



**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.421/2021

Today the 13th day of July, 2021

The Court,

Having seen that on the 4th July, 2021, the prosecution arraigned under arrest **Marek DRGA, a Czech national, holder of Czech identity card number 210043621 and Maltese identity card number 0082411A**, hereinafter referred to as 'the person requested';

Having seen the European Arrest Warrant issued by the Regional Court in Brno, branch office in Zlin, dated the 15th November, 2019,¹ and Schengen Information System Alert bearing number CZ000000719904300001;²

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

¹ **Doc. MG5** a fol.23 et seq.

² **Dok.MG3** a fol.19

³ Minutes of the 4th July, 2021 a fol. 10-12

Having seen that in terms of Regulation 11 of the Extradition (Designated Foreign Countries) Order, S.L. 276.05, hereinafter referred to as “the Order”, the person requested 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 Regulation 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 Regulation 7 of the Extradition (Designated Foreign Countries) Order, S.L. 276.05;⁵

Considers,

Whereas the European Arrest Warrant issued by the Regional Court in Brno, branch office in Zlin, against the person requested was issued for purposes of serving sentence for the offence of VAT evasion through fraudulent declarations.⁶

Learned counsel for the person requested submits that whilst there are no bars to extradition, the crime for which DRGA’s return is being requested - “*Offence of evading a tax, charge ...*”⁷ - does not satisfy the double criminality rule in so far as it is not punishable with a term of imprisonment under Maltese law.

Learned prosecuting counsel submits that the relevant provisions on which this Court is to base its decision on the issue of extraditability of the conduct for which DRGA is sought, are those of Regulation 59 of the Order which are to be read together with articles 11 and 14 of the Criminal Code.

Considers,

This Court does not agree with the prosecution’s submission regarding the legal provisions which find application to the case under examination. The European Arrest Warrant is one seeking the execution of a sentence and thus it is not Regulation 59 of the Order which applies. The applicable provision is that found under Regulation 60(3) of the Order which provides:

⁴ Fol.12

⁵ **Doc MG1 and MG2** a fol.14-15

⁶ Vide Para (e) of the EAW, a fol.24

⁷ Fol.24

(3) The conduct also constitutes an extraditable offence in relation to the scheduled country if these conditions are satisfied:

(a) the conduct occurs in the scheduled country;

(b) the conduct would constitute an offence under the law of Malta if it occurred in Malta;

(c) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed **in the scheduled country** in respect of the conduct.

There is no further requirement to be met and thus the fact that under Maltese law the offence is only punishable with a pecuniary penalty, in no way impinges on the decision as to whether the relevant conduct is tantamount to an extraditable offence.

These three pre-requisites listed in Regulation 60(3) of the Order shall now be considered in turn to determine whether the offence, for which the return of the person requested is being sought, is an extraditable offence:

(i). In the first place there is no doubt that the Czech Republic is indeed a scheduled country listed in Schedule 1 of the Order.

(ii). Secondly, the conduct of evading tax, and in particular evading value added tax (VAT), constitute criminal offences under Maltese law.

Article 46 of the Income Tax Management Act, Chapter 372 of the Laws of Malta, Articles 76 and more saliently Article 77 of the Value Added Tax Act, Chapter 406 of the Laws of Malta, sanction such conduct through offences punishable by a fine (*multa*).

Moreover article 77 of the Value Added Tax Act, Chapter 406 of the Laws of Malta, provides that when the tax amounting to more than one hundred euro (€100) would be endangered, the offence would also be liable to imprisonment for a term not exceeding six months.

Consequently, the second requisite, the **double criminality** requirement, is also satisfied since there remains no doubt that tax evasion, including VAT evasion, constitute offences under Maltese law.

(iii). Finally, the last requirement is that the sentence which is to be served in the requesting or scheduled country is that of imprisonment exceeding four months.

The European Arrest Warrant in its para (c) indicates that the remaining sentence to be served by the person requested is that of **four (4) years, two (2) months and seventeen (17) days**; consequently, this requirement has also been met.

Thus, and in view of the foregoing,

The Court,

Having seen Regulations 13(5) and 24 of the Order,

Orders the return of **Marek DRGA** to the Czech Republic on the basis of the European Arrest Warrant issued against him on the 15th November 2019,⁸ and commits him to custody while awaiting his return to the Czech Republic.

This Order of Committal is being made on condition that the present extradition of the person requested to the Czech Republic be subject to the law of speciality, and thus solely to serve sentence in connection with the offence mentioned in the European Arrest Warrant issued against him and deemed to be an extraditable offence by this Court.

In terms of Regulation 25 of the Order as well as Article 16 of the Extradition Act, Chapter 276 of the Laws of Malta, this Court is informing the person requested that: -

- (a) He will not be returned to the Czech Republic until after the expiration of seven days from the date of this order of committal and that,
- (b) He may appeal to the Court of Criminal Appeal, and

⁸ Doc.MG5 a fol. 23 et seq

(c) If he thinks that any of the provisions of article 10(1) and (2) of the Extradition Act, Chapter 276 of the Laws of Malta has been contravened or that any provision of the Constitution of Malta or of the European Convention Act is, has been or is likely to be contravened in relation to his person as to justify a reversal, annulment or modification of the court's order of committal, he has the right to apply for redress in accordance with the provisions of article 46 of the said Constitution or of the European Convention Act, as the case may be.

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