range for the offence and offender in question.

That the applicants humbly submit that the question of whether the sentence passed in their regard was excessive in the sense of being outside the appropriate

range is impossible to determine with the procedure followed by the Court, since the law does not provide that the range be established and explained by the Criminal Court in its decision and therefore one cannot follow. The Court of Criminal Appeal itself identified two possible ranges of punishment that could have been inflicted in the present case, i.e. that of two (sic) to twelve years imprisonment in the case of a reduction in punishment by two degrees under Section 29 of Chapter 101 of the Laws of Malta of three (sic) to twenty years in the case of a reduction by one degree under the same provision. Moreover the applicants could be benefited from further reductions in punishment, which however, were solely mentioned but never identified as reductions by the Criminal Court in its sentencing process.

The basis of this constitutional application is therefore,

1. Applicants submit that the failure of the Criminal Court to show how and why it arrived at establishing parameter within which the term of imprisonment of thirteen years with regards to each of the applicants was arrived at, constitutes per se a violation of their fundamental right to a fair trial as established under Article 6 of the European Convention on Human Rights and Article 39 of the Maltese Constitution.

Applicants submit that it is an accepted principle that the right to a fair trial of a person charged with a criminal offence continues to apply at the sentencing stage.[1] The right of a fair trial as laid down in Article 6 places the domestic court under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties and further obliges the courts to give adequate reasons for their judgments.[2] The European Court of Human Rights has held that the extent to which the duty to give reasons applies, may vary according to the nature of the decision at issue, taking into account, inter alia the diversity of the submissions that a

[1] X v United Kingdom (1872) 2 Digest 766; T and V v United Kingdom (2000) 30 EHRR 121

[2] Jokela v Finland 21.05.02 (appl no 28856/95)

litigant may bring before the courts. The question whether has failed to fulfill the obligation to state reasons can therefore only be determined in the light of the circumstances of the case.[3]

Applicants humbly submit that it was an accepted position that in this case they legally should have benefited from a number of reductions in punishment in virtue of a number of applicable provisions of law and decisions regulating punishment, namely Articles 22(2)(aa) and 29 of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), as well as reductions consequent to their early admission of guilt. Therefore, in this case the Court had a wide margin of discretion in the application of parameters and punishment meted out to appellants.

Applicants humbly submit that the starting point as regards the state of applicable punishment and the benefits in reduction of same applied by the Criminal Court in their favour, when arriving at the parameter within which the punishment was meted out was not clarified by the Court. The Court failed to specify whether it was applying Article 22(2((aa) of Chapter 101, and therefore made it impossible for the appellants to know whether the Court, in calculating the punishment to be awarded, started of from the scale of punishment of life imprisonment or from the scale of imprisonment from thirty years downwards, which latter punishment would have been applicable had the Court applied Article 22(2)(a)(a) to bring it down from life imprisonment to thirty years ? For there onwards it is not clear what degrees appellants benefited from as a result of Article 29 and their admission of guilt.

Appellants humbly submit that the procedure followed by the Criminal Court as sanctioned by the Court of Criminal Appeal prohibited and still prohibits them from establishing whether there was any mathematical error in

[3] Higgins and others v France (1999) 27EHRR 703; Ruiz Torija v Spain (1995) 19 EHRR 542

the Court's calculation which led it to establish punishment in the parameter of seven to twenty years imprisonment. The lack of transparency violates their fundamental rights and prejudices and trial.

2. Applicants humbly submit that although the Court of Criminal Appeal, in dismissing the appeals of the appellants laid particular emphasis on the fact that the first court went to great lengths to spell out in its judgment all the mitigating and aggravating factors, this in itself does not automatically render the trial fair, it depends on the peculiarities of each case. A general statement as that enunciated by the Court of Criminal Appeal that it should not interfere with the punishment meted out by the Criminal Court because *en passant* the Criminal Court stipulated that it took consideration of all *mitigating and aggravating factors,* does not satisfy the requisites of a trial. It is humbly submitted that not every statement preceding the imposition of a sentence is automatically a reason.[4] In the words of learned text-writer Andrew Ashworth, "*Statements… that full account has been taken of mitigating circumstances' should not be acceptable as reasons, for they do not disclose why the court chose three years rather than two…"* [5]

3 The third ground of this application is that the procedures were filled against both applicants as thought each one of them imported the total amount of drugs (800g) individually. This in turn also meant that the file applied reflected as though there was a double importation.

The Court and even the Court of Appeal took the bearing that each individual should be punished as though they each imported 800g and also the fine which was applied to each of them was applied as though they had separate importations. The grievance here is that the applicants were either responsible for one importance of 800g between them or they were individually responsible

[4] Stockdale & Devlin, On Sentencing, The Criminal Law Library No. 5
[5] Ashworth, A., "Techniques of Guidance on Sentencing" (1984) Crim. L.R. 528

for the amounts which were actually imported by each one of them. The disparity in punishment is clearly evident when compared with other court decisions. It is obvious that in this particular case the punishment meted out reflected the punishment which is usually meted out to persons which import from 800g to circa one kilogram. [6] The issue being raised is therefore whether the procedure adopted by the prosecution forming part of this trial and indirectly sanctioned by the Courts is correct and whether it impinges upon the right to a fair trial, in such situation where the accused are aware that in order to be able to object to the formulation of the formulation of the charges brought against them and they must not admit to the acts committed by them, thereby directly meaning that they forfeit the benefit of a reduction in punishment by a third to a half of the punishment that can be awarded. Should an accused had no option but to carry the brunt of what a person on the same flight accompanying him/her imported as well, or should they have been separately charged with what they separately imported, hence, being made to respond for what they specifically imported. The accusation as it was a general accusation which accused humbly submits violates their right to a fair trial.

Applicants therefore finally submit that in view of the above fact that;

1. they could not follow the mathematical calculations followed by the Court which led the Court to arrive at the parameter with respect to which it established punishment

2. the lack of reasons in arriving at punishment, and

3. either of the appellants were made to respond to the total amount of drugs imported between them the trial and appeal hearing that they faced and the appeal violated their fundamental right to a fair trial.

[6] Republika ta' Malta vs Divina Alacon Ortiz, 6.01.03, Qorti Kriminali, Republika ta' Malta vs Larbed, 01.04.98, Qorti Kriminali; Republika ta' Malta vs Mohammed Galal Zaki El Asawi, 16.11.98, Qorti Kriminali

Applicants therefore, humbly request that this Honorable Court:

1. declares that the applicants were not given a fair hearing in terms of article 39 of Constitution of Malta u further in terms of Article 6 of the European Convention on Fundamental Human Rights, and consequently

2. make such orders, issue such wrists, and give such directions as it may consider appropriate, including declaring null and annulling the two decisions given, that of the Criminal Court and that of the Court of Criminal Appeal.

Having seen the **reply filed by the Attorney General** whereby it was submitted :

That in the present application, the applicants alleged that during criminal procedures that they underwent before the Criminal Court, their fundamental rights to a fair hearing as Protected by article 6 of the European Convention on Human Rights and article 39 of the Constitution of Malta were violated.

It is to be submitted that the judgement delivered by the Honourable Criminal Court of the 31st May 2004, as confirmed by the Honourable Court of Appeal on the 25th August ,2005, is a judgement related to the granting of the punishment, since their was an admission on the part of the applicants.

The applicants attributed the alleged violation of their fundamental rights with the fact that;

(i) the Court failed to specify the article of law whereby the punishment was calculated;

(ii) due to the said failure, the applicants could not establish whether here was any mathematical mistake in the calculation of the punishment by the Honourable Court;

(iii) the penalty applied by the Honourable Court was excessive.

That with all respect, all these allegations are frivolous for the following reasons;

The punishments attributed for crimes committed under Chapter 101 of the Laws of Malta are regulated by Article 22(2) of the same Chapter 101.

Article 22(2) of Chapter 101 starts by establishing a general principle and namely that crimes committed under certain articles of the same Chapter are subject to life imprisonment. The same article however states that once in the opinion of the Court there subsist a number of circumstances or factors, the punishment is not that of imprisonment but falls under a scale of punishment.

Article 29 0f Chapter 101 further states that once the applicants help the police and the prosecution declares this in the proceedings, the punishment is reduced by a grade or two. The grades of punishment are regulated by article 31 of the Criminal Code.

Both the scale of the punishment under article 22(2)as well as the reduction of the punishment under article 29 of Chapter 101 are in the discretion of the Court, and these are always applied according to the circumstances of the case.

What is being alleged by the applicants is that the Honourable Criminal Court in its judgement failed to specify the article of Law whereby the punishment was calculated. This same point was raised before the Honourable Court of Appeal, for which argument the Honourable Court of Appeal justly commented that it was not bound to do so.

‘ Although the determination of the nature and the quantum of the punishment is of its nature the determination of a question of law…all that is required is that the Court states the facts of which the accused has

been found guilty…quote the relevant provision or provisions of the law creating the offence…and state the punishment or other form of disposal of the case.'

From an examination of the judgement of the Criminal Court it clearly results that the Honourable Criminal Court followed article 22(2); In the judgement of the 31st May 2004, the Criminal Court considered amongst others;

(i) the conduct of the applicants;
(ii) the quantity of medicines trafficked;
(iii) the assistance the applicants gave to the police;
(iv) the fact that the crime had already been committed by the applicants on other occasions;
(v) the admission of the charges by the applicants.

On the basis of these considerations, imprisonment for life as contemplated under article 22(2) was not applicable. Since there was an admission on the part of the applicants and thus there was no verdict by the jury, article 22(2) (a) (bb) did not apply also. The Court thus moved on to apply the proviso of article 22(2) (a)(aa) i.e. a punishment of imprisonment for not more than four years but not more than thirty years. Once the prosecution declared in the proceedings that the applicants helped the Police, the Honourable Court on the basis of article 29 had the power to reduce the punishment by one or two grades.

That it is very difficult for the applicant that in order to understand what is so extraordinary in the above that obstructed the applicants from understanding how the Honourable Court reached its conclusions in the granting of punishment. What is being alleged by the applicants is that the judgement of the Honourable Criminal Court is defective since it did not specify any mathematical table in virtue of which could conclude whether there was any mathematical mistake on the part of the Court.

That contrary to what can be alleged by the applicants, the Honourable Criminal Court did not exceed the parameters of the law at any stage. The law attributes to

the Court certain discretion in the granting of punishment and for obvious reasons and namely because no case is like the other, and no consideration is like the other. But once the Court acted within the parameters of the law, a Court cannot be accused of not acting fairly and that it did not give the applicants a fair
hearing that they deserved.

As regards the allegation that the Court awarded the applicants a severe punishment, this once again is not a question which should be dealt with by the Honourable Constitutional Court but it is a question which was already raised before the Honourable Court of Appeal and thus this point has been surpassed.

Thus in view of the above, the applicant asks this Honourable Court to reject all the demands of the applicant with all costs against them.

Having seen the Acts of the proceedings before the Criminal Court and the Court of Appeal which have been annexed to these proceedings;

Having seen the applicants' note of submissions and that of respondents;

Having heard counsels make their oral submissions;

Application

Applicants are asking the Court to declare that they have not been given a fair hearing in terms of article 39 of the Constitution and article 39 of the European Convention on Human Rights and to make such orders, issue such writs and give such directions as it may consider appropriate and consequently to declare the two judgments pronounced by the Criminal Court and the Court of Criminal Appeal as null. Specifically applicants are requesting this Court to reform both decisions by confirming applicant's guilt as a result of their admission and then declare the extent of reductions which they

should have benefited from, and award the punishment due according to the appropriate scale of punishment.

The basis applicants' complaint is that the proceedings before the Criminal Court and the Court of Appeal violate their fundamental right to a fair hearing because:

- They could not follow the mathematical calculations used by the Court in order to establish the appropriate scale of punishment applied.

- No reasons were given how the Court reached the punishment awarded.

Moreover applicants complaint that they were each held responsible for the whole amount of drugs which was imported instead of for each individual amount imported.

Contestation

Respondents submitted that the punishment meted out by the Criminal Court was according to Section 22(2) of Chapter 101 of the Laws of Malta and this was confirmed by the Appellate Court. The Criminal Court took into account all the mitigating factors and at no stage did it decide outside the proper scale of punishment. Within those scales the Court had discretion as to which punishment to apply according to the particular circumstances of the case, which discretion cannot now be disturbed. Finally they submit that the allegation that the punishment meted out was excessive is not a matter which can be dealt with by this Constitutional Court. In actual fact what the applicants want is that this Court provide a template and anything less than that, for them, amounts to lack transparency and breach of their fundamental right of fair hearing.

Considers

Applicants are complaining that they could not follow how the Criminal Court came to pass judgment and in particular how that particular punishment was meted out. In this case they want to ensure that all the reductions that they were entitled to were in actual fact given to them.

Applicants contend that the Criminal Court did not apply the proper scale of punishment and that there was a mathematical error in its calculation. The issue for them is not whether the Criminal Court applied the law correctly (that would not be a basis for a Constitutional application) nor are they entering into the merits of the Court's discretion. The basis of their complaint is whether the law (criminal) provides for the constitutional guarantees necessary for a trial to be fair in accordance with our Constitution and the European Convention on Human Rights.

Applicants observe that the Criminal Court failed to specify whether it was applying Article 22(2)(aa) of Chapter 101 and therefore it was impossible for them to know whether the Court, in calculating the punishment, started off from the scale of punishment of life imprisonment or from thirty years downwards, the latter punishment being applicable had the Court applied Article 22(2)(aa). The question therefore is whether the Criminal Court applied a degree in reduction from life to thirty years, or had the Criminal Court applied article 22(2)(aa) to bring it down from life imprisonment to thirty years. From then onwards it was not clear what degrees applicants benefited from as a result of Article 29 and their admission of guilt. Applicants insist that they should have been given the maximum of two degrees under article 29 because they identified the person to whom the drug was to be delivered and contributed in bringing him to justice. Therefore the scale should have been reduce to six years to twelve years whereas the Court gave them thirteen years.

Decision of the Criminal Court.

It results from the decision of the Criminal Court that it had considered both local and foreign case law regarding the plea in mitigation of punishment where the accused person files an early plea of guilt.

It considered that applicants had identified the person to whom the drugs they had imported were to be delivered and contributed in bringing him to justice.

It noted that the prosecution had agreed that in this case Sec 29 of Ch 101 was applicable in favour of both applicants. Therefore the Court started from the premise that both persons convicted were to benefit from the provisions of Sec 29 Ch 101 as evidenced by the minute entered into the records of the case by the Prosecution and Defence.

Decision of the Court of Criminal Appeal

The same complaint which is being brought forward before this Court had already been submitted before the Court of Criminal Appeal. Applicants had submitted to that Court that the Criminal Court, in its judgment, did not explain how, in the light of the various provisions of the law regarding punishment and the equally diverse possibilities for decrease in punishment, it had reached the figure of 13 years.

The Court of Criminal Appeal stated that all that is required is that the Court state the facts of which the accused has been found guilty, quote the relevant provision/s of the law creating the offence, and state the punishment or other form of disposal of the case. The Criminal Court was not obliged to give detailed reasons explaining either the nature or the *quantum* of the punishment being meted out, or to spell out any mathematical calculations that it may have made in arriving at that *quantum*.

The Court of Criminal Appeal went on to explain that in the particular case the first Court went to great lengths to spell out in its judgment all the mitigating and aggravating

factors; both (applicants) had benefited extensively from reduction in the punishment for their timely plea of guilty, no less than for their co-operation with the police in Malta, therefore the punishment awarded was neither wrong in principle nor manifestly excessive,

As to whether the proper scale of punishment was applied by the Criminal Court the Court of Criminal Appeal went into detail to explain that the punishment was correct in principle. It said that "in the instant case it is patently obvious that the Criminal Court was of the opinion that life imprisonment was not the appropriate punishment, even though it did not state so *expressis verbis* in the judgment. This means that the starting point, as far as the custodial punishment was concerned, was of a minimum of four years imprisonment and a maximum of thirty years. Reducing these parameters by the maximum two degrees allowed by Section 29 of Cap. 101, the punishment applicable would have been a minimum of two years and a maximum of twelve years; whereas, with the reduction of only one degree, the parameters are a minimum of three years and a maximum of twenty years. This Court can find no valid reason why the Criminal Court should necessarily have applied the reduction by two degrees, as opposed to a reduction by one degree, which appears to have been the case."

It is clear that the proper forum where the complaint of applicants whether the appropriate punishment was applied was the Court of Criminal Appeal. The said Court decided that the proper scale of punishment was applied by the Criminal Court and it is therefore not for this Court to decide otherwise. There was no doubt for the Court of Criminal Appeal that the starting point for the custodial sentence was to start from a minimum of four years imprisonment up to a maximum of thirty years. Then the mitigating and aggravating factors were taken into consideration and the punishment applied.

Neither is it within the remit of this Court to examine whether the punishment meted out was excessive or

whether the Criminal Court should have at its discretion given one or two degrees in terms of Sec 29 of Chapter 101.

Applicants are also submitting that their complaint is whether the law (criminal) provides for the constitutional guarantees necessary for a trial to be fair in accordance with our Constitution and the European Convention on Human Rights in the sense that the reasoning behind the award of punishment is an essential element of an accused's right to a fair trial and should ensure the transparency in the manner the Court has arrived at the punishment awarded. For applicants the mere fact that the Criminal Court simply stated that considerations had been given to the factors giving rise to mitigation of punishment when passing judgment was not enough.

According to the authors Van Dijk and Van Hoof (Theory and Practice of the European Convention on Human Rights) The *nulla poena* principle in its requirements of legal certainty does not go to such lengths that the exact measure of the penalty, or an exhaustive enumeration of alternatives, must be laid down in the criminal law provision. If, as is customary in several legal systems, only the maxima are indicated, the legal subjects know what is the maximum penalty they may incur upon violation of the norm. Reference is here also made to the decision of the Constitutional Court in H. Cassar vs Attorney General et decided on the 10th January 2005 where a somewhat similar complaint like the one raised by applicants was considered by that Court and where the above quoted text was referred to with approval.

Finally the Court observes that the spelling out of the mathematical calculations as to how the Criminal Court reached its decision on the quantum of punishment is not the same as the obligation of the Court to give a reasoned opinion for its decision in terms of article 6 of the Convention. These mathematical calculations, so long as they are within the proper scale of punishment,

(which in this case they are) fall within the absolute discretion of the Court.

Excessive punishment

Applicants complain as an aside that the way the charge was formulated left the applicants with no choice but to admit the charge (which they deny), and they had to do so, to benefit from the further reduction in penalty afforded to them for having admitted at the earliest stage possible. For them the benefit of admitting outweighed the fact that they were being charged with importation of a superior amount.

For this Court this complain seems to confirm that applicants not only were aware of what kind of punishment awaited them, but they made their calculations as to what would benefit them most. It is not the function of this Court to examine and decide as to how charges should have been formulated.

DECISION

For these reasons
The Court dismisses the application
With costs against applicants.

< Sentenza Finali >

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