



**In the Court of Magistrates (Malta)
As a Court of Preliminary Inquiry**

(For purposes of the Extradition Act referred to as a Court of Committal)

Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

**The Police
(Inspector Mark Galea)
-vs-
Marek DRGA**

Extradition (EAW) Proceedings No.87/2019

Today the 6th day of March, 2019

The Court,

Having seen that on the 8th February, 2019, the prosecution arraigned under arrest **Marek DRGA**, hereinafter referred to as 'the person requested';

Having seen the European Arrest Warrant issued by the District Court of Zlin, dated the 12th January, 2018,¹ and the Schengen

¹ **Doc. MG4** a fol.10 et seq.

Information System Alert number CZ000000719904300001 of the 11th December 2018 (2018/12/11);²

Having taken cognizance of the examination of the person requested as well as the documents exhibited by the prosecution;³

Having seen that in terms of Article 11 of the Extradition (Designated Foreign Countries) Order, S.L. 276.05, hereinafter referred to as “the Order”, the requested person was informed of the contents of the Part II warrant and having given the person requested the required information about consent as provided in para (2) of the same article;⁴

Having seen that Article 11(1A) of the Order has been complied with;

Having heard submissions by the prosecution on the European Arrest Warrant and having seen the Certificate of the Attorney General in terms of Article 7 of the Extradition (Designated Foreign Countries) Order, S.L. 276.05;⁵

Having heard submissions by counsel for the person requested;

The Court,

² **Dok.MG5** a fol.18

³ Minutes of the 8th February, 2019

⁴ *Ibid.*

⁵ **Doc MG2** a fol.8

Whereas the European Arrest Warrant issued by the District Court of Zlin is dated the 12th January, 2018;

Whereas this is the same date as that of the judgment of the Court of Criminal Appeal *The Police vs Marek Drga*,⁶ which confirmed the surrender of the wanted person to the Czech Republic;

Whereas in those proceedings the return of the wanted person was requested on the strength of an European Arrest Warrant issued by the District Court in Zlin, Czech Republic, dated 3rd October 2014, wherein subject was wanted for prosecution for offences committed in 2011;

Whereas following the said decision delivered by the Court of Criminal Appeal dated the 12th January, 2018, which ordered Drga's committal to custody to await his return to the Czech Republic, Drga was taken into custody by the authorities of the Czech Republic on the 2nd February, 2018;⁷

Whereas the requested person was released from custody on the 23rd August, 2018, "*when custody was changed into supervision by a probation officer*". According to the supplemental information Drga informed the probation officer in writing that he left the country and that he would be returning to Malta. This happened when

⁶ Per Hon. Justice Giovanni M. Grixti; Appeal Nr: 532 /2017

⁷ Dok.GCZZ

proceedings against him for the offences for which he was returned to the Czech Republic were ongoing.⁸ Information sent to the Maltese authorities via Sirene clearly provides that *“on 3.10.2018 the subject delivered letter to probation service dated the 29.09.2018 that he moved to Malta and left the Czech territory. The judicial authorities were informed about the situation. Between 04.10.2018 and 6.12.2018 Drga contacted by phone several times the probation service and confirmed his place of stay Malta for the reasons of work etc.”*⁹ In that Form M it was also stated that he was released from the Czech prison on the 23rd August, 2018, under condition of supervision of probation and mediation service. Another Form M dated the 11th February, 2019, states in no unclear terms that *“Drga travelled back to Malta in September 2018 after he was released from the Czech prison”*.¹⁰

The court notes that the judgement by the Court of Criminal Appeal of the 12th January, 2018,¹¹ had confirmed the judgment of the Court of Committal dated the 7th December, 2017, wherein it was clearly stated that:

This Order of Committal is being made on condition that the present extradition of the Requested Person be subject to the law of speciality and thus in connection with the offence mentioned in the European

⁸ Dok.GCZ1 a Fol.23 and Dok. GCZZ

⁹ Dok.GCZ1 a fol.23

¹⁰ Dok.GCZ a fol.22

¹¹ *Supra*.

*Arrest Warrant issued against him deemed to be an extraditable offence by this Court.*¹²

Whereas the court further notes that had the person wanted fled from the Czech authorities to avoid prosecution or the serving of any eventual sentence relating to the offences for which his previous extradition from Malta took place, an European Arrest Warrant attesting to that fact and requesting his return specifically on such basis would have surely been presented. None was filed.

Thus having ascertained that Drga violated no conditions governing his release with respect to the criminal proceedings for which his extradition was granted on the 12th January, 2018, it remains to be established whether the request for his return for offences allegedly committed in 2011 and 2012¹³ on the strength of this present European Arrest Warrant, is one made in conformity to the ***Rule of Specialty*** requirements as laid down by the *Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)*:

Article 27

Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior

¹² Per Hon. Magistrate Aaron Bugeja

¹³ **Dok.MG5** a fol. 18 *tergo* and **Dok. MG4** a fol.14 *tergo*

to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

Whereas with respect to Article 27.1 Malta had made the following notification to the General Secretariat of the council:

Malta does not intend to make any notifications with regard to Article 27(1) (Possible prosecution for other offences) and Article 28(1) (Surrender or subsequent extradition) of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States (2002/584/JHA).¹⁴

Whereas this indicates that Malta did not agree to have its consent presumed in cases of prosecution for other offences, in other words it indicated that it would not be waiving, *a priori*, the rules governing the *rule of specialty* regime.

Whereas article 27 of the Council Framework Decision continues:

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

(a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so **within 45 days of his or her final discharge**, or has returned to that territory after leaving it;

¹⁴ Notifications with regard to the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. **Brussels, 16 September 2004; 12438/04; COPEN 106, EJM 58, EUROJUST 75;**

Whereas it transpires that although the person wanted was released on the 23rd August, 2018,¹⁵ and by the 1st October, 2018, had already travelled to Milan,¹⁶ clearly indicating that he left the Czech territory within 45 days of his release, Article 27(3)(a) adds a further qualification to the need for the wanted person leaving the territory of the requesting state within 45 days. In fact the 45 days commence to run not from the date of his being given an opportunity to leave the territory of the requesting State, but **the 45 days commence to run from the date of his or her final discharge**. From the basis of the evidence brought before it, there was no final decision discharging him on the day he left the Czech Republic and thus Article 27(3)(a) finds no application, unaffected the clear statement which Article 27(2) of *Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)* establishes.

Thus the wanted person's right, in terms of Article 27(2), not to be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered, remains unfettered and unaffected.

The court deems it is obliged to note that Article 27(3) of the Framework Decision 2002/584/JHA is not fully transposed through

¹⁵ Dok.GCZ1 a fol.23

¹⁶ Dok.CGZ2 a fol.24

Article 18(4)(a) of the *Extradition (Designated Foreign Countries) Order, S.L.276.05*, since in terms of the Council Framework Decision the 45 day period does not commence when the wanted person arrives in the requested State, as provided for in Article 18(4)(a) - and which admittedly is difficult to envisage how it can find application given that upon arrival a wanted person is subjected to judicial proceedings which generally exceed 45 days. Instead in terms of the Framework Decision, and logically, the 45 day period commences when the wanted person is **finally discharged**.

Whereas the information presented manifests that person wanted was released from custody in August, 2018, thus well after his return in February, 2018, a period which surpassed by far the 45-day window which Article 18(4)(a) cites, nowhere does it result that the person wanted had been given an opportunity of the sort as that to which Article 18(4) refers. Thus, even if this Court is to base its decision simply on the basis of this article's interpretation, the exception to the rule of specialty still finds no application.

Nonetheless this Court is duty bound to interpret local legislation, in a manner which is in conformity to the Council Framework Decision.

Reference is made to House of Lords Judgment of **Dabas (Appellant) v. High Court of Justice, Madrid (Respondent) (Criminal Appeal from Her Majesty's High Court of Justice):**¹⁷

39. In *Criminal proceedings against Pupino* (Case C-105/03) [2006] QB 83, 91, para 23, Mrs Advocate General Kokott said that the object of creating an ever closer union among the people of Europe to which article 1 EU refers will not be achieved unless the member states and institutions of the Union co-operate sincerely and in compliance with the law. She then explained how framework decisions must be given effect in accordance with article 34(2)(b) EU:

"28. Framework decisions in Union law are also largely identical in their structure to directives in Community law. Under article 34(2)(b) EU, they are binding on the member states as to the result to be achieved but leave the choice of form and methods to the national authorities. Although direct effect is expressly excluded, at least the wording concerning their binding character as to the result to be achieved corresponds to that of the third paragraph of article 249 EC, on the basis of which - together with other reasons - the Court of Justice has developed the doctrine of the application of national law in conformity with Community directives.

36. In summary, it follows from article 34(2)(b) EU and from the principle of loyalty to the Union that every framework decision obliges national courts to bring their interpretation of national laws as far as possible into conformity with the wording and purpose of the framework decision, regardless of whether those laws were adopted before or after the framework decision, so as to achieve the result envisaged by the framework decision."

40. In its judgment in the *Pupino* case the Court of Justice said:

¹⁷ Session 2006-07; [2007] UKHL 6; on appeal from: [2006] EWHC 971 (Admin); Judgement 28th February 2007: Appellate Committee Lord Bingham of Cornhill, Lord Hope of Craighead, Lord Scott of Foscote, Lord Brown of Eaton-under-Heywood, Lord Mance;
<https://publications.parliament.uk/pa/ld200607/ldjudgmt/jd070228/dabas-2.htm>

"34. The binding character of framework decisions, formulated in terms identical to those of the third paragraph of article 249EC, places on national authorities, and particularly national courts, an obligation to interpret national law in conformity with Community law.

42. It would be difficult for the Union to carry out its task effectively if the principle of loyal co-operation, requiring in particular that member states take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law, were not also binding in the area of police and judicial co-operation in criminal matters, which is moreover entirely based on co-operation between the member states and the institutions, as the Advocate-General has rightly pointed out in para 26 of her opinion.

43. In the light of all the above considerations, the court concludes that the principle of interpretation in conformity with Community law is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union. When applying national law, the national court that is called on to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with article 34(2)(b) EU."

Consequently, in the light of these considerations and having seen the provisions of Article 27(2) of the Council Framework Decision and the provisions of Articles 13(1)(d) and 18(4) of the *Extradition (Designated Foreign Countries) Order*, finds that when the wanted person left the Czech Republic, proceedings against him were not yet concluded and hence there had been no final discharge.

For these reasons Marek Drga's right not to be prosecuted for offences committed prior to his surrender other than that for which he was surrendered, **a condition on the basis of which his previous surrender in February, 2018, was acceded to** following the

judgement of the 7th December, 2017,¹⁸ which was in turn confirmed by the Court of Criminal Appeal on the 12th January, 2018, is hereby being safeguarded.

In view of the foregoing and in terms of Articles 13(1)(d)(3) and 18(4) of the *Extradition (Designated Foreign Countries) Order*,

The Court,

finds that the return of Marek Drga to the Czech Republic is barred by reason of speciality and thus orders his discharge.

Given the considerations relating to transposition to which reference has already been made to above, a copy of this decision is to be notified to the Attorney General and the Minister for Justice, Culture and Local Government.

Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)
Magistrate

¹⁸ *Supra*.