



**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 Roderick Spiteri)**

-vs-

Marcian Viorel OTAN

Extradition (EAW) Proceedings No. 167/2023

Today the 27th day of March, 2023

The Court,

Having seen that on the 27th February, 2023, the prosecution arraigned under arrest **Marcian Viorel OTAN**, born in **Campina, Prahova, Romania**, on the **11th May 1972**, without a fixed residence locally and holder of **Maltese Identity Residence Document MT7515362 (ID 124684A)**, hereinafter referred to as 'the person requested';

Having seen the European Arrest Warrant issued by the County Court of Law of Prahova (Tribunalul Prahova) dated the 3rd June, 2020,¹ and the Schengen Information System Alert number ROIGP0137411877000001 of the 9th June, 2020;²

¹ Fol.23-30

² Doc. RS and Doc. RS1 a fol.6-9

Having taken cognizance of the examination of the person requested³ as well as the documents exhibited by the prosecution;

Having taken cognizance of the declaration by the Prosecuting Officer that the person requested was served with a copy of the European Arrest Warrant upon his arrest;⁴

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 was given the required information about consent as provided in subregulation (2) of the same regulation;

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

Having seen that the provisions of Regulation 43 of the said Order have 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 Article 7 of the Extradition (Designated Foreign Countries) Order, S.L. 276.05;⁵

Having heard submissions by counsel for the person requested;

The Court,

Whereas the European Arrest Warrant issued by the County Court Of Law of Prahova (Tribunalul Prahova) indicates that the person requested is to serve a custodial sentence of three (3) years in the issuing country, namely Romania;

Whereas the European Arrest Warrant relates to the offences of forgery of administrative documents and trafficking of forged administrative documents, swindling and tax evasion (described also in the facts of the case under para (e)⁶ and as indicated in the supplementary information⁷);

³ Fol.4

⁴ Ibid.

⁵ **Doc.RS6-Doc.RS7** a fol.33-34

⁶ Fol.26

⁷ Fol.9, Legal Classification and Para 5 of **Doc.RS5**

Whereas Regulation 60(3) of the Order 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.

Whereas, in terms of the said Article 60(3) of the Order, the conduct of which the person requested has been convicted and for which his return is being sought occurred in Romania and the said conduct constitutes offences under Maltese law had the conduct occurred in Malta,⁸ thereby satisfying the double criminality requirement.

Whereas the person requested is to serve a custodial sentence of three (3) years, thereby rendering the said conduct extraditable offences;

Moreover, the said offences are also scheduled offences and thus, the provisions of regulation 60(2) of the Order applies. This states:

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

(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 a sentence of imprisonment or another form of detention for a term of four (4) months or a greater punishment has been imposed in the scheduled country in respect of the conduct.

Thus, the conduct constitutes extraditable offences even under this provision.

Having seen that no ground as contemplated by regulation 13(1) of the Order was raised by learned defence counsel, the Court consequently finds

⁸ Forgery of documents and use thereof, fraud (swindling) and tax evasion are all criminal offences under Maltese law as per Title V (Articles 179 et seq) and Sub-Title III of Title IX (Articles 308 et seq) of Part Two Book One of the Criminal Code, Part IX of the Income Tax Management Act, Chapter 372 of the Laws of Malta and Part X of the Value Added tax Act, Chapter 406 of the Laws of Malta.

that the person's return to the scheduled country is not prohibited by any of the reasons mentioned in regulation 13(1) of the Order;

Having seen that the person requested was convicted in his presence;⁹

The Court,

Having seen Regulations 13(4), 23(2) and 24 of the Order,

Orders the return of **Marcian Viorel OTAN to Romania**, on the basis of the European Arrest Warrant and Schengen Information System Alert issued against him on the 3rd June, 2020¹⁰ and the 9th June, 2020 respectively¹¹, and commits him to custody while awaiting his return to Romania.

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

⁹ Fol.25 and Fol.32

¹⁰ Fol.23-30

¹¹ **Doc. RS and Doc. RS1** a fol.6-9