



THE COURT OF CRIMINAL APPEAL

The Hon. Mr. Justice Aaron M. Bugeja M.A. (Law), LL.D. (melit)

**The Police
(Inspector Mark Galea)
vs.
Marek DRGA**

Extradition (EAW) Proceedings number 421/2021

Sitting of the 6th August 2021

The Court,

1. Having seen the Decree of Surrender delivered by the Court of Magistrates (Malta) on the 13th July 2021 wherein it was stated as follows:

Having seen that on the 4th July, 2021, the prosecution arraigned under arrest Marek DRGA, a Czech national, holder of Czech identity card number 210043621 and Maltese identity card number 0082411A, hereinafter referred to as 'the person requested';

Having seen the European Arrest Warrant issued by the Regional Court in Brno, branch office in Zlin, dated the 15th November, 2019,1 and Schengen Information System Alert bearing number CZ000000719904300001;

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

Having seen that in terms of Regulation 11 of the Extradition (Designated Foreign Countries) Order, S.L. 276.05, hereinafter referred to as “the Order”, the person requested was informed of the contents of the Part II warrant and having given the person requested the required information about consent as provided in para (2) of the same article;

Having seen that Regulation 11(1A) of the Order has been complied with; Having heard submissions by the prosecution on the European Arrest Warrant and having seen the Certificate of the Attorney General in terms of Regulation 7 of the Extradition (Designated Foreign Countries) Order, S.L. 276.05;

Considers,

Whereas the European Arrest Warrant issued by the Regional Court in Brno, branch office in Zlin, against the person requested was issued for purposes of serving sentence for the offence of VAT evasion through fraudulent declarations.

Learned counsel for the person requested submits that whilst there are no bars to extradition, the crime for which DRGA’s return is being requested - “Offence of evading a tax, charge ...” - does not satisfy the double criminality rule in so far as it is not punishable with a term of imprisonment under Maltese law.

Learned prosecuting counsel submits that the relevant provisions on which this Court is to base its decision on the issue of extraditability of the conduct for which DRGA is sought, are those of Regulation 59 of the Order which are to be read together with articles 11 and 14 of the Criminal Code.

Considers,

This Court does not agree with the prosecution’s submission regarding the legal provisions which find application to the case under examination. The European Arrest Warrant is one seeking the execution of a sentence and thus it is not Regulation 59 of the Order which applies. The applicable provision is that found under Regulation 60(3) of the Order which provides: (3) The conduct also constitutes an extraditable offence in relation to the scheduled country if these conditions are satisfied:

- (a) the conduct occurs in the scheduled country;
- (b) the conduct would constitute an offence under the law of Malta if it occurred in Malta;
- (c) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the scheduled country in respect of the conduct.

There is no further requirement to be met and thus the fact that under Maltese law the offence is only punishable with a pecuniary penalty, in no way impinges on the decision as to whether the relevant conduct is tantamount to an extraditable offence. These three pre-requisites listed in

Regulation 60(3) of the Order shall now be considered in turn to determine whether the offence, for which the return of the person requested is being sought, is an extraditable offence:

(i). In the first place there is no doubt that the Czech Republic is indeed a scheduled country listed in Schedule 1 of the Order.

(ii). Secondly, the conduct of evading tax, and in particular evading value added tax (VAT), constitute criminal offences under Maltese law. Article 46 of the Income Tax Management Act, Chapter 372 of the Laws of Malta, Articles 76 and more saliently Article 77 of the Value Added Tax Act, Chapter 406 of the Laws of Malta, sanction such conduct through offences punishable by a fine (multa). Moreover article 77 of the Value Added Tax Act, Chapter 406 of the Laws of Malta, provides that when the tax amounting to more than one hundred euro (€100) would be endangered, the offence would also be liable to imprisonment for a term not exceeding six months. Consequently, the second requisite, the double criminality requirement, is also satisfied since there remains no doubt that tax evasion, including VAT evasion, constitute offences under Maltese law.

(iii). Finally, the last requirement is that the sentence which is to be served in the requesting or scheduled country is that of imprisonment exceeding four months. The European Arrest Warrant in its para (c) indicates that the remaining sentence to be served by the person requested is that of four (4) years, two (2) months and seventeen (17) days; consequently, this requirement has also been met.

Thus, and in view of the foregoing,

The Court, Having seen Regulations 13(5) and 24 of the Order, Orders the return of Marek DRGA to the Czech Republic on the basis of the European Arrest Warrant issued against him on the 15th November 2019, 8 and commits him to custody while awaiting his return to the Czech Republic.

This Order of Committal is being made on condition that the present extradition of the person requested to the Czech Republic be subject to the law of speciality, and thus solely to serve sentence in connection with the offence mentioned in the European Arrest Warrant issued against him and deemed to be an extraditable offence by this Court.

In terms of Regulation 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 Czech Republic 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.

2. Having seen the appeal application filed by Marek DRGA on the 19th July 2021 wherein he requested this Court "to revoke the appealed judgment of the 13th July 2021" whereby the Court of Magistrates (Malta) ordered the return of the appellant to the Czech Republic on the basis of the European Arrest Warrant issued against him and committed him to custody while awaiting his return to the Czech Republic, and instead to order his immediate release from custody, after that the said appellant premised as follows :

That applicant was brought before the Court of Magistrates [Malta] as a Court of Preliminary Inquiry [Court of Committal] on the force of a European arrest warrant issued against him and signed by the Regional Court in Zlin, Brno Czech Republic and this for the purposes of serving sentence for the offence of evading tax through fraudulent declarations.

That by judgment dated 13th July 2021 the first Court ordered the return of appellant to the Czech Republic on the basis of the European Arrest Warrant issued against him and committed him to custody while awaiting his return to the Czech Republic.

That following the European arrest warrant issued against appellant and signed by Judr. Jiri Dufek'a judge of the Regional Court in Brno, branch office in Zlin, Czech Republic dated 15th November 2019 and this for the purposes of execution of a custodial sentence appellant was arrested the island of Gozo were he has been habitually residing for the last 9 years and this since he was seeking refuge from a criminal association in the Czech Republic that had tried to implicate him in the matter/s mentioned in the European Arrest Warrant brought against him with serious threat to his life and safety.

That appellant felt aggrieved by the said judgement and is hereby appealing therefrom.

That the facts of the case in short are the following:

That the grievance is manifest and clear and consists in the following:

1. That the judgement of the first court and all proceedings in front of it are null and void and this in consequence of the way the whole procedure before the court of first instance was swayed and flipped around as a consequence of open remarks and comments made by the presiding Magistrate in the course of the extradition hearing which remarks and comments obviously had a direct and immediate effect and bearing on

the way the extradition hearing was addressed by the defence which in turn refrained from putting forward its evidence and from making its entire submissions on the basis of the 're-assurance' it felt it had been given in the sense that the conduct indicated in the relative E.A.W. was not an extraditable offence in terms of law and this as will duly and abundantly result in the course of the hearing of this appeal.

2. That without prejudice to the preliminary plea set here above, the decision of the first court whereby it ordered the return of appellant to the Czech Republic on the basis of the above mentioned European Arrest Warrant issued against him and whereby it committed him to custody while awaiting his return to the Czech Republic was manifestly wrongly in terms of law as Regulation 60 of the Extradition [Designated foreign Countries] Order, S.L. 276.05 quoted by the same court had no application to the present case as in case was it alleged the appellant is or was **unlawfully at large**.
3. That without prejudice to the preliminary plea set here above, the decision of the first court whereby it ordered the return of appellant to the Czech Republic on the basis of the above-mentioned European Arrest Warrant issued against him and whereby it committed him to custody while awaiting his return to the Czech Republic was manifestly wrongly in terms of law as the conduct indicated in the same warrant does not constitute an extraditable offence in terms of Article 5 of Chapter 276 of the Laws of Malta [Extradition Act] and / or Legal Notice 320 of 2004 will result in the course of the relative oral submissions pertaining to this appeal.
4. That by reason of the trivial nature of the offence of which he was convicted; or of the passage of time since appellant is alleged to have committed the crime and / or because the accusation against him is not made in good faith in the interest of justice, it is, having regard to all the circumstances, it would be unjust and / or oppressive to return him to the Czech Republic in terms of article 20 of Chapter 276 of the Laws of Malta [Extradition Act] and this as will be sufficiently and satisfactorily proven before this Honourable Court in the course of the oral pleadings of this appeal in terms of Section 22(3) of Chapter 276 of the Laws of Malta.
5. That without prejudice to any of the grievances above proffered, in any eventuality the extradition of appellant to the requesting State cannot take place prior the final decision of the relevant authorities in relation to his request to serve the punishment indicated in the above captioned EAW proceedings here in Malta in terms of Legal Notice 55 of 2012 and the Framework Decision 909/2008/JHA. Thus should this Honourable Court reject the present appeal on the merits, it is humbly being requested to order the postponement of his return for the said reason. It is thus that appellant humbly requests this Honourable Court to revoke the appealed judgment of the 13th July 2017 whereby the first Court ordered the return of appellant to the Czech Republic on the basis of the European Arrest Warrant issued against him and committed him to custody while awaiting his return to the Czech Republic, and instead orders his immediate release from custody.

3. Having noted to the parties that despite the fact that the sitting Judge, while practicing as a Magistrate in the Court of Magistrates (Malta) he issued the decree of surrender of Marek DRGA in the records of the EAW proceedings wherein DRGA was requested by the Czech Judicial Authorities for the purposes of prosecution of the criminal action against him, which eventually led to the judgment for which his surrender is now being sought by the same Judicial Authorities after that the judgment delivered by the Czech Court became *res iudicata*.
4. Having also noted that this Court decided to proceed with the hearing of this case on account of the fact that the proceedings which are subject to review before it were essentially different from the ones that the sitting judge, while practicing as a Magistrate decided in respect of appellant DRGA.
5. Having noted that during the sitting of the 3rd instant the appellant withdrew the first and the fourth grievances and retained firm and valid the remaining grievances, that is to say grievances 2, 3 and 5;
6. Having heard the submissions made by Counsel to the appellant and by the Attorney General (henceforth referred to as the **AG**);
7. Having seen the record of the proceedings;

Considers as follows:

8. First of all this is an appellate Court tasked with the revision of the decision made by the Court of Magistrates (Malta) as a Court of Criminal Inquiry, in these proceedings acting as a Court of Committal. This Court does not change the analysis of the facts and the law as well as and the decision made by the Court of Magistrates when it appears to it that the Court of Magistrates was legally and reasonably correct. In the judgment delivered by the Court of Criminal Appeal in its Superior Jurisdiction in the case **Ir-Repubblika ta' Malta vs Emanuel ZAMMIT**¹ it was held that this

¹ 21st April 2005. See also, inter alia, **Ir-Repubblika ta' Malta vs Domenic Briffa**, 16 th October 2003; **Ir-Repubblika ta' Malta vs Godfrey Lopez** and **Ir-Repubblika ta' Malta v. Eleno sive Lino Bezzina**, 24th April 2003, **Ir-Repubblika ta' Malta vs Lawrence Ascjak sive Axiak** 23rd January 2003, **Ir-Repubblika ta' Malta vs Mustafa Ali Larbed**; **Ir-Repubblika ta' Malta vs Thomas sive Tommy Baldacchino**, 7th March 2000, **Ir-Repubblika ta' Malta vs Ivan Gatt**, 1st December 1994; **Ir-Repubblika ta' Malta vs George Azzopardi**, 14th February 1989; **Il-Pulizija vs Andrew George**

Court makes its own detailed analysis of the record of the proceedings before the Court of first instance in order to see whether that Court was reasonable in its conclusions. If as a result of this detailed analysis this Court finds that the Court of first instance could not reasonably and legally arrive at the conclusion reached by it, then this Court would have a valid, if not compelling reason, to vary the discretion exercised by the Court of first instance and even change its conclusions and decisions. In the ordinary course of its functions, this Court does not act as a court of retrial, in that it does not rehear the case and decide it afresh; but it intervenes when it sees that the Court of Magistrates, would have mistakenly assessed the evidence or wrongly interpreted the Law - thus rendering its decision unsafe and unsatisfactory. In that case this Court has the power, and indeed, the duty to change the decision of the Court of Magistrates or those parts of its decision that result to be wrong or that do not reflect a correct interpretation of the Law.

Considers further :

9. These proceedings are conducted in terms of the Order, which, in turn, transposes into Maltese Law the provisions of the Council Framework Decision of the 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures between Member States done at Luxembourg on the 13th June, 2002, adopted pursuant to

Stone, 12th May 2004; **Il-Pulizija vs Anthony Bartolo**, 6th May 2004; **Il-Pulizija vs Maurice Saliba**, 30th April 2004; **Il-Pulizija vs Saviour Cutajar**, 30th March 2004; **Il-Pulizija vs Seifeddine Mohamed Marshan et**, 21st October 1996; **Il-Pulizija vs Raymond Psaila et**, 12th May 1994; **Il-Pulizija vs Simon Paris**, 15th July 1996; **Il-Pulizija vs Carmel sive Chalmer Pace**, 31st May 1991; **Il-Pulizija vs Anthony Zammit**, 31st May 1991.

In **Ir-Repubblika ta' Malta vs Domenic Briffa** it was further stated:

Kif gie ritenut diversi drabi, hawn qieghdin fil-kamp ta' l- apprezzament tal-fatti, apprezzament li l-ligi tirrizerva fl- ewwel lok lill-gurati fil-kors tal-guri, u li din il-Qorti ma tiddesturbahx, anke jekk ma tkunx necessarjament taqbel mija fil-mija mieghu, jekk il-gurati setghu legittimament u ragonevolment jaslu ghall-verdett li jkunu waslu ghalih. Jigifieri l-funzjoni ta' din il-Qorti ma tirrizolvix ruhha f'ezercizzju ta' x'konkluzjoni kienet tasal ghalha hi kieku kellha tevalwa l-provi migbura fi prim'istanza, imma li tara jekk il-verdett milhuq mill-gurija li tkun giet "properly directed", u nkwadrat fil-provi prodotti, setax jigi ragonevolment u legittimament milhuq minnhom. Jekk il-verdett taghhom huwa regolari f'dan is-sens, din il-Qorti ma tiddesturbahx (ara per ezempju **Ir-Repubblika ta' Malta v. Godfrey Lopez** u **r-Repubblika ta' Malta v. Eleno sive Lino Bezzina** decizi minn din il-Qorti fl-24 ta' April 2003, **Ir-Repubblika ta' Malta v. Lawrence Ascjak sive Axiak** deciza minn din il-Qorti fit-23 ta' Jannar 2003, **Ir-Repubblika ta' Malta v. Mustafa Ali Larbed** deciza minn din il-Qorti fil-5 ta' Lulju 2002, **ir-Repubblika ta' Malta v. Thomas sive Tommy Baldacchino** deciza minn din il-Qorti fis-7 ta' Marzu 2000, u **r-Repubblika ta' Malta v. Ivan Gatt** deciza minn din il-Qorti fl-1 ta' Dicembru 1994).

Title VI of the Treaty, the terms of which are set out in the relative arrangement published in the Government Gazette dated the 1st June, 2004, as amended by Council Framework Decision 2009/299/JHA of the 26th February, 2009 (hereinafter referred to as the FD). According to regulation 3(1) of this Order:

Only the provisions of this Order, save where otherwise expressly indicated, shall apply to requests received or made by Malta on or after the relevant date for the return of a fugitive criminal to or from a scheduled country, or to persons returned to Malta from a scheduled country in pursuance of a request made under this Order, and the provisions of the relevant Act shall have effect in relation to the return under this Order of persons to, or in relation to persons returned under this Order from, any scheduled country subject to such conditions, exceptions, adaptations or modifications as are specified in this Order.

10. As the name indicates clearly, with the adoption of this Framework Decision, the European Union (EU) decided to make a paradigm shift in relation to the extradition of fugitive criminals. This was the shift from extradition to surrender, which has had very serious legal and practical implications. This shift has had its fair share of controversy and disputes. But this shift is real across the EU and is having real implications in concrete cases.
11. The difference between surrender and traditional extradition is of a procedural nature. The EAW did away with the traditional and formal extradition procedures. It shifted the surrender of a requested person from the political realm to the judicial realm. This is one of the consequences stemming from the Tampere Programme of 1999, aimed at establishing an area of freedom, security and justice within the EU - thus shifting the balance in favour of a political, rather than merely an economic, Union.
12. This FD has shifted the power of surrender to the Judicial Authorities of the participating EU Member States while it did away with Extradition Treaties among these States; it removed the double criminality requirement in relation to a set of scheduled offences; it limited the speciality rule, and allowed surrender to EU Members States of own nationals.
13. This FD procedure places huge reliance on the issue of the EAW by the issuing Member State. The EAW becomes the basis for the surrender of the fugitive. The EAW is a **judicial** decision issued by the competent Judicial Authorities of the Issuing Member

State. The EAW is the decision **that forms the basis** of surrender, without the Executive organs of the issuing Member State having a say in the process. This sharply contrasts the position under formal extradition proceedings. This EAW procedure therefore results in a less formal, resource intensive and time consuming procedure of surrender of fugitive criminals than formal extradition.

14. The EAW procedure is even more efficient and effective as **the Judicial Authorities are the sole executors of surrender requests, based on the overriding principle of mutual trust among Judicial Authorities of EU Member States and more importantly on the concept of mutual recognition of Judicial decisions. This means that as a rule, the EAW has to be recognised and executed throughout the EU; and its non-execution remaining the exception, based only a limited number of bars to extradition can be raised by the Executing Member State under very specific circumstances.**
15. The EU pushed in favour of this system, aiming to achieve in the criminal justice sphere what the Cassis de Dijon case did to the civil sphere – namely the achievement of a unified system based on the concept of mutual recognition. Instead of embarking on the herculean task of harmonizing criminal laws of EU Member States, this system achieved the same aims through the development of judicial co-operation mechanisms without the need to overhaul domestic criminal laws. In a nutshell the concept of equivalence and mutual trust achieved the same aims, at a fraction of the effort and cost, and leading to the free circulation of judicial decisions within the EU territory, having full direct effect.
16. The natural consequence of this paradigm shift brought about by the EAW surrender procedure was the fact that as a default position, the judicial decision issued by the Judicial Authority of the Member State had to be executed by the Judicial Authority of the Executing Member State, based on the mutual trust between Judicial Authorities inherent in the mechanism. This is buttressed by the removal of the double criminality requirement for the thirty two (32) scheduled offences and the limited specific grounds for the refusal of surrender. The end result is a more efficient, faster, less bureaucratic mechanism of surrender, that is also more difficult to halt or refuse.

17. In **Routledge Handbook of Transnational Criminal Law**, edited by Neil Boister and Robert J. Currie, published in 2015 by Routledge, New York, page 129 it was stated as follows : -

To what extent is MR different from MLA? The basic idea was that despite the differences between the procedural regimes in the Member States, they were all party to the European Convention on Human Rights and could thus trust each other. Mutual trust was presupposed and considered sufficient grounds to apply MR, even with little or no harmonization in the field. This means that MR order or warrants coming from an issuing Member State have legal value in the AFSJ (area of freedom, security and justice) and could thus automatically be executed without an exequatur procedure. Legal doubts about the order or warrant, linked to, for instance, the legality of the evidence that served to justify the order or warrant, could only be challenged in the issuing Member State.

In 2002 the Council of Ministers adopted the first MR instrument: the European Arrest Warrant (EAW) replacing the extradition conventions. The EAW was adopted under a fast-track procedure after the 9/11 events and did not include harmonization of investigative acts or procedural safeguards. An EAW, whether meant to bring a suspect to trial or to execute a trial sentence, is based on mutual trust and must thus be recognised and executed, unless mandatory or optional grounds for non recognition apply. However, the grounds are strongly restricted, compared to the refusal grounds under the MLA extradition treaty, and do not contain grounds that are based directly on a human rights clause.

18. In Malta, the EAW procedure is regulated by the Order, working in tandem with the Extradition Act. The drafting of the Order bears resemblance to the United Kingdom Extradition Act, 2003, Part 1, extradition to category 1 territories. Insofar as EAW proceedings in Malta are concerned, it is the rules and procedures mentioned in the Order that enjoy precedence. The Extradition Act provisions operate only subject to such conditions, exceptions, adaptations or modifications as are specified in this Order. This Order does not do away with the general principles of criminal procedure; however it introduces certain provisions that are aimed to ease and facilitate EAW proceedings. Maltese Law does not spell this out clearly, but in the absence of a specific provision on the matter it is reasonable to conclude the where the Special Law is silent on the matter, the Ordinary Law of the Land applies. In this sense some provisions may be seen to depart from the procedural rules applicable in trials before Courts of criminal jurisdiction.²

² Even though extradition proceedings are brought before criminal courts, they cannot be regarded as criminal trials. This can be seen not only from a reading of judgments of ordinary criminal courts in Malta and abroad, but also from judgments of the European Court of Justice and the European Courts of Human Rights (ECtHR). Consequently this decision is going to be based on these special principles applicable to these particular proceedings.

Considers further :

19. The main grievance in this case rested on the interpretation of regulation 60 of Legal Notice 320 of 2004 (the Order). The appellant claimed that the Court of Magistrates (Malta) mistakenly based its decision for surrender on regulation 60 of the Order. This regulation 60 specifically required the requested person to be “unlawfully at large”. However, from the EAW itself it transpired that the appellant was not “unlawfully at large”. To the contrary, on page 5 of this warrant, in sub paragraph (f) it clearly transpired that apart from the fact that the appellant was surrendered to the Judicial Authorities of the Czech Republic for the purposes of prosecution of the criminal action against him in the Czech Republic, he was released from custody during those proceedings. The appellant was not ordered to remain in that country, or not to leave that country or to return on a later date. The appellant was therefore not “unlawfully” at large after conviction after that he was sentenced for the offences de quo and so the first requirement mentioned by regulation 60 of the Order was missing. This constituent element of regulation 60 was not satisfied and therefore the conduct was not extraditable. This warranted the decision to be overturned.

20. On the otherhand, the Attorney General argued that the phrase “unlawfully at large” had to be understood by reference to its proper context. It simply meant that the sentence delivered by the foreign jurisdiction could not be enforced or executed against the convict due to his absence from that country. In this case the Czech Judicial Authorities requested the appellant back to serve the final and conclusive sentence meted out against him. This scenario rendered him “unlawfully at large”. While it was true that pending prosecution the appellant was free to leave the Czech Republic and to be assisted and represented by a Lawyer before the competent court, once that the judgment was delivered by the Czech Court and the appellant was not in the Czech Republic to serve the sentence meted out against him, then this meant that he was “unlawfully at large”. “Unlawfully at large” did not mean that the appellant necessarily fled the Judicial Authorities of the requesting State.

21. Defence rebutted this argument by claiming that the appellant was so not “unlawfully at large” that when, in between the EAW executed in 2017 and the present one, another EAW was issued by the Czech Judicial Authorities against him, he was traced, contacted

and eventually the Court rejected this EAW due to the rule of specialty. The AG did not appeal this decision of the Court of Magistrates (Malta). Defence criticised the Order's use of the phrase "unlawfully at large" as it did not provide for persons who were not "unlawfully at large" and yet, the constitutive element of regulation 60 was restricted to those who were "unlawfully at large". These words had a specific meaning which excluded the behaviour of the appellant in this case – given that he was not "unlawfully at large". On this basis, Defence requested this Court to revoke the Decision for Surrender.

Considered further:

22. The Order does not define the phrase "unlawfully at large"; nor does the Extradition Act, for that. As already stated, Maltese Law was modelled on the English Law governing the European Arrest Warrant procedure during the time when England and Wales were still enforcing this specific procedure in their jurisdiction. Therefore once that Maltese Law does not define the phrase "unlawfully at large" reference is to be made to English Law as a source of inspiration for the proper meaning for the said phrase also within a Maltese legal context.

23. According to the English Extradition Act, 2003, a person is alleged to be "unlawfully at large" after conviction of an offence if:

(a) he is alleged to have been convicted of it, and

(b) his extradition is sought for the purpose of his being sentenced for the offence or of his serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

24. In the Briefing paper to the House of Commons, number 07016 of the 18th April 2017, it was held that :

If the requested person has been convicted, the documentation must make it clear that the person is 'unlawfully at large' (liable to immediate arrest and detention). The requested person can then be arrested and brought before a court.³

³ <https://researchbriefings.files.parliament.uk/documents/SN07016/SN07016.pdf> accessed on the 3rd August 2021.

25. Moreover, the Crown Prosecution Service in England and Wales too consider the specific meaning of the phrase “unlawfully at large” by reference to the specific procedural context of the convict. Thus:

Where a person has already been sentenced for an offence but has yet to serve that sentence in full, an EAW may be issued for the purpose of arrest and extradition so that the requested person serves the outstanding portion of the sentence. This may arise when:

1. a person is sentenced in absence following conviction;
2. a serving prisoner absconds;
3. a person is released from the custodial element of their sentence subject to licence, and the licence is subsequently revoked due to a breach of the licence conditions, leading to a recall to prison.⁴

26. In this particular case it was surely proven to the Court of Magistrates (Malta) that the proceedings before the Czech Court were carried out, at least in part, in the absence of the appellant. The appellant acknowledged that fact and he did not contest that this judgment of the Czech Court was delivered in his absence, while, at the same time having been represented before that Court through his official representative.

27. Given that the appellant was not present before the Czech Court when the final and absolute judgment was delivered against him, and therefore was not present to serve the sentence meted out against him, then he is to be deemed as a person sentenced in absence following a conviction. That, according to this interpretation of English Law makes him “unlawfully at large”.

28. This Court sees no reason why this same interpretation ought not also apply to an analogous case within a Maltese Legal context.

Consequently

There being no further grievances to be decided, the Court, therefore :

- (a) dismisses applicant’s appeal requesting the reversal of the Order of the Court of Magistrates (Malta) as a Court of Committal of the 13th July 2021;

⁴ <https://www.cps.gov.uk/legal-guidance/extradition> accessed on the 3rd August 2021.

- (b) confirms the decision of the Court of Magistrates (Malta) as a Court of Committal of the 13th July 2021 ordering the surrender of Marek DRGA to the Judicial Authorities of the Czech Republic;
- (c) and orders that appellant Marek DRGA be kept in custody to await his return to the Judicial Authorities of the Czech Republic.
- (d) Furthermore the Prosecution and Defence agreed that the appellant made a request to the competent Judicial Authorities of the Czech Republic and the Attorney General of Malta to serve in Malta the sentence meted out against him by the Regional Court in Zlin, Brno, Czech Republic in terms of Framework Decision 909/2008/JHA. The Attorney General while confirming that this request was received on the 19th July 2021 and the Czech Judicial Authorities acknowledged receipt on the 21st July 2021, the Attorney General confirmed also that the process of analysis of this request was still ongoing. The Prosecution and Defence requested this Court to order the postponement of the surrender of the appellant until after a final decision is reached between the Judicial Authorities of the Czech Republic and the Attorney General of Malta about this specific request. This Court confirmed the order of surrender issued by the Court of Magistrates (Malta) and so request of the Czech Judicial Authorities has been acceded to and the appellant should be surrendered to those Judicial Authorities. However given the ongoing engagement between the Judicial Authorities of the Czech Republic and the Attorney General of Malta in relation to the request lodged by the appellant which is still being assessed, this Court accedes to the request of the appellant and orders that the return of the appellant to the Judicial Authorities of the Czech Republic **be postponed** until the determination of this request by the competent Judicial Authorities of the Czech Republic and of the Republic of Malta – it being made explicitly clear that if, for any reason, no agreement is reached by these Judicial Authorities, the appellant is to be surrendered and returned to the Judicial Authorities of the Czech Republic in accordance with this decision and the provisions of the Order, which surrender will not however take place until the expiration of seven days from the notification to the appellant of the decision not acceding to his request;
- (e) and that if the appellant is of the opinion that any provisions 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 Chapter 319 of the laws of Malta.

Aaron M. Bugeja
Judge