



**COURT OF MAGISTRATES (MALTA)  
AS A COURT OF COMMITTAL**

**MAGISTRATE DR.  
NEVILLE CAMILLERI**

Sitting of the 4 th July, 2013

Number. 445/2013

**The Police  
(Inspector Melvyn Camilleri)**

**vs.**

**Ruben Lee Rudtke  
(ID: 76609A)**

The Court,

Having seen the “Authority to Proceed”<sup>1</sup> issued by the Minister for Home Affairs and National Security on the 21<sup>st</sup>. May 2013 from which order it appears that the Government of the United States of America is requesting the extradition of Ruben Lee Rudtke (also known as Reuben Lee Rudtke), hereafter to be known as “the

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<sup>1</sup> a fol. 54.

Informal Copy of Judgement

Person”, who is wanted by the judicial authorities of the United States of America for the crimes described therein.

Having seen the Schedule marked “X”<sup>2</sup> attached to the above mentioned document.

Having seen the warrant of arrest<sup>3</sup> and issued by this Court on the 7<sup>th</sup>. May 2013.

Having heard, under oath, Inspector Melvyn Camilleri who brought in front of this Court the Person and requested the same Court that it proceeds in accordance with Chapter 276 of the Laws of Malta and Legal Notice 375 of 2007 (i.e. Subsidiary Legislation 276.07<sup>4</sup>) as amended.

Having seen the examination<sup>5</sup> of the Person for the purpose of identification.

Having seen all the documents and acts exhibited during these proceedings.

Having heard the witnesses produced, including the Person and his wife.

Having heard the oral submissions by the parties.

Having seen Chapter 276 of the Laws of Malta and Subsidiary Legislation 276.07.

### **Considers**

That reference ought to be made to the sitting of the 13<sup>th</sup>. May 2013<sup>6</sup> wherein the Court was satisfied that the Person brought before it is the same Person against whom a request had been submitted by the US Department of Justice. The Court reached this conclusion

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<sup>2</sup> *a fol.* 55.

<sup>3</sup> *a fol.* 16.

<sup>4</sup> Extradition (United States of America) Order.

<sup>5</sup> *a fol.* 23.

<sup>6</sup> *a fol.* 3 *et seq.*

after asking some questions<sup>7</sup> to the Person regarding his identity and after the Person was shown document marked as Doc. "MC 5"<sup>8</sup> (which document contains a passport and an Identity Card).

That, despite what has been argued by the defence regarding a mistaken identity of the Person, the Court confirms what had been previously decided during the sitting of 13<sup>th</sup>. May 2013 in the sense that the Court is satisfied that the Person brought before it is the same Person against whom a request had been submitted by the US Department of Justice.

### Considers

**That, as required by Section 15(3) of Chapter 276 of the Laws of Malta, the Court has seen that an authority to proceed has been issued in respect of the Person arrested, i.e. Ruben Lee Rudtke<sup>9</sup>.**

That, as further required by Section 15(3) of Chapter 276 of the Laws of Malta, the Court of Committal has to be satisfied, after hearing any evidence tendered in support of the request for the return of the Person or on behalf of the Person, that the offence to which the authority relates is an extraditable offence.

That, as per Section 8 of Chapter 276 which has to be read concurrently with Regulation 4 of Subsidiary Legislation 276.07, an offence is an extraditable one if: (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 Maltese Law and under that law with imprisonment for a term of more than 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

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<sup>7</sup> a fol. 23.

<sup>8</sup> a fol. 20.

<sup>9</sup> a fol. 54.

extra-territorial offence, in corresponding circumstances outside Malta.

That after reference was made to the legal points relevant to the plea under examination, this Court examined the evidence produced to see whether it results from the same evidence that the Person is being charged with an offence or offences that are extraditable in accordance with the law as above stated. In regard to the charges against the Person, these refer to the distribution of child pornography which occurred during the period between the 27<sup>th</sup>. December 2010 and 28<sup>th</sup>. April 2011 as described in detail in the above mentioned "Schedule X"<sup>10</sup>.

That in regard to the evidence produced to substantiate the request for the extradition of the Person, this consists namely of affidavits as well as various "attachments"<sup>11</sup>, giving a detailed outline of the investigations carried out in the requesting state in regard of the case in question.

That the Court examined the evidence mentioned in order to determine whether the offence, or offences, under examination would amount to an offence, or offences, under the Laws of Malta and this in accordance with Section 8 of Chapter 276 of the Laws of Malta and Regulation 4 of Subsidiary Legislation 276.07.

That "Exhibit C"<sup>12</sup> in Doc. "DFD 4"<sup>13</sup> shows that under the United States Code the punishment for the offences therein indicated is imprisonment not less than five years and not more than twenty years. The corresponding provision under Maltese Law is Section 208A(1) of Chapter 9 of the Laws of Malta which states the following:

"Any citizen or permanent resident of Malta whether in Malta or outside Malta, as well as any person in Malta, who makes or produces or permits to be made or produced any indecent material or produces, distributes,

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<sup>10</sup> *a fol. 55.*

<sup>11</sup> *Vide Doc. "DFD 4" (a fol. 92 et seq.) and Doc. "DFD6" (a fol. 165 et seq.)*

<sup>12</sup> *a fol. 106.*

<sup>13</sup> *a fol. 92 et seq.*

disseminates, imports, exports, offers, sells, transmits, makes available, procures for oneself or for another, or shows such indecent material shall, on conviction, be liable imprisonment for a term **from twelve months to five years**". [emphasis added]

Section 208A(1B) of Chapter 9 of the Laws of Malta states:

"Any person who acquires, knowingly obtains access through information and communication technologies to, or is in possession of, any indecent material which shows, depicts or represents a person under age, shall, on conviction, be liable to imprisonment for a term from not exceeding three years".

Section 208A(3) of Chapter 9 of the Laws of Malta states:

"Where the offences in subarticles (1) and (1B) are committed by any ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the person under age shown, depicted or represented in the indecent material, or where such person under age has not completed the age of nine years or where the indecent material shows, depicts or represents a minor involved in acts of bestiality, brutality, sadism or torture:

(a) in the case of the offence in subarticle (1), the punishment shall be of imprisonment for a term **from two to nine years**, and

(b) in the case of the offence in subarticle (1B), the punishment shall be of imprisonment for a term **from six months to four years**,

and the provisions of Article 197(4) shall also apply".  
[emphasis added]

Hence it is clear that the twelve months imprisonment and over mentioned by Section 8 of Chapter 276 and by Regulation 4 of Subsidiary Legislation 276.07 is satisfied.

From the above it is clear and evident that:

a. if the Person committed, in Malta, the offence, or offences, with which he is being charged in the requesting state, he would face charges vis-à-vis and under the above cited Articles (*Vide* also Section 15(3)(a) of Chapter 276 of the Laws of Malta).

b. the offence, or offences, with which the Person is being charged in the requesting state correspond in substance with the above cited Sections and this in accordance with all the provisions of Section 8 (“substantially of the same nature”).

**Hence, the Court is satisfied that the offences to which the Authority relates are extraditable offences.**

### **Considers**

That the Court has to examine whether the Person has a *prima facie* case to answer. This refers to Section 15(3)(a) of Chapter 276 of the Laws of Malta which requires that the Court has to be satisfied also that where the Person is accused of the offence (as in the current case) that the evidence would be sufficient to warrant his trial for that offence if it had been committed within the jurisdiction of the Courts of Criminal Justice of Malta. In a few words, this means that the Court has the duty to examine all the evidence produced in front of it and to see that the same evidence is sufficient to justify and warrant that the Person whose extradition is being sought can be put on trial for the offence and offences under examination and, without in any way deciding the merits of the case, come to the conclusion that a reasonable jury, properly directed, could accept it (the evidence) and find a verdict of guilty. In other words, the evidence must be such “[...] as to cause him to form the opinion that the accused is probably guilty” (**Regina vs. Latta** as quoted in

the case **The Police vs. Anthony Cassar** decided on the 23<sup>rd</sup>. of October 1978).

That in the case **Il-Pulizija vs. Andriy Petrovych Pashkov** delivered on the 10<sup>th</sup>. June 2009, the Court noted the following:

“Hawnhekk jkun opportun li wiehed jissofferma ruhu u jinghad, fil-qasir, x’jfisher dan l-artikolu citat. Fil-fehma ta’ din il-Qorti, kif konfortata minn giurisprudenza “in materia” gja pronunzjata mill-Qrati lokali f’diversi kazijiet, l-istess provi ghandhom jigu ezaminati u analizzati “funditus” mhux semplicement sabiex wiehed jara jekk il-persuna tistax tigi suspettata li setghet ikkomettiet delitt izda l-Qorti trid tara, oggettivament jekk tistax, ragjonevolment, tinstab htija fil-konfront tal-persuna. Din il-Qorti, ma hiex kompetenti li tiddikjara bniedem hati jew mhux hati ta’ dak addebitat lilu izda trid tara’ bid-debita attenzjoni rikjesta, illi l-provi, jekk jigu konsiderati minn bniedem ragjonevoli, jistghux jwasslu li tista’ tinstab htija fl-istess persuna. Certament, f’kaz li hemm nuqqas totali ta’ provi inkriminanti jew l-istess provi huma manifestament insufficjenti ghal dan il-ghan, din il-Qorti trid tichad talba ghall-estradizzjoni. Pero’, jekk mill-provi, jirrizulta li dawn huma bizzejjed sabiex minnhom jirrizulta l-esistenza u l-kommissjoni ta’ delitt ta’ estradizzjoni u li jista’ jissussistess bejn l-ghemil jew nuqqas kriminali u l-persuna li taghha qed tintalab l-estradizzjoni peress li ghandha “a case to answer”, ghandha tigi ordnata t-treggija lura tal-istess persuna. Dan kollu qed jinghad anke jekk il-Qorti jkollha dubbju ragjonevoli, dwar il-htija tal-istess persuna peress li dan joltrepassa l-kompetenza ta’ din il-Qorti”.

That the Court complied with the duty imposed on it by the law (as required by Section 15(3)(a) and after analysing the evidence brought forward and the contents of Doc. “DFD 4”<sup>14</sup> (most importantly “Exhibit A”<sup>15</sup> and *a fol. 110 et seq.*) and Doc. “DFD 6”<sup>16</sup> (especially *a fol. 167 and 168*

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<sup>14</sup> *a fol. 92 et seq.*

<sup>15</sup> *a fol. 102 and 103.*

<sup>16</sup> *a fol. 165 et seq.*

and “Attachment 3”<sup>17</sup> and “Attachment 4”<sup>18</sup>), the Court is satisfied that the *iter criminis* involving distribution of child pornography results. Hence, in a few words, the Court is satisfied that the Person has a *prima facie* case to answer in the Court of the requesting state. **Consequently, the Court is satisfied that the Acts of the Case satisfy what is required by Article 15(3)(a) of Chapter 276 of the Laws of Malta.**

## Considers

That the defence of the Person submitted four points with regards to the request under examination.

- **Mistaken identity?**

That the defence argues that the United States document<sup>19</sup> mentions, amongst others, that the requested Person has multiple citizenships and multiple passports, including a Danish one. It argues that the Person does not hold a Danish passport. The Person denies that he ever had a Danish passport. His wife confirms this. The defence also submits that it is not true that the Person has numerous international connections and has family residing throughout Europe as indicated in the United States document already referred to. The Court will not go into the merits whether or not the Person had a Danish passport or not or whether it is true or not that he had numerous international connections and family residing throughout Europe. This is not required considering that the Court is satisfied that the Person brought before it is the Person who is requested to be extradited by the United States of America.

- **Discrimination – will the Requested Person be afforded a Fair Trial?**

The Person argues that he was discriminated in the United States. The defence argues that since Doc. “MC 1”<sup>20</sup> says that the Person “*has numerous international*

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<sup>17</sup> a fol. 181 et seq.

<sup>18</sup> a fol. 184 et seq.

<sup>19</sup> Doc. “MC 1” – a fol. 8.

<sup>20</sup> a fol. 8.



*connections, having been born in Germany*” can be connected very much to the discrimination on the basis of the nationality of the Person, just because he is German. The defence asks whether the Person will be afforded a fair trial in the United States.

The Court, as an aside, notes that the Person confirmed under cross-examination that in the United States he had a lawyer to assist him. Furthermore, the Court concurs with the Prosecution when it noted that to constitute a bar to extradition one has to provide evidence which leads it finding that should extradition be ordered the Person would be discriminated upon his return. In this case no evidence admissible at law has been provided. Hence the Court notes that the arguments of the defence regarding the discrimination because the Person is German are unfounded.

- **Oppression and Hardship**

The defence also argues that if the Person is extradited to the United States, he will suffer oppression and hardship since he will be alone, with no means to sustain himself and with no means to get the legal assistance he needs. The Court heard the Person testifying saying that he was registered in Germany until September 2002 when he de-registered to leave to the United States. It must not be forgotten that the Person lived and worked in the United States for a number of years until he came to Malta and hence he had a social life there.

In the judgment **II-Pulizija vs. George Cauchi** delivered on the 6<sup>th</sup>. January 2004, the Court of Criminal Appeal declared that for an extradition to be considered as “unjust” it must result at least on the basis of probability that the requested person is in some way to be prejudiced or prejudged (*“pregudikat”*) against the law during the relative proceedings and for it to be considered as “oppressive” it should result, always on the basis of probability, that the requested person would suffer “hardship” due to a change in his personal circumstances. From the Acts of this Case, it is clear that, should this Court allow the Person to be extradited, such a decision

would not be 'unjust' in his regard. As to whether this would be 'oppressive' it has already been noted what the Person is claiming. In this regard, the Court notes that should the Person be extradited to the United States, it would be the responsibility of the competent United States Authorities to safeguard the Person and take all the necessary measures to ensure his safety. Certainly, such a situation cannot amount as a bar to extradition, since it cannot, in any way, be considered as 'oppressive'.

Furthermore, the Court notes that no evidence whatsoever was brought forward that the Person will be subjected to oppression and hardship. Hence, there is no doubt that even the arguments regarding oppression and hardship are unfounded.

- ***Corpus delicti***

The defence questions whether there is a link between the *corpus delicti* and the requested person. It refers to the fact that the documents sent by the US Department of Justice contain various emails. During his testimony, the Person testified that he used to leave his laptop on an open space where he used to work, where it could have been used by other people. The defence asks whether the exchange of emails was done by the Person.

The Court notes that it has already decided that it is satisfied, from what has been outlined above, that the Person has a *prima facie* case to answer in the Court of the requesting state. Hence, there is no reason whatsoever for the Court to make any further comments.

### **Considers**

That from the above considerations the Court sees no bar to order the extradition of the Person to the United States so that he may be processed in connection with the offences of child pornography as indicated in the Authority to Proceed<sup>21</sup> and the Schedule<sup>22</sup> annexed to it.

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<sup>21</sup> *a fol.* 54.

<sup>22</sup> *a fol.* 55.

In view of the above and for the above reasons, the Court, after having seen Section 15(3) of Chapter 276 of the Laws of Malta, accedes to the request under examination and orders that the Person, Ruben Lee Rudtke, also known as Reuben Lee Rudtke, be kept in custody in order to await his return and his extradition to the United States of America. Moreover, the Court having seen Section 16 of Chapter 276 of the Laws of Malta is informing the Person that he cannot be extradited before the lapse of fifteen (15) days from the date of this Order and that he can appeal from the decision to the Court of Criminal Appeal. The Court is also informing the Person that if he feels and thinks that any of the provisions of Article 10(1) and (2) of Chapter 276 of the Laws of Malta have been contravened or that of any provision of the Constitution of Malta or of the European Convention Act has been, or is likely to be contravened, in relation to his Person, as to justify a reversal, annulment or modification of this Order of Committal, he has the right to apply for redress in accordance with Article 46 of the Constitution of Malta or of the European Convention Act as the case may be.

**< Final Judgement >**

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