



**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-**

**Mark Anthony SAUNDERS**

***Extradition (EAW) Proceedings No. 163/2019***

Today the 26<sup>th</sup> day of March, 2019

The Court,

Having seen that on the 15<sup>th</sup> March, 2019, the prosecution arraigned under arrest **Mark Anthony SAUNDERS, holder of United Kingdom passport number 550858660, without fixed address in Malta**, hereinafter referred to as 'the person requested';

Having seen the European Arrest Warrant issued by the District Judge (Magistrates' Court) dated the 21<sup>st</sup> November, 2018,<sup>1</sup> and the Schengen Information System Alert number GBP190000012330000001 of the 1<sup>st</sup> March, 2019;<sup>2</sup>

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

Having taken cognizance of the declaration by the person requested that he was served with a copy of the European Arrest Warrant upon his arrest;<sup>3</sup>

In terms of Article 11 of the Extradition (Designated Foreign Countries) Order, S.L. 276.05, hereinafter referred to as "the Order", having seen that the person requested was informed of the contents of the Part II warrant and was given the required information about consent as provided in para (2) of the same article;<sup>4</sup>

Having seen that Article 11(1A) of the Order has been complied with;

Having explained the provisions of Article 43 of the said Order;

Having heard submissions by the prosecution on the European Arrest Warrant and having seen the Certificate of the Attorney General in terms of Article 7 of the Extradition (Designated Foreign Countries) Order, S.L. 276.05;<sup>5</sup>

Having heard submissions by counsel for the person requested;

Considers,

Whereas the conduct for which the person requested is being sought, the offence of fraud, constitutes a *scheduled offence*;

Whereas article 59(2) of the Order provides:

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

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<sup>1</sup> **Doc. MG4** a fol. 11

<sup>2</sup> **Doc. MG5** a fol.22-24

<sup>3</sup> Fol.27

<sup>4</sup> Fol.5

<sup>5</sup> **Doc MG1** a fol. 8

- (a) the conduct occurs in the scheduled country and no part of it occurs in Malta;
- (b) a certificate issued by an appropriate authority of the scheduled country shows that the conduct is scheduled conduct;
- (c) the certificate shows that the conduct is punishable under the law of the scheduled country with imprisonment or another form of detention for a term of three years or a greater punishment.

Whereas reference is made to the Opinion of Lord Bingham of Cornhill in the Judgement (Appellate Committee) delivered by the House of Lords in *Office of the King's Prosecutor, Brussels (Respondents) v. Armas*:<sup>6</sup>

5. Paragraph 2 of article 2 of the Framework Decision is central to the main issue in this appeal. It sets out a list of offences which have been conveniently labelled "framework offences". These are not so much specific offences as kinds of criminal conduct, described in very general terms. Some of these, such as murder and armed robbery, are likely to feature, expressed in rather similar terms, in any developed criminal code. Others, such as corruption, racism, xenophobia, swindling and extortion, may find different expression in different codes. Included in the list, and relevant to this case, are the offences of trafficking in human beings, facilitation of unauthorised entry and residence and forgery of administrative documents. Underlying the list is an unstated assumption that offences of this character will feature in the criminal codes of all Member States. Article 2(2) accordingly provides that these framework offences, if punishable in the Member State issuing the European arrest warrant by a custodial sentence or detention order for a maximum period of at least three years, and as defined by the law of that state, shall give rise to surrender pursuant to the warrant "without verification of the double criminality of the act".

This dispensation with the requirement of double criminality is the feature which distinguishes these framework offences from others. The assumption is that double criminality need not be established in relation to these offences because it can, in effect, be taken for granted. The operation of the European arrest warrant is not, however, confined to framework offences. Paragraph 4 of article 2 provides:

"For offences other than those covered by paragraph (2), surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing [i.e., the requested] Member State, whatever the constituent elements or however it is described."

While, therefore, Member States may not require proof of double criminality where framework offences are in question they may do so in relation to any offence not covered by that list.....

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<sup>6</sup> 17 November, 2005; SESSION 2005-06; [2005] UKHL 67; Hearing Date 12 October, 2005

**Lord Scott of Foscote** also delivered an opinion in the same judgement stating:

50. Lord Hope has referred to the background to the European Council Framework Decision of 13 June 2002. The Framework Decision was intended to simplify the procedures for extradition of individuals from one Member State to another either for the purpose of being prosecuted for alleged criminal conduct or for the purpose of serving a sentence imposed after conviction. There were two particular features of the Framework Decision extradition scheme that, having regard to the issues raised by this appeal, deserve mention. First, in relation to offences falling within the so-called Framework List the requirement of double criminality was removed, that is to say, it would not be necessary to show that the conduct of the accused for which he was to be prosecuted in the requesting State, or which had constituted the offence of which he had been convicted in the requesting State, would have been criminal conduct for which he could have been prosecuted or convicted in this country.

51. Secondly, the Framework Decision was intended to make it unnecessary, whether in relation to Framework List offences or any other offences, for the requesting State to have to show that the individual had a case to answer under the law of that State. The merits of the extradition request were to be taken on trust and not investigated by the Member State from which extradition was sought. Article 1(2) says that:

“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.”

And recital (5) of the Framework Decision speaks of “abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities.”

52. The principle underlying these changes is that each Member State is expected to accord due respect and recognition to the judicial decisions of other Member States. Any enquiry by a Member State into the merits of a proposed prosecution in another Member State or into the soundness of a conviction in another Member State becomes, therefore, inappropriate and unwarranted. It would be inconsistent with the principle of mutual respect for and recognition of the judicial decisions in that Member State.

53. Accordingly, the grounds on which a Member State can decline to execute a European arrest warrant issued by another Member State are very limited. Article 3 sets out grounds on which execution must be refused. Article 4 sets out grounds on which execution may be refused. None of these grounds enable the merits of the proposed prosecution or the soundness of the conviction or the effect of the sentence to be challenged. There is one qualification that should, perhaps, be mentioned. The execution of an arrest warrant can be refused if, broadly speaking, there is reason to believe that its execution could lead to breaches of the human rights of the person whose extradition is sought (see recitals (12) and (13)).

Having heard defence counsel agree that the said conduct for which extradition is being sought constitutes an extraditable offence;

Having heard defence counsel agree that the person’s return to the scheduled country is not prohibited by any of the reasons mentioned in article 13(1) of the Order;

The Court,

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

**Orders** the return of **Mark Anthony SAUNDERS** to the United Kingdom on the basis of the European Arrest Warrant and Schengen Information System Alert issued against him on the 21<sup>st</sup> November, 2018, and the 1<sup>st</sup> March, 2019, respectively, and commits him to custody while awaiting his return to the United Kingdom.

This Order of Committal is being made on condition that the present extradition of the person requested to the United Kingdom be subject to the law of speciality and thus solely in connection with those offences mentioned in the European Arrest Warrant issued against him and deemed to be extraditable offences by this Court.

In terms of Article 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 United Kingdom 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

(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**