



**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

Timothy Alan Mackay

Today, the 28th February 2025

The Court,

Having seen that Timothy Alan Mackay, of 64 years, born in Australia on the 28th February 1960, holder of Maltese residence permit document MT0892365 and 0159311A and Australian Passport number PE0389522 was arraigned under arrest as she is wanted by the Polish Competent Authorities in terms of Article 5 of Subsidiary Legislation 276.05 for the purposes of prosecution;

Having seen the European Arrest Warrant (the “EAW”) of the 31st December 2024 issued by the Sąd Okręgowy w Legnicy - III Wydział Karny [District Court of Legnica – III Criminal Department]

Having seen the Certificate dated the 22nd January 2025 issued by the Attorney General in terms of Regulation 6A 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 4th February 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;

General Principles:

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 Articles 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.”

That the above principles have also been adopted by our courts wherein it has been held that the presumption is in favour of surrender by the Executing State to the Requesting State on the basis of the principle of mutual trust and mutual recognition between Members States.²

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

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 To this end, reference is made to the judgement awarded by the Court of Criminal Appeal in the names **The Police vs Paul-Philippe Al-Romaniei**, decided on the 10th June 2024 (EAW No. 359/2024 NGS)

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

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 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

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

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 within matters found in the caselaw of the CJEU.

The Formalities of the EAW:

Having established the above general principles, the Court must now proceed to examine whether the present case satisfies the formalities required by law and examine also the position of both the prosecution and the Requested Person.

The Prosecution submits that the Court, in EAW Proceedings, must decide in favour of the Requesting State and order the surrender of the requested person. It submits that the EAW is formally correct and that this Court does not need to look into any matter of double criminality. It submits that there are no bars to extradition and that the requesting person did not provide any evidence in support to the claim that his human rights will be breached by the Polish Authorities.

The Requested Person, on the other hand, raised a number of defences why, in its view, this Court cannot order the surrender of the Requested Person, namely

- a) That the EAW does not provide sufficient information;
- b) The absence of a National Arrest Warrant;
- c) Violation of the Requested Person's Human rights;

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

Considered;

The EAW does not provide sufficient information:

The Requested person submits that in the EAW document there is a lack of information and motivation, including lack of proportionality in its issuance, and it also lacks the reasons for which the extradition is being requested.

From an examination of the EAW document, the Court finds that Section “E” provides enough information to allow both the Court and the Requested Person to understand the reasons why he is wanted by the Polish Authorities and also the offences which were allegedly committed by the Requested Person. Section “C” also provides a clear indication of the maximum length of the custodial sentence which may be imposed. Furthermore, from the EAW document it clearly emerges that the Requested Person is wanted for the purposes of prosecution, as was also confirmed by the Polish Authorities in their reply to this Court dated the 24th February 2025.

Moreover, the Court finds that the issuing of the EAW is proportional to the reasons for which it was issued, therefore this Court finds that the element of proportionality has also been satisfied.

That Regulation 5(3) of the Order lists the elements necessary for a relevant arrest warrant for prosecution. That from an examination of the present EAW and supporting documentation, it results that the present EAW satisfies the formalities stipulated by sub-regulations 5(3),(4) and (5) of the Order.

Furthermore, it also results that the Issuing State is a Scheduled Country in terms of Annex 2 of the Order. Furthermore, from the certificate issued by the Attorney General on the 22nd January 2025, it results that the authority which issued the present EAW has the function of issuing arrest warrants in Poland, 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.

The Absence of a National Arrest Warrant:

The Requested Person submitted that the Polish National Arrest Warrant against the requested person was never presented in these proceedings and therefore questioned whether there actually was a national arrest warrant prior to the issuance of the EAW.

Article 8(1)(c) of the Framework decision states that the EAW must contain, *inter alia*, evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect. In the case **Niculaie Aurel Bob-Dogi**⁶, the CJEU held that the term ‘national arrest warrant’ is to be understood as the judicial decision on which the European arrest warrant is based. Furthermore, in the case **MM**⁷, the CJEU further clarified that this concept refers, in the first place, to a national measure that is distinct from the EAW decision.

From Section “B” of the present EAW it results that this warrant is based on the **“Ruling of the Regional Court [Polish: Sąd Rejonowy of Legnica of December 4, 2024 (II Kp 1057/24) on application of preventive measure in form of a pre-trial detention for a period of 30 days since the day of detention in case 3044-2.Ds.19.2024.”**

The above is also corroborated by the below entry in the **“Form A – Supplementary information relating to extradition”**:

Arrest Warrant of Judicial Decision Having The Same Effect:	240.	II Kp 1057/24
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⁶ Case C-241/15, **Niculaie Aurel Bob-Dogi**, Judgement of 1 June 2016 (Para. 46).

⁷ Case C-414/20 PPU, **MM**, Judgment of 13 January 2021 (para. 51).

Therefore, from the above, it results that the above decision of the Regional Polish Court amounts to a judicial decision which is separate and distinct from the EAW and which serves the basis of the present EAW.

The Court therefore finds that this EAW satisfies the criteria established by Article 8(1)(c) of the Framework Directive.

Bars to Extradition:

Having established the above formalities, the Court will now examine whether in these proceedings there exist any from the bars to extradition listed in Regulation 13 of the Order.

Although during these proceedings the requested person raised a number of defences, none of the bars to extradition listed in sub-regulations 13(1) and (1A) of the Order were raised. Indeed, from an examination by this Court of the documentation submitted in these acts, the Court finds that there are no bars to extradition on the grounds listed by sub-regulations 13(1) and (1A) of the Order.

In accordance with Regulation 13(5) 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 not alleging that the Requested Person is unlawfully at large after a conviction, the Court must proceed to examine the Warrant in accordance with Regulation 24 of the Order.

Human Rights' Defences:

In these proceedings, the Requested Person raised the defence that if this Court orders his surrender to the Polish Authorities, his fundamental human rights will be at risk of being breached.

At the outset, this court makes reference to the judgement in the names **Paul Philippe Al-României vs L-Avukat Ġenerali**⁸ wherein the Constitutional Court held that when deciding upon the execution of an EAW, the Courts of Criminal Jurisdiction are dutybound to determine whether the surrender of the Requested Person could result in a breach of that person's fundamental human rights. In fact, it was held that:

“33. Minn din is-sentenza hu ċar li l-qradi ta’ kompetenza kriminali li jiddeċiedu każijiet dwar l-eżekuzzjoni ta’ mandat ta’ arrest Ewropew, għandhom dmir jiddeċiedu jekk mill-provi jirrizultax li hemm riskju reali li t-treġġiġ lura tal-persuna jwassal għal trattament inuman u degradanti tal-persuna li tintalab mill-awtorità ġudizzjarja emittenti. L-istess raġunament sar f’każ fejn kien hemm riskju reali li l-persuna ssofri, jekk titreġġa’ lura, ksur tal-jedd fundamentali garantit mit-tieni paragrafu tal-Art. 47 tal-karta (ara sentenza tal-QĠUE C-216/18 tal-25 ta’ Lulju, 2018)”

As already mentioned above, it is settled case law of the CJEU that an EAW should, in principle, be only refused on the grounds listed in Articles 3, 4 and 4a of the Framework Directive or in ‘exceptional circumstances’⁹ which, owing to their gravity, require that limitations be placed on the principles of mutual recognition and mutual trust between Member States, on which judicial cooperation in criminal matters is based.

In the case **Aranyosi and Căldăraru** the CJEU held that the right guaranteed by Article 4 of the Charter of Fundamental Rights of the European Union is unalterable and must be upheld in an absolute manner. In this judgment, the CJEU developed a two-step examination process by which the Court may determine whether a defence is grave enough to justify the refusal to execute an EAW on the basis of a breach of fundamental human rights:

⁸ **Paul Philippe Al-României vs L-Avukat Ġenerali**, Constitutional Court, 9th July 2024 (Rik Nru 267/24/2 MS), para. 30

⁹ Joined Cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, Judgment of 5 April 2016.

1. in the first step, the executing judicial authority must assess whether there is a real risk that fundamental rights will be breached, in the light of the general situation in the issuing Member State;
2. in the second step, that judicial authority must assess, specifically and precisely, whether there is a real risk that a fundamental right of the requested person will be breached, having regard to the circumstances of the case.

The CJEU held that both steps from the above examination need to be satisfied so as to merit a refusal to execute an EAW.¹⁰ In the case of **Dumitru-Tudor Dorobantu**¹¹ the CJEU further solidified the principles established in the *Aranyosi and Căldăraru* and the *Generalstaatsanwaltschaft*¹² cases and held that in order to ensure the observance of Article 4 of the Charter in the procedure of an EAW, the executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, is then bound to determine, specifically and precisely, whether, in the particular circumstances of the case, there are substantial grounds for believing that, following the surrender of that person to the issuing Member State, he will run a real risk of being subject to inhuman or degrading treatment in that Member State, within the meaning of Article 4 of the Charter.

A refusal to execute an EAW on the above basis constitutes the exception to the rule. In fact, in the case **P.P.R and others**¹³ the CJEU held that under the principle of mutual trust, it is incumbent on the Member States to presume that all the other Member States are complying with EU law and particularly with the fundamental rights recognised by EU law. It continues that a refusal by the executing authority to execute an EAW on the ground of a risk of infringement of a fundamental right may be justified only in exceptional circumstances.

¹⁰ Case C- 158/21, **Puig Gordi and Others**, Judgment of the 31 January 2023.

¹¹ Case C-128/18, **Dorobantu**, Judgment of 15 October 2019.

¹² Case C-220/18 PPU, **Generalstaatsanwaltschaft**, Judgment of 25 July 2018.

¹³ Case C-318/24 PPU [**Breian**], **P.P.R.**, Judgment of the 29 July 2024, para. 73 - 75.

Specific Human Rights' Defences:

i. Constitutional Crisis of Poland:

a. The appointment of Judges:

The Requested Person submitted that due to the Constitutional Crisis in Poland and the manner by which members of the judiciary are appointed, he runs a real risk of being tried by an unfair and partial tribunal trial and this in breach of his fundamental human rights. To substantiate this claim, the Requested Person submitted a Resolution of the European Parliament on the rule of law crisis in Poland.¹⁴

The CJEU, in the cases **Minister for Justice and Equality (Deficiencies in the System of Justice)**¹⁵ held at paras 48-58 that a real risk of breach of the fundamental right to an independent tribunal and, therefore, of the essence of the fundamental right to a fair trial is capable of permitting the executing judicial authority to refrain, by way of exception, from giving effect to an EAW. It further laid out the two-step examination necessary to determine such a claim:

- The first step, being the systematic assessment, requires the Court to assess on the basis of material that is objective, reliable, specific and properly updated concerning the operation of the system of justice in the issuing Member State, whether there is a real risk, connected with a lack of independence of the courts of that Member State on account of systemic or generalised deficiencies there, of the fundamental right to a fair trial being breached.

¹⁴ **The Rule of law crisis in Poland and the primacy of EU law** - European Parliament resolution of 21 October 2021 on the rule of law crisis in Poland and the primacy of EU law (2021/2935(RSP)) - OJ C-184/154, 5 May 2022 (Dok "AZ7")

¹⁵ Case C-216/18 PPU, **Minister for Justice and Equality (Deficiencies in the System of Justice)**, Judgment of 25 July 2018.

- The Second step, being the “specific assessment”, is where the Court must **assess specifically and precisely** whether, in the particular circumstances of the case, there are substantial grounds for believing that following the individual’s surrender to the issuing Member State, **the requested individual will run** the risk of a breach of his fundamental human rights.

In the case **Minister for Justice and Equality (Tribunal établi par la loi dans l’État membre d’émission – II)**¹⁶ the CJEU held that where the executing authority has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State, in particular as regards the procedure for the appointment of the members of the judiciary, that executing authority may refuse to surrender that person where, in the context where the Requested Person is wanted for the purposes of prosecution, the executing authority finds that in the particular circumstances of the case there are substantial grounds for believing that:

- having regard *inter alia* to the information provided by the Requested Person relating to his or her personal situation;
- the nature of the offence for which the Requested Person is prosecuted;
- the factual context surrounding that EAW; and
- any other circumstance relevant to the assessment of the independence and impartiality of the panel of judges likely to be called upon to hear the proceedings in respect of the Requested Person,

the Requested Person, if surrendered, runs a real risk of breach of that fundamental right.

Finally, as has been held in the case **Openbaar Ministerie (Tribunal établi par la loi dans l’État membre d’émission)**¹⁷ although the right to be judged by a tribunal established by law includes the judicial appointment procedure, not every irregularity in the judicial appointment procedure can be regarded as constituting a breach of the

¹⁶ Case C-480/21, **Minister for Justice and Equality (Tribunal établi par la loi dans l’État membre d’émission – II)**, Order of 12 July 2022, para 58.

¹⁷ Joined Cases C-562/21 PPU and C-563/21 PPU, **Openbaar Ministerie (Tribunal établi par la loi dans l’État membre d’émission)**, Judgment of 22 February 2022.

fundamental human rights. Furthermore, the fact a national council of the judiciary, which is involved in the procedure for the appointment of judges is, for the most part, made up of members chosen by government cannot, in itself, give rise to any doubt as to the independence of the judges appointed at the end of that procedure. The fact that a body made up, for the most part, of members representing or chosen by government intervenes in the judicial appointment procedure in the issuing Member State is therefore not sufficient, in itself, to justify a decision of the executing judicial authority refusing to surrender the person concerned.

That from the documents submitted to this Court, although there is a general indication that in Poland there could be deficiencies in the process of the appointment of members of the judiciary,¹⁸ the Court has no specific and precise information about how, in the particular circumstances of this case, such deficiencies could give rise to a breach of the Requested Person's fundamental human rights as he is alleging. Furthermore, no specific or precise information has been submitted to the Court on how the charges indicated in the EAW could contribute towards a breach of the Requested Person's Fundamental Human rights. Therefore, applying the **Minister for Justice and Equality (Deficiencies in the System of Justice)** criteria mentioned above, although the first step could be seen as being satisfied with the information provided, the Court has no evidence that could satisfy the specificity required by the second step as explained above.

In addition to this, the Requested Person also submitted that the alleged facts which form the subject of this EAW have already been investigated by two other countries, one of which is a Member State, and both countries found that there was insufficient evidence to proceed with the prosecution against the person. To this end, the Requested Person submitted two decisions and email correspondence.

The Court examined said documentation and found that:

¹⁸ Vide Case C-216/18 PPU (submitted as Dok "AZ6"); "The Rule of law crisis in Poland and the primacy of EU law" (submitted as Dok "AZ7"); Case C-430/21 (submitted as Dok "AZ8"); and "Rule-of-Law" cases against Poland are adjourned for an additional year" (submitted as Dok "AZ9");

- the first document submitted¹⁹ is an order by the United States District Court for the Southern District of Texas, Houston Division, dated the 16th May 2017 in the matter between MYADVERTISINGPAYS Ltd *et al* vs VX GATEWAY INC. *et al.* where that Court ordered that the matter between the parties is to be resolved by arbitration in Panama.
- the second document²⁰ is a decision awarded by the Eleventh Court of the Circuit of the Criminal of the First Judicial Circuit of Panama on the 30 July 2018 wherein the Court issued a “*provisional dismissal order, which does not transit to res judicata and allows the reopening of the process*”
- the third document is composed of a set of two communications.²¹ One is an email from Morgan Bonneure to the Requested person’s defence counsel stating that the prosecutor has decided to classify the file as soon as possible in the absence of sufficient charges.²² Furthermore, the Requested Person also submitted communication she received from Morgan Bonneure explaining that in the investigation following a complaint made by WISE to the CTIF (which is equivalent to the Malta Financial Intelligence Analysis Unit), the Brussels Public Prosecutor’s Office declared that all charges against them have been dropped.

That from the above documentation, it does not result that the allegations forming the subject matter of the present EAW have been in anyway dismissed by the mentioned countries. The decision taken by the Panama court, apart from referring to a commercial matter between the two mentioned companies, does not exclude the revival of that claim between them whilst the decision taken by the Brussels’ authorities relate to an allegation made by WISE to CTF.

¹⁹ Dok “AZ1”

²⁰ Dok “AZ2”

²¹ Dok “AZ3” and “AZ4” together.

²² Vide the translation effected by the Court expert Dr. Anthony Licari of the email dated 7th December 2023

Therefore, the Court finds that if the Requested Person is surrendered, there will be no real risk of a breach of the Requested Person's fundamental right to a fair trial by an impartial and independent tribunal established by law.

ii. The Prison Conditions:

The Requested Person also alleged that if this Court had to order his surrender to the Polish Authorities, his fundamental human rights would be at risk of being breached due to the poor conditions of the Polish prison facilities, namely due to the size of the cells, the hygiene and sanitary conditions, access to healthcare, prevention of violence and ill-treatment and the treatment as foreign nationals. To substantiate this claim, the requested person submitted the *Commission Recommendation (EU) 2023/681 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions*²³ and the Criminal Detention in the EU: Conditions and Monitoring (FRANET) in relation to Poland.²⁴ In his submissions, the Requested Person made highlighted various conclusions from said FRANET report.

That in accordance with Regulation 13A of the Order, the Court requested additional information to the Polish Authorities on the prison conditions as were being alleged by the Requested Person. By a reply dated the 24th February 2025, the Polish Authorities replied that according to the Act of 6th June 1997 – the (Polish) Executive Penal Code, (i) they will be given the adequate and nutritional food and drink taking into account various considerations such as their age etc. (ii) the cells are not less than 3m² in size and are equipped with a separate space for sleeping, having proper hygienic conditions, fresh air and good temperature; (iii) they get 8 hours sleep per day and a minimum of one hour stroll every day; (iv) the administration of the penitentiary are to ensure the personal safety of each inmate; (v) any intentional breach by a person in custody of the Act is subject to disciplinary action and this ensures that the Requested Person is not discriminated.

²³ Vide Dok "AZ10".

²⁴ Vide Dok "AZ11".

That there appears to be a dichotomy between the submissions of the Requested Person, basing on international reports cited by him, and the position of the Polish Authorities in regard to the respect for the fundamental human rights of the Requested Person. Both the Requested Person and the Polish Authorities, however, agree that the minimum size of a cell in a Polish Penitentiary is of 3m². The Requested Person further argues that this size is below the minimum standard of 6m² of living space in a single-person cell and of 4m² in a multi-person cell as recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) within the Council of Europe. Although this submission of the Requested Person is factually correct, the Court makes reference to the CJEU judgement in the names Puig Gordi and Others²⁵ wherein it was held that in assessing the first step as required by the Aranyosi and Căldăraru judgement, although the Court may rely on objective, reliable, specific and properly updated information obtained from, *inter alia*, reports and other documents produced by bodies of the Council of Europe, the executing judicial authority is not bound by the conclusions set out in such report.

Moreover, in the case P.P.R.²⁶ the CJEU held that:

“Nonetheless, a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of detention in the issuing Member State cannot lead, in itself, to the refusal to execute a European arrest warrant. The mere existence of evidence that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people or certain places of detention, with respect to detention conditions in the issuing Member State does not necessarily imply that, in a specific case, the individual concerned will be subjected to inhuman or degrading treatment in the event that he or she is surrendered to the authorities of that Member State (judgment of 25 July 2018, Generalstaatsanwaltschaft (Conditions of detention in

²⁵ Case C-158/21, **Puig Gordi and Others**, Judgment of 31 January 2023, para 124 – 125

²⁶ Case C-318/24 PPU [**Breian**], **P.P.R.**, Judgement of the 29 July 2024, para. 104.

Hungary), C-220/18 PPU, EU:C:2018:589, paragraph 61 and the case-law cited)."

Therefore, although it has been proven by the Requested Person that the living space in residential cells is indeed lower than the recommendation of the CPT, this fact by itself does not militate in favour of the refusal of the EAW. The Court is not in possession of any data or information specific to the Requested Person so as to satisfy the second step of the Aranyosi and Căldăraru test.

The same observations made above apply *mutadis mutandis* with regard to the submissions made by the Requested person in connection with the hygiene and sanitary conditions, access to healthcare, prevention of violence and ill-treatment and the treatment as foreign nationals.

Therefore, basing on the above, the Court finds that there are no exceptional circumstances which merit the overturning of the principle of mutual assistance and recognition by rejecting the present EAW.

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 **Timothy Alan Mackay** to the Polish Authorities on the Basis of the European Arrest Warrant dated the 31 December 2024 **is not barred** and therefore, in accordance with Regulation 24 of the Order:

1. is ordering Timothy Alan Mackay to custody to await his return to Poland, being the scheduled country which issued the present warrant.

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 Poland 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