



## **CRIMINAL COURT**

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

Sitting of the 18 th June, 2007

Number 6/2006

**The Republic of Malta  
Vs  
Mark Charles Kenneth Stephens**

The Court,

Having seen the bill of indictment no. 06/2006 against the accused Mark Charles Kenneth Stephens wherein he was charged with:

Following the arrest of Gregory Robert Eyre and Susan Jayne Molyneaux in Malta on the 11<sup>th</sup> August, 2003, the Police became aware that these two had been sent from Spain by accused Mark Charles Kenneth Stephens with over three kilos of cocaine and seven thousand ecstasy pills for illegal importation into Malta. Mark Charles Kenneth Stephens had been exporting drugs to Malta on a regular monthly basis for the last fifteen years. These drugs included also cannabis resin, apart from cocaine

and ecstasy pills. Therefore, prior to the eleventh (11) August, two thousand and three (2003) and the fifteen years prior to that date, Mark Charles Kenneth Stephens had conspired with Gregory Robert Eyre and others for illegally dealing and trafficking in drugs. That accused used to agree with others to deliver the drugs in Spain, indicate the means to be employed and the compensation to be paid for the importation of the drugs into Malta, and provide all necessary assistance for this illegal activity causing untold harm to Maltese society.

By committing the above mentioned acts with criminal intent, *Mark Charles Kenneth Stephens* rendered himself guilty of conspiracy to trafficking in dangerous drugs in breach of the provisions of the Dangerous Drugs Ordinance and The Medical and Kindred Professions Ordinance.

Wherefore, the Attorney General, in his aforesaid capacity, accused *Mark Charles Kenneth Stephens* 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 the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta) and specifically of dealing illegally in any manner in cocaine, cannabis resin and ecstasy pills and of having promoted, constituted, organized and financed such conspiracy.

Demands 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 Malta 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) u 26(1)(2) of the Dangerous Drugs Ordinance (Chap.101), together with sections 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.

Having seen that accused filed a note of preliminary pleas on the Bill of Indictment and on the Evidence on the 28<sup>th</sup>. April, 2006, wherein he pleaded:-

1. the lack of jurisdiction of the Maltese Criminal Courts to take cognizance of and try an accused person under the Dangerous Drugs Ordinance and the Medical and Kindred Professions Ordinance when the fact is that the person charged , not being either a Maltese Citizen or a permanent resident of Malta , allegedly conspires on foreign soil , even though the allegation is that the final destination intended was Malta .

2. in the event that the bill of indictment is amended to cover complicity in importation, then the Maltese Courts do not have jurisdiction over the person charged , as the accomplice acting on foreign soil is not triable in Malta for violation of the two Ordinances mentioned in the Bill of Indictment, as such complicity does not fall within the ambit of Article 5 (1) (g) of Chapter 9 nor is it envisaged under any special rule in the Ordinances mentioned in the Bill of Indictment.

3. The nullity of the Bill of Indictment, as the charge of conspiracy, when the facts being alleged amount to complicity on the importation of drugs to Malta. The facts alleged are not merely those of the conceptual or intentional stage, but the Prosecution is alleging the actual commission of importation, which necessarily absorbs the “conspiratorial stage”.

4. The nullity of the Bill of Indictment, as the charge does not in substance reflect the provision of the criminal law. In fact it has manipulated the text of the law in an attempt to fit an interpretation that would give jurisdiction to the Maltese Courts, and this by changing the wording, and especially by the introduction of punctuation marks, which do change the meaning of a provision of law.

5. that allegation that the accused had been infringing the law over a period of 15 years is not borne out by a single

piece of evidence, as it was only an allegation of the prosecuting officer, and the Bill of Indictment should be amended, in any case, as the facts therein stated must result from the compilation of evidence and not constitute mere fiction.

6. that an extra judicial statement, even if under oath, made by any other person mentioned in the first paragraph of the Bill of Indictment, cannot be considered as admissible evidence, as the Prosecution is requesting, as such persons are indicated as accomplices, and consequently in virtue of Article 30A of the Dangerous Drugs Ordinance they are not exempted from what is provided in Article 639 (3) of the Criminal Code.

7. that any extra judicial statement as above mentioned cannot be admissible evidence under article 30 of Chapter 101 and the relevant provision of the Medical and Kindred Professions Ordinance, as the persons therein mentioned are accomplices and not third parties who “purchased or otherwise obtained or acquired” the drug, as this provision means and was meant to apply to the supply of the drug from a dealer to a consumer, who considers the drug as his. It does not apply to accomplices.

Having seen the Note of Submissions filed by Defence Counsel during the sitting of the 30<sup>th</sup>. October, 2006 as well as attachments thereto;

Having seen the Note in Reply filed by the Attorney General on the 7<sup>th</sup>. November, 2006 and attachments thereto;

Having seen the Counter-reply of accused dated 20<sup>th</sup>. November, 2006;

Having seen the minutes of proceedings of the sitting of the 8<sup>th</sup>. January, 2007, wherein Prosecuting Counsel declared that the Prosecution had taken note of the counter-reply filed by the accused on the 20<sup>th</sup>. November, 2006, and submitted that the prosecution was not invoking *res judicata* in this case but merely stating that the reason given by the Court of Magistrates for upholding jurisdiction

were valid and could be confirmed by this Court and that the prosecution would not be filing any further written submissions on this point.

Having seen that at the same sitting Dr. Joseph Brincat for the Defence bound himself to obtain a certified legal copy of the arrest warrant issued by Magistrate Dr. Tonio Micallef Trigona and the relative extradition order or request based upon said order;

Having seen the Note filed by accused on the 11<sup>th</sup>.January, 2007, whereby he filed a legal copy of the documents which were originally filed in the Constitutional case "**Dr. Joseph Brincat noe.vs. Avukat Generali**" and finally decided on the 23<sup>rd</sup>.November, 2004. The relevance of these documents –according to said note – lay in that the request for extradition was based on Article 22 (1) (e) and (f) of Chapter 101 and the corresponding and identical provisions Article 120A (1) (e) and (f) of Chapter 33 (recte : 31). No new request was issued and the new warrant issued by Magistrate Lofaro was considered as a new substituting document of the original request. The Spanish Court decided on "conspiracy to import drugs".

Having seen the Note of accused dated 23<sup>rd</sup>. January, 2007, whereby he filed the relevant articles for the purposes of the pleas of the UN Convention on Illicit Drugs 1988;

Having considered all oral submissions made by learned Counsel;

Having seen that on the 12<sup>th</sup> of March, 2007, the case was put off for judgement on the preliminary pleas to today;

Now therefore considers ;

That with regard to the first preliminary plea, where accused is pleading lack of jurisdiction of the Maltese Courts, accused submitted that the Constitutional Court in

its judgement in the case "**Dr. Joseph Brincat vs. Avukat Generali**" decided on the 23<sup>rd</sup>. November, 2004 , had held that the matter of jurisdiction had to be decided by the Criminal Courts and that it revoked the explicit statement of the First Hall of the Civil Court that Malta had jurisdiction to try the offence under paragraph (f) of Article 22 of Chapter 101, even though the alleged conspiracy occurred in Spain. He further submitted that although the case is being conducted in the English Language, the Maltese text of the law prevails. If there is no jurisdiction according to the Maltese version of Article 22 (1) (f) of Chapter 101 then the story ends there. The thesis of the accused about lack of jurisdiction is even better confirmed in the Maltese text. An accurate examination of this article shows that (1) (f) provides for two hypotheses : (1) one who conspires with someone to sell drugs in Malta and (2) one who promotes, organises or finances this conspiracy. The construction of the sentence (by the insertion of the comma followed by the word "jew") shows a disjunctive structure. In the first hypothesis there is no mention that the person is guilty of the offence whether he is in Malta or abroad. If the legislator wanted to express that intention to cover also the second hypothesis, then the extension of jurisdiction in the second hypothesis should have been made clear in the special law. As there is no extension of jurisdiction to cover activities outside the territorial domain, then Article 5 of Chapter 9 should apply. In this case the accused, as charged, never did anything in Maltese territory as he was in Spain.

Accused further submitted that even the first hypothesis in the Maltese text shows that there is no clear intention of extending jurisdiction. All three verbs are in the singular person "jassocja ruhu, ibiegh jew jittraffika". This means that a person in Malta who agrees with another person (wherever he may be) so that he can sell drugs is punishable for the mere fact of showing such design. Unlike Article 83A (5) of the Criminal Code, which has all its verbs in the plural and which is a clear example of the extension of jurisdiction, this is not the case with article 22 (1) (f) of Chapter 101. While in the English Text use is made of present participles "selling or dealing in a drug"

which may refer to a single person or a number of persons, the Maltese text with its use of the singular verb leaves no doubt that the person who sells or deals in drugs is the main subject of the sentence. As written in Maltese therefore, paragraph 22 (1) (f) means that any person (A) is guilty of this offence, if while in Malta , A makes any form of contact with any other person, wherever that person may be around the world, so that A sells drugs in Malta. The structure of the sentence means that the offender has to be in Malta while the other person or persons may also be abroad.

Accused then draws parallels with other sections of the Criminal Code where the use of the phrase "*sew f' Malta jew barra minn Malta*" or similar wording indicates an extension of jurisdiction , i.e. Section 337A, 106 (3) , 121 (4) (f), 310B and 337E where the intention to extend jurisdiction cannot be said to be in doubt.

Referring to the English Text, of Section 22 (1) (f), the accused submits that had there been at least a comma after the word "persons" the interpretation of the Attorney General would have prevailed. The expression "*in Malta or outside Malta*" would have been an adverbial phrase of place qualifying the verb "conspires". However as it stands, it qualifies the noun phrase "one or more persons". To reach the conspirator acting from abroad, this article had to be drafted differently and he goes on to give examples how.

The Accused then refers to the drafting of article 22 (1) (d) and (e) The latter extends jurisdiction on the personal criterion to any one who is considered as a citizen of Malta or a permanent resident of Malta who in any place outside Malta does some act, which had it been committed in Malta would constitute drug trafficking, or a crime under paragraph (f) even though that person does nothing in Malta. Therefore here we have a clear admission in a different paragraph of the same article that if the act is committed in Malta, it would constitute an offence under paragraph (f), but if it is not committed in Malta, then it cannot constitute the offence against

paragraph (f). Hence an offence under paragraph (f) must be committed in Malta (and not in Spain).

Accused concludes that these arguments are not based on the text of Article 5 of Chapter 9, They challenge the true meaning and ambit of paragraph (f) of Article 22 (1) of Chapter 101 and the analogous provision in Article 120A in the Medical and Kindred Professions Ordinance. In the **Knajber** case the interpretation of Article 22 (1) was taken for granted. On the text of the law, the Maltese Courts do not have jurisdiction to try a person, not being a Maltese Citizen or a permanent resident of Malta, who conspires according to Chapter 101 when he is on foreign territory.

In his Note in Reply, the Attorney General on the other hand succinctly contends that the issue of jurisdiction was extensively dealt with before other courts and referred to the decision of the Magistrates Court of the 23<sup>rd</sup>. February, 2006. Reference was also made to the decision of the Constitutional Court of the 14<sup>th</sup>. February, 2006.

That in his rejoinder accused again submitted that the Attorney General in his reply had perfunctorily dismissed the arguments of the defence and almost pleaded "res judicata". The Constitutional Court had quashed the decision of the First Hall which had affirmed jurisdiction and remitted the question to the Criminal Courts and the decision of the Magistrate Court as a Court of Criminal Enquiry did not decide the issue finally. That court only decides on matters finally according to the powers conferred upon it by Section 403 of the Criminal Code. Otherwise the Court of Criminal Enquiry does not deliver a judgement and res judicata is based on judgements and not on preliminary opinions. Then accused goes on to quote article 449 (5) and (6) of the Criminal Court with regard to the want of jurisdiction (which in the Maltese text is referred to as "l-inkompetenza") where he argues that the matter of jurisdiction is so important that the Criminal Court itself may raise it "*ex officio*".

Accused then went on to draw a conclusive argument from what is stated in part of the judgement (para. 11) of the Constitutional Court of the 14<sup>th</sup>. February, 2006 above mentioned, which states that :

*"...f' kaz li l-Qorti Istrutturja tiddeciedi li hemm ragunijiet bizzejjed biex l-imputat jitqieghed taht att ta' akkuza, l-imputat jibqalghu xorta wahda l-opportunita', fi stadju ulterjuri tal-process penali, li jikkontesta il-kwistjoni tal-gurisdizzjoni, kif minnu sollevata in limine litis".*

Having considered ;

That in the latter mentioned judgement of the Constitutional Court, it was clearly stated that :-

*"...terga' tqieghed lill-istess Mark Charles Kenneth Stevens fil-pozizzjoni li kien fiha minnfieh qabel dik id-decizjoni sabiex il-Qorti Istrutturja tiddeciedi mill-gdid jekk hemmx jew le ragunijiet bizzejjed biex huwa jitqieghed taht att ta' akkuza WARA LI DIK IL-QORTI TIEHU KONT TAL-ECCEZZJONI DWAR IL-GURISDIZZJONI (fis-sens kif hawn aktar 'l fuq imfisser f' dan il-gudikat)"* (emphasis added by this Court).

It was therefore clearly the intention of the Constitutional Court that the plea of lack of jurisdiction had to be taken into consideration by the Magistrate's Court when deciding whether there were sufficient grounds for accused to be placed under a bill of indictment, but that this issue could be decided finally by this Court. It is only this construction that this Court can give to the judgement under reference faced with the phrase "*(fis-sens kif hawn aktar 'l fuq imfisser f' dan il-gudikat)*" and this is how this Court can reconcile this statement with the final decision above quoted.

In actual fact the Court of Magistrates - as clearly directed to do by the Constitutional Court - did deal with and decide the issue of jurisdiction in its ruling of the 23<sup>rd</sup>. February, 2006 and in no uncertain terms upheld and affirmed the jurisdiction of the Maltese Courts with regards to the charges of conspiracy brought against the accused

in relation to drug trafficking, for the detailed reasons mentioned in its ruling.

This Court is however being called upon to decide this issue afresh.

Having considered ;

That the Constitutional Court in another judgement of the 23<sup>rd</sup>. November, 2004 had already pronounced itself on this issue and went on record as stating that :-

*"Fil-fehma ta' din il-Qorti d-dispozizzjoni tal-paragrafu (f) tal-artikolu 22 (1) tal-Kap.101 taghti lok li jinhareg il-mandat ta' arrest bhalma nhareg f' dan il-kaz , u dan ghax il-Qrati ta' Gustizzja Kriminali f' Malta ghandhom gurdizzjoni fuq , u jistghu jipprocedu kontra, kull persuna li tassocja ruha "ma' xi persuna jew persuni ohra f' Malta jew barra minn Malta" sabiex tbiegh jew tittraffika d-droga f' Malta , (sottolinear ta' din il-Qorti). Fi kliem iehor, il-fatt ta' l-assocjazzjoni, bi skop ta' traffikar ta' droga f' Malta, li jsir kemm f' Malta kif ukoll barra minn Malta, jidher li hu kontemplat f' din il-ligi specjali bhala reat u ghalhek jaqa' fil-kompetenza tal-Qrati tal-Gustizzja Kriminali."*

It is true that in the same judgement the Constitutional Court went on to say that there could be two plausible different interpretations of paragraph (f) of article 22 (1) of Chapter 101, namely that the agent who conspires has to commit the act of conspiracy in Malta, as accused Stephens maintains; or that the agent can also be guilty of conspiracy when he is physically outside Malta, as has been held in various cases by the Courts of Criminal Justice in Malta (even though in some cases only implicitly) that court had to decide that the arrest of accused was according to law , but this Court, in the light of such a clear and univocal pronouncement of the highest Court of the land quoted in the previous paragraph, that the Maltese Courts have jurisdiction to try such a case even if the conspiracy takes place outside Malta, would be presumptuous to decide otherwise.

Furthermore in this Court's view, in spite of the lure and appeal of the clever exercise in punctuation, syntax and semantics which emerges from accused's note of submissions, it is this Court's view that the spirit of the law was clearly to make an act of conspiracy committed outside Malta accountable to the jurisdiction of the Maltese Courts when the aim was the trafficking of drugs in Malta. The aim of the legislator was clearly that of extending jurisdiction to cover those persons who, although not being citizens or permanent residents of Malta, but who were causing irreparable social harm to the population of these islands by conspiring to sell drugs here, and whose deeds were in most cases more nefarious than those of the poor couriers who were lured to act as such by the promise of some financial gain, should also be brought to justice in Malta, even though they were operating - relatively safely - from abroad. No juggling of commas can convince this court that the intention of the legislator was in any way different .

Indeed this Court has been regularly and constantly convicting accused persons (particularly drug couriers) of the crime of conspiracy - albeit after guilt pleas were filed by them in most cases - even though this offence is alleged to have taken place outside Malta, i.e. at the stage before the courier actually entered these Islands with the drugs. (vide: **"The Republic of Malta vs. Gregory Robert Eyre"** [4.10.2004]; **"The Republic of Malta vs. Winnie Wanjiku Kanmaz"** [5.10.2004]; **"The Republic of Malta vs. Rahman Abdirahaman Ibrahim"** [4.4.2005]; **"Ir-Repubblika ta' Malta vs. Omar Mohamed Mehemud Erayani"** [6.3.2006]; **"Ir-Repubblika ta' Malta vs. Khallouf Fatiha"** [22.5.2006]; **"The Republic of Malta vs. Kamil Kurucu"** [11.12.2006]; **"Ir-Repubblika ta' Malta vs. Atanas Paskalev Dimitrov"** [12.2.2007]; and others)

As such, this Court is dismissing the first preliminary plea raised by accused and holds that this Court has jurisdiction to try this case even though it is being alleged by the prosecution that the alleged conspiracy took place when accused was outside Malta.

Having considered;

That accused's second plea is a conditional or hypothetical one, namely based on the possibility or eventuality that the Bill of Indictment might be amended to cover complicity in importation. In that case accused submits that the Maltese Courts would not have jurisdiction as the accomplice acting on foreign soil is not triable in Malta for violation of the provisions of the two Ordinances mentioned in the Bill of Indictment.

However, to date no such request to amend the Bill of Indictment has been tabled by the Attorney General or indeed ordered by this Court and therefore this is merely a hypothetical scenario that accused is raising and not one based on the actual Bill of Indictment as it stands.

In the opening paragraph of the Bill of Indictment , i.e. in the narrative part, said Bill states inter alia :-

*"...prior to the 11<sup>th</sup>. August, two thousand and three (2003) and fifteen years prior to that date, Mark Charles Kenneth Stevens had conspired with Gregory Robert Eyre and others for illegally dealing and trafficking in drugs. That accused used to agree with others to deliver the drugs in Spain, indicate the means to be employed and the compensation to be paid for the importation of the drugs into Malta and provide all necessary assistance for this illegal activity causing untold harm to Maltese Society."*

In this Court's view these facts clearly refer to the crime of conspiracy under section 22 (1) (f) of Chapter 101 and section 120A of Chapter 31. The fact that earlier on in this same opening paragraph the Bill of Indictment states that following the arrest of Gregory Robert Eyre and Susan Jayne Molyneaux in Malta on the 11<sup>th</sup>. August, 2003, the Police became aware that these two had been sent from Spain by accused with over three kilos of cocaine and seven thousand ecstasy pills for illegal importation into Malta and that he had been exporting drugs ranging from

cannabis resin, cocaine and ecstasy pills to Malta on a regular monthly basis for the last fifteen years, does in no way detract from the charge of conspiracy proffered against the accused. These facts are merely being stated to give a background to the case and to state how the Police came to know about accused' s alleged conspiracy and are not intended as a preamble to a charge of complicity in the importation of drugs into Malta. The Attorney General had every right to choose with what offence to charge the accused. He was in no way bound to opt to charge him with the offence of importation into Malta or complicity in said offence, even if matters had gone beyond the conspiratorial stage and translated into actual importation of said drugs into Malta, (in this case by other persons).

The crimes of conspiracy, importation, and possession of drugs (with or without intent to traffic) are distinct and separate offences created by the two Ordinances under reference (Chapters 31 and 101) and the Prosecution has the absolute discretion in deciding with which of these different offences to charge an accused person. In some cases it charges an accused with all three depending on the alleged involvement of the accused, as viewed by the prosecution. In others, where according to the Prosecution, the accused was only involved with one or only two stages, it can opt to charge as it deems fit.

Clearly in his note of submissions the accused is confusing the question of the absorption for purposes of punishment of the crime of conspiracy into the crime of actual importation in those cases where it results that accused is guilty of both offences, if he has been charged with both in the first place, with the Prosecution's absolute discretion as to with what offence or offences it deems fit to charge a person in a Bill of Indictment. Clearly even though it might appear to others that an accused person could have also been accused of another equally grave or indeed even more serious offence in which the offence as charged would be absorbed for purposes of punishment, say according to Section 17 (h) of the Criminal Code, it remains the Attorney General's prerogative to charge

accused with a lesser offence or with one offence instead of two or more others. The notion of "assorbiment" only arises had the Attorney General also opted to charge accused with the offence of importing drugs into Malta or complicity in said offence and it would only have assumed relevance in the sentencing stage if and when accused were to be found guilty of both charges. But in this case the Bill of Indictment contains only one charge and therefore the issue elaborated on in accused' s written note of submissions is irrelevant at this stage. In any case accused' s attempt to widen the scope of his second preliminary plea from a hypothetical one to one of an entirely different nature cannot be countenanced at this stage.

Therefore once that the facts stated in the Bill of Indictment do refer to the offence of conspiracy and once there has not been any request to amend the Bill of Indictment, this hypothetical plea is being rejected.

Similarly the third plea is being rejected as even if in the narrative part of the Bill of Indictment there are references to facts which suggest that the acts of accused went beyond the conspiratorial stage and resulted in the actual importation of drugs into Malta, once there is also reference to the conspiratorial stage, as quoted above, there can be no nullity of the Bill of Indictment. This reference to actual importation has only been included to reinforce the allegation that prior to this stage accused was indeed involved in the crime of conspiracy and in no way detracts from the facts constituting the basis of the charge of conspiracy. This is not a case where the attorney General is recounting one set of facts and charging under another provision as stated by accused in his written note of submissions. The Attorney General is clearly stating facts which amount to conspiracy and reinforcing said facts by stating in addition other facts which show that the conspiracy eventually materialised into the separate offence of drug importation. But the latter facts are clearly meant to support the facts on which the charge of conspiracy is based and not to supplant them. In this Court's view the facts stated in the Bill of

Indictment do constitute in essence and substance the crime with which accused has been charged - even if they say more. Hence this plea presumably based on paragraph (b) of the proviso of subsection (5) of Section 449 is being rejected.

Having considered;

That the fourth preliminary plea raised by accused is that the Bill of Indictment is null because the charge does not in substance reflect the provision of the criminal law and because (the Attorney General) has manipulated the text of the law in an attempt to fit an interpretation that would give jurisdiction to the Maltese Courts and this by changing the wording and especially by the introduction of the punctuation marks, which do change the meaning of a provision of law.

Clearly this plea is based on paragraph (a) of the proviso to Section 449 (5) of the Criminal Code.

Now the operative accusatory part of the Bill of Indictment states as follows:-

*"...accuses .....Stephens 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 the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta) and specifically of dealing illegally in any manner in cocaine, cannabis resin and ecstasy pills and of having promoted, constituted, organised and financed such conspiracy."*

The relevant part of the text of Article 22 (1) (f) of Chapter 101 reads as follows in the Maltese version :-

***" Kull min.... jassocja ruhu ma xi persuna jew persuni ohra f' Malta jew barra minn Malta sabiex ibiegh jew jittraffika medicina f' Malta kontra d-dispozizzjonijiet ta'***

***din l-Ordinanza, jew li jippromwovi, jikkostitwixxi, jorganizza jew jiffinanzja l-assocjazzjoni"***

The relevant part of the text of Article 120A (1) (f) of Chapter 31 in the Maltese version is almost identical word for word to the above text and runs as follows :-

***"Kull persuna... tassocja ruha ma xi persuna jew persuni ohra f' Malta jew barra minn Malta sabiex tbiegh jew tittraffika medicina f' Malta kontra d-dispozizzjonijiet ta' dan l-artikolu, jew li tippromwovi, tikkostitwixxi, torganizza jew tiffinanzja l-assocjazzjoni".***

No commas exist in both texts except after the word "Ordinanza" and after each of the words "jippromwovi" and "jikkostitwixxi" in Section 22 (1) (f) of Chapter 101 and after the words "artikolu", "tippromwovi" and "tikkostitwixxi" in section 120A (1) (f) of Chapter 31.

The exact wording in the corresponding English version of Section 22 (1) (f) of Chapter 101 is as follows:-

***"Any person.....who with another one or more persons in Malta or outside Malta conspires for the purposes of selling or dealing in a drug in these islands against the provision of this Ordinance or who promotes, constitutes, organises or finances the conspiracy"***

The English version of Section 120A (1) (f) of Chapter 31 runs as follows :-

***"Any person .....who with another one or more persons in Malta or outside Malta conspires for the purposes of selling or dealing in a drug in Malta against the provisions of this article or who promotes, constitutes, organises or finances the conspiracy."***

Clearly what accused is objecting to is the use of the commas after the words : "in Malta" and "outside Malta" in the third paragraph of the Bill of Indictment. His

objection is that the use of these commas were meant to manipulate the text of the law to ground jurisdiction. Otherwise this Court sees no substantial difference between the wording used in the Bill of Indictment and the text of the two provisions of law above quoted.

It is true that no such commas exist in the text of the two provisions above quoted, but as this point is only relevant to accused' s submissions on the issue of jurisdiction, already decided by this Court and can have no other bearing or relevance whatsoever on the merits of the actual charge contained in the Bill of Indictment, this Court sees no grounds for upholding a plea of nullity of the Bill of Indictment under section 449 (5) (proviso) (b) of Chapter 9.

Hence this fourth plea is also being dismissed.

As to accused 's fifth preliminary plea, that the allegation that accused had been infringing the law over a period of fifteen years contained in the narrative part of the Bill of Indictment is not borne out by any single piece of evidence, as it was only an allegation of the prosecuting officer, and that therefore the Bill of Indictment should be amended, this Court notes that it is left to the Attorney General's discretion as to what facts he chooses to refer to in the narrative part of the Bill of Indictment even though these, in some cases, might not reflect the results of the evidence collected in the compilation of evidence. It is then left to the Court - in this case the jurors as directed by the presiding judge - to sift the wheat from the chaff - and see what facts alleged have in fact been proved and how these proven facts relate to the actual charge or accusation proffered in the Bill of Indictment and whether they should lead to a conviction on that charge or not.

However, in this case accused is not being charged with a continuous offence under section 18 of the Criminal Code, in which case his activity during the fifteen years preceding the 11<sup>th</sup>. August, 2003, could not only have been very relevant but would also have been essential to

have been clearly stated in the narrative part of the Bill of Indictment to support such a charge.

As drafted, the Bill of Indictment, as accused quite rightly submits, purports to cast a dark shadow on his activities throughout the previous fifteen years, by alleging that throughout this long period he had been committing the same offences for which he has -as far as this Court can make out - never been charged and, even more so, never convicted. This could indeed be interpreted as an oblique or indirect reference to accused' s criminal conduct , prior to the alleged conspiracy that took place on or around the 11<sup>th</sup>. August, 2003, when matters came to a head with the arrest of Gregory Robert Eyre and Susan Jayne Molyneaux on their arrival in Malta, and with which he is being charged before this Court. In this Court' s view such a reference could conceivably prejudice the jury unduly in spite of and notwithstanding any warnings or directives which might be given by the judge presiding this Court.

In the circumstances therefore this Court, even as a measure of prudence, is upholding accused' s plea by ordering the amendment of the Bill of Indictment and the deletion from the first paragraph of the First (and only) Count thereof the words : **"on a regular monthly basis for the last fifteen years"** and the words: **"and the fifteen years prior to that date"**.

Having considered;

That in his two pleas regarding the evidence, accused only made generic objections regarding extra-judicial statements without in any way identifying such statements to which he was referring, either in the course of his oral pleadings before this Court and, even less so, in his very detailed written submissions contained in his note of the 30th. October, 2006.

As such, this Court is not in a position to address these pleas in a specific and concrete way and therefore can only limit itself at this stage to stating that it will be guided in deciding whether to admit or not to admit any such

evidence only by the relevant provisions of the law and the principles which have been accepted by our Courts in ensuring that the accused is given a fair hearing and that due process, as interpreted by our Constitution Court and the European Court of Human Rights (including those to which accused has referred to in his note of preliminary pleas and written submissions) is observed.

Now therefore this Court is dismissing and rejecting accused' s first, second, third and fourth preliminary pleas contained in his note of the 28<sup>th</sup>. April, 2006 , and upholding his fifth preliminary plea by ordering that the Bill of Indictment be amended by deleting the words : "**on a regular monthly basis for the last fifteen years**" and the words : "**and the fifteen years prior to that date**" in the first paragraph of the First (and only) Count of the Bill of Indictment, which Bill of Indictment as now amended, is to be served anew upon the accused.

Furthermore this Court is disposing of accused' s two generic pleas as to the admissibility of evidence by the (equally generic) declaration contained in the next but last preceding paragraph.

The case is therefore being adjourned "**sine die**" to be re-appointed to be heard by jury according to its turn on the list of pending cases, and, in any event, after any appeal from this judgement, if any, is definitively decided.

Till then accused is to remain on bail under the present conditions.

< Final Judgement >

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