



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL INQUIRY**

[IN THE ACTS OF THE EXTRADITION CALLED AS THE COURT OF COMMITTAL]

Magistrate Dr. Leonard Caruana LL.D., M.A. (Fin. Serv)

The Police
(Inspector Roderick Spiteri)

Vs

Salah Ajile

Today, the 28th February 2025

The Court,

Having seen that Salah Ajile, of 40 years, born in Libya on the 5th August 1984, holder of Maltese residence permit No. MT4153908 and 131160A and Maltese Passport number 0019225 was arraigned under arrest as he is wanted by the Swedish Competent Authorities in terms of Article 5 of Subsidiary Legislation 276.05 in order to serve a cumulative sentence of imprisonment;

Having seen the European Arrest Warrant (the “EAW”) of the 13th November 2024 issued by the Åklagarmyndigheten, Nationella åklagaravdelningen, Riksenheten mot internationell och organiserad brottslighet (Swedish Prosecution Authority, National Public Prosecution Department, National Unit Against Organised Crime);

Having seen the Certificate dated the 19th November 2024 issued by the Attorney General in terms of Regulation 7 of the Extradition (Designated Foreign Countries) Order (S.L. 276.05) hereinafter referred to as the “Order”;

Having seen that during the sitting of the 11th January 2025, the Court ascertained that the person arraigned is, in fact, the person wanted by the mentioned foreign authorities;

Having seen the evidence submitted;

Having heard the submission of the parties;

Considers;

That the European Arrest Warrant is regulated within the Member States of the European Union by means of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between the Member States (2002/584/JHA), as amended by Council Framework Decision 2009/299/JHA of the 26 February 2009, which Framework Decision forms the inspiration of our law in this regard.

That Article 1(1) and (2) of the Framework Decision stipulate that:

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

That the general principle which forms the basis of the Framework Decision is explained in the Commission Notice – Handbook on how to issue and execute a European Arrest Warrant¹ which states: -

“The Framework Decision on EAW reflects a philosophy of integration in a common judicial area. It is the first legal instrument involving cooperation between the Member States on criminal matters based on the principle of mutual recognition. The issuing Member State’s decision must be recognised without further formalities and solely on the basis of judicial criteria.

The surrender of nationals is a principle and a general rule, with few exceptions. These exceptions concern the enforcement of custodial sentences in one’s home country and apply equally to residents. In practice, about one fifth of all surrenders in the Union concern a country’s own nationals.”

Our courts also had the opportunity to underline this principle. In fact, in the judgement **Carmelo Borg et vs Ministru Responsabbli mill-Ġustizzja u l-Intern et**² it was held that:

“Fil-fehma kunsidrata ta’ din il-Qorti, l-Ordni dwar Pajjizi Barranin Appuntati dwar l-Estradizzjoni jagħmel restrizzjonijiet fuq il-verifika gudizzjarja li huma permissibbli, ma humiex irragjonevoli, ma jikkozzawx ma’ xi principji ta’ gustizzja naturali, u li jinkwadraw fl-iskop tal-ligi principali, cioe` dak li tigi regolata l-estradizzjoni ta’ persuna minn Malta għal pajjiz barrani – f’dan il-kaz pajjizi ta’ l-Unjoni Ewropea fejn principju bazilari huwa dak tal-fiducja reciproka li dawn il-pajjizi għandhom fis-sistema tal-gustizzja ta’ xulxin.”

¹ **Commission Notice – Handbook on how to issue and execute a European Arrest Warrant** (C/2023/1270), dated 15 December 2023, p. 10/166.

² **Carmelo Borg et vs Ministru Responsabbli mill-Ġustizzja u l-Intern et**, Constitutional Court, 15th May 2006 (App. Ċiv Nru 1080/2005/1)

Furthermore, the Court of Justice of the European Union, in the **Radu** case³ held that:

- “34. *Framework Decision 2002/584 thus seeks, by the establishment of a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the objective set for the European Union to become an area of freedom, security and justice by basing itself on the high degree of confidence which should exist between the Member States (see, to that effect, judgment of 28 June 2012 in Case C-192/12 PPU West, paragraph 53 and the case-law cited).*
35. *Under Article 1(2) of Framework Decision 2002/584, the Member States are in principle obliged to act upon a European arrest warrant.”*

Moreover, in the joined cases in the names **Aranyosi and Căldăraru**⁴ the Court of Justice of the European Union held that:

- “79 *In the area governed by the Framework Decision, the principle of mutual recognition, which constitutes, as is stated notably in recital (6) of that Framework Decision, the ‘cornerstone’ of judicial cooperation in criminal matters, is given effect in Article 1(2) of the Framework Decision, pursuant to which Member States are in principle obliged to give effect to a European arrest warrant (see, to that effect, judgment in Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 36 and the case-law cited).*
- 80 *It follows that the executing judicial authority may refuse to execute such a warrant only in the cases, exhaustively listed, of obligatory non-execution, laid down in Article 3 of the Framework Decision, or of optional non-execution, laid down in Articles 4 and 4a of the Framework*

³ Case C-396/11, **Ciprian Vasile Radu**, judgment of 29 January 2013, (para 34 -35).

⁴ Joined Cases C-404/15 and C-659/15 PPU, **Aranyosi and Căldăraru**, Judgment of 5 April 2016 (para 79 -80).

Decision. Moreover, the execution of the European arrest warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 of that Framework Decision (see, to that effect, judgment in Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 36 and the case-law cited)."

Therefore, from the above it results that the general underlying principle is that the executing State is bound to execute a European Arrest Warrant on the basis of mutual trust and mutual recognition and may only refuse to do so on the specific grounds listed in Articles 3, 4 and 4a of the Framework Decision or in exceptional circumstances⁵, on reasons as specified by the Court of Justice of the European Union. Our Order and legislative framework regulating these proceedings follows the same general principles as outlined above.

Therefore, this Court, in its examination of these proceedings is precluded from focussing on matters which do not fall strictly within the grounds listed in Articles 3, 4 and 4a of the Framework Decision or matters which are found in the caselaw of the Court of Justice of the European Union.

Considered

By way of background, it results that the requested person is wanted by the Swedish Authorities for the execution of the remaining period of imprisonment awarded by (i) a judgement of the Svea Court of Appeal delivered on the 4 April 2024 in the case B 12005/22, and (ii) a judgement of the Solna District Court delivered on the 24 August 2023 in the case B 6565/23 which forms the basis for the present EAW.

According to the EAW, the warrant relates to the conviction of the requested person for six offences:

⁵ To this end, vide C-216/18 PPU judgments of 25 July 2018, **Minister for Justice and Equality** para 43 and the case-law cited, and also C-220/18 PPU Judgement of 25 July 2018, **Generalstaatsanwaltschaft**, para 56

(i) Judgment I - Svea Court of Appeal:

Assault, 05.04.2021.

Salah Ajile delivered a blow with a closed fist to the complainant's face. This happened on 5 April 2021 at Kirunaplan 5, Vällingby, Stockholm Municipality, Sweden. The complainant suffered wounds, injuries to a tooth, pain, bleeding, and soreness. Salah Ajile committed the act with intent.

Assault, 07.02.2022.

Salah Ajile pushed the complainant and punched him multiple times in the face. This happened on 27 February 2022 at The Corner, Hässelby torg 8, Stockholm Municipality, Sweden. The complainant suffered bleeding and extensive dental injuries and pain.

Narcotics offence, 21.04.2022.

Salah Ajile was unlawfully in possession of 96 grams of cannabis resin, which is classified as a narcotic drug. This happened on 21 April 2022 on Fyrspannsgatan, in Hässelby, Stockholm Municipality, Sweden. Salah Ajile committed the act with intent.

Minor narcotics offence, 04.12.2021

Salah Ajile was unlawfully in possession of 3.71 grams of cannabis resin, which is classified as a narcotic drug. This happened on 4 December 2021 at Hässelby torg 1, Stockholm Municipality, Sweden. Salah Ajile committed the act with intent.

(ii) Judgment II - Solna District Court:

Threat against a public official, 21.03.2023

Salah Ajile attacked the security guard (the complainant) using threats of violence as the complainant was patrolling around Tensta allé. This happened on 21 March 2023 at Tensta alle 13, Spånga, Stockholm Municipality, Sweden. Salah Ajile said "I'm going to kill you" or words to the same effect, while at the same time mimicking a pistol with his hand. The threat was made in response to the complainant having previously arrested Salah Ajile, Salah Ajile committed the act with intent.

Minor narcotics offence, 21.03.2023

Salah Ajile was unlawfully in possession of 0.25 grams of cocaine, which is classified as a narcotic drug. This happened on 21 March 2023 at Tensta allé 13, Spånga, Stockholm Municipality, Sweden. Salah Ajile committed the act with intent.

Considered;

That Regulation 5(6) of the Order lists the elements necessary for a valid arrest warrant after conviction, that is: (i) the contents as listed in Regulation 5(7) and (ii) that it contains the information required in Regulation 5(8) of the Order.

That from an examination of the present EAW and supporting documentation, it results that the present EAW satisfies the formalities required by Reg 5(7) and 5(8) of the Order and has also been written in the format as required by Reg 5A(2) of the Order. Furthermore, the Issuing State is a Scheduled Country in terms of Annex 2 of the Order. From the certificate issued by the Attorney General on the 19th November 2024 in accordance with Reg. 7 of the Order, it results that the authority which issued the

present warrant has the function of issuing arrest warrants in Sweden, being the requesting country in these proceedings.

Therefore, on the basis of the above, the Court finds that the present EAW is formally correct and satisfies all the requirements of the above mentioned regulations.

Considered;

Having established the above formalities, the Court will now examine whether there are any Bars to extradition as listed in Regulation 13 of the Order.

During these proceedings, the requested person did not raise any of the grounds listed in sub-regulations 13(1) and (1A) of the Order. Indeed from an examination of the documentation submitted in these acts, the Court finds that there are no bars to extradition on the grounds indicated by sub-regulations 13(1) and (1A) of the Order.

In accordance with Regulation 13(4) of the Order, once this Court has found that the Requested Person's return is not barred by any of the reasons mentioned in sub-regulations 13(1) and (1A) of the Order and given that the Requesting State is alleging that the Requested Person is unlawfully at large after a conviction, the Court must proceed to examine the Warrant in accordance with Regulation 23 of the Order.

From the European Arrest Warrant, it results that although the Requested Person did not appear in person at the Trial, being aware of the scheduled trial he had given a mandate to legal counsellor, who was either appointed by him or by the scheduled country, to defend him at his trial, and was indeed defended by that legal counsellor at the trial. This declaration satisfies the requirement stipulated by Regulation 23(3)(b) of the Order and, as in accordance with Regulation 23(4) of the Order, the Court must therefore proceed in line with Regulation 24 of the Order.

Considered;

The requested person, however, raised before this Court his wish to serve the custodial sentence in Malta owing to the fact that he has his wife and children in Malta. In addition, the requested person also fears that since he is not a European Union national, the moment his custodial sentence is served, the Swedish Authorities will repatriate him to his native country, wherein he was persecuted for political reasons. If this happens, the requested person fears that his life will be in imminent danger.

That by a decree dated the 30st January 2025 in accordance with Article 13A of the Order, this Court requested the Swedish Authorities to provide information about and an assurance that the Requested Person will be returned back to the Republic of Malta once he serves the custodial sentences subject to the European Arrest Warrant.

That by a communication dated the 6th February 2025, the Swedish Authorities replied that the Swedish judgement does not include a decision to expel the Requested Person and that after he has served his sentence in Sweden, the Swedish Prison and Probation Service will not take any action regarding his stay in Sweden. Moreover, the Swedish Migration Board confirmed that if the Requested Person, “after his prison sentence, does not legalize his stay in Sweden, he may be deported. When deporting a foreigner who has a valid residence permit in another EU state, it is stated in the Swedish Aliens Act Chapter 8 section 6a, that the foreigner shall, as a general rule, be asked to return voluntarily before the question of deportation can be decided.”

Therefore, it results from the above that the fear the Requested Person had of being deported to this native country has been addressed by the Swedish Authorities.

That it has been submitted before this Court, however, that although the Requested Person has a refugee status valid until 2027 his residence permit is now expired and that he needs to renew said residence permit. This means that upon a renewal of the residence permit which, under normal circumstances, is typically renewed on the strength of a valid refugee Status, the Requested Person will have the possibility to

return to Malta voluntarily from Sweden, after he serves the sentences for which he is wanted.

Decide:

Therefore, on the basis of the above, the Court, in accordance with the Extradition (Designated Foreign Countries) Order (S.L. 276.05), is hereby deciding that the return of **Salah Ajile** to the Swedish Authorities on the Basis of the European Arrest Warrant dated the 13 November 2024 **is not barred** and therefore, in accordance with Regulation 24 of the Order:

1. is ordering Salah Ajile to custody to await his return to Sweden, being the scheduled country which issued the present warrant.

SOHOWEVER that his return to Sweden is conditional to, and may only be effected after he is in possession of a valid residence permit issued from the competent authorities.

In accordance with Regulation 25 of the mentioned Order, read in conjunction with Article 16 of the Extradition Act, (Cap. 276 of the Laws of Malta) the Court is informing the person requested that: -

- (a) He will not be returned to Sweden until after the expiration of seven days from the date in which this order of committal comes into effect and that,
- (b) He may appeal this decision 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.

The Court is hereby ordering that the identification documents and passport presented in these Acts are released to the Commissioner of Police for the purposes of the surrender of the Requested Person to the Requesting State.

Ft.Dr Leonard Caruana
Magistrate

Sharonne Borg
Deputy Registrar