



**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 Omar Zammit)
(Inspector Robinson Mifsud)**

-vs-

Mario MARJANOV

Extradition Proceedings No. 689/2021

Today the 1th day of December, 2021

The Court,

Having seen the provisional arrest warrant issued in terms of article 14 of the Extradition Act, Chapter 276 of the Laws of Malta, on the 26th October, 2021, by Magistrate Dr. Doreen Clarke LL.D.¹;

Having seen that on the 27th October, 2021, the prosecuting officers confirmed on oath their report² by means of which they arraigned under arrest **Mario MARJANOV**, having a **Serbian Passport bearing number 008172546** and a **Maltese residence permit card bearing number MT9221727 and 024700A**, hereinafter referred to as 'the fugitive criminal';

Having seen that **Mario MARJANOV** is alleged to be unlawfully at large after conviction and is sought by the Serbian authorities to serve a sentence of

¹ Dok.OZ1 a fol.10-11; Dok.OZ2 a fol.14-15

² Fol.5

imprisonment of three years and three months which was imposed upon him by the High Court in Zrenjanin and confirmed upon appeal;³

Having seen the request for extradition issued by the Republic of Serbia dated the 13th September, 2021;⁴

Having seen that the said request was transmitted to the Maltese Government via Note Verbal No.380-946/2021-1 dated the 1st October, 2021;⁵

Having seen the Authority to Proceed issued in terms of Article 13 of the Extradition Act by the Hon. Minister for Justice and Governance dated the 26th October, 2021;⁶

Having taken cognizance of the examination of the fugitive criminal⁷ as well as the documentation exhibited by the parties;

Having heard parties declare that they are raising no issues relating to Article 22 of the Extradition Act;

Considers,

The Republic of Serbia is a designated foreign country in terms of Article 7 of the Extradition Act read together with Article 3 of the Extradition (Designated Foreign Countries) (No. 2) Order.

Marjonov is wanted in Serbia to serve sentence for the offences of unlawful production and circulation of narcotics and the facilitation of the taking of narcotics.⁸

The decision which awaits this court is dictated by Article 15 of the Extradition Act, and is twofold:

(3) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any evidence tendered in support of the request for

³ **Dok.OZ4** a fol.22; **Dok.OZ7** a fol.29-32

⁴ **Dok.OZ3** a fol.18 et seq

⁵ **Dok.GF**

⁶ Fol.12-13; 16-17

⁷ Fol.9

⁸ Fol.16 et seq. **Dok.YA** a fol.55 et seq. Original copy also exhibited as **Dok.YAOriginal** a fol.105 et seq

the return of that person or on behalf of that person, that the offence to which the authority relates is an extraditable offence and it is further satisfied

(b) where the person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large.

It is Article 8 of the Extradition Act which sets out the requirements for an offence for which a person is sought, or for which he has been convicted, to tantamount to an extraditable crime.

One such requirement is that of **double criminality**. Additionally, the crime must be punishable under the law of the Requesting State, Serbia in this case, by a punishment of **imprisonment of twelve months or more**. Article 8(1) of the Act states:

(a) it is an offence in respect of which a fugitive criminal may be returned to that country in accordance with the arrangement and is punishable under that law with **imprisonment for a term of twelve months or a greater punishment**; and

(b) the act or omission constituting the offence or the equivalent act or omission, would **constitute an offence against the law of Malta** if it took place within Malta or, in the case of an extra-territorial offence, in corresponding circumstances outside Malta.

Adding the following explanatory provision:

(2) In determining for the purposes of this section whether an offence falls within the requirements of subarticle (1)(a) and (b), the description of the offence shall not be regarded as material if the offences under the law of Malta and that of the requesting country are substantially of the same nature.

Considers,

The offence of unlawful production and circulation of narcotics carries a maximum punishment of imprisonment which varies between three to twelve years (Article 246, Criminal Code of the Republic of Serbia). The offence for facilitating the taking of narcotics (Article 247) is punishable by imprisonment ranging between six months to five years.⁹

The conduct described in the extradition request constitutes offences under the Laws of Malta as foreseen by Article 22, Part III and Part VI of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, Regulations 4 and 9 of the Internal Control of Dangerous Drugs Rules, S.L.101.02 (G.N. 292/1939), Articles 40A and 120A of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta, Regulations 2, 3 and 5, First Schedule, of the Drugs

⁹ Dok.OZ8 a fol.47-48.

(Control) Regulations (S.L.31.18; L.N.22 of 1985) with respect to marijuana, cannabis and psilocin respectively.

Thus, the requirements imposed by article 8(a) of the Extradition Act are satisfied.

The requisite laid down by Article 15(3)(b) of the Extradition Act is also satisfactorily proven given the documentation sent by the Requesting Authorities, namely the judgement upon which the fugitive's criminal conviction was delivered on the 13 February, 2019¹⁰, the appeal therefrom which was rejected on the 19th June, 2019¹¹ and the judgment delivered on the 30 October, 2019, wherein the Supreme Court of Cassation held:

*"The request for the protection of legality of the defendant Mario Marjanov's defence attorney - lawyer Mirko Maric, filed against the final verdict of the Higher Court in Zrenjanin %k No.73/18 from 13 February, 2019 and the Court of Appeal in Novi Sad Kzl No.537/19 from 19 June, 2019, shall be REJECTED as untimely."*¹²

Consequently,

Having ascertained that the fugitive's committal is not prohibited by any other provision of the Extradition Act,

Having ascertained that the person appearing in these proceedings is the fugitive criminal whose return is sought by the Republic of Serbia in its Request for Extradition, and that the said fugitive is the same person to whom the Ministerial Authority to Proceed relates,

Having seen articles 10 and 15(3) of the Extradition Act,

Commits Mario Marjanov to custody to await his return to the Republic of Serbia.

¹⁰ **Dok.OZ7** a fol.29 et seq; **Dok.YA** a fol.56 et seq. Original copy also exhibited as **Dok.YAOriginal** a fol.105 et seq

¹¹ Fol.94 et seq

¹² **Dok.OZZ** a fol.150 et seq

This order of Committal is being made on condition that the present extradition be subject to the law of speciality and thus in connection with those offences mentioned in the Extradition Request deemed to be extraditable offences by this Court.

In terms of 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 Serbia until after the expiration of fifteen days from the date of this order of committal and that,
- (b) He may appeal to the Court of Criminal Appeal, and
- (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