



MALTA

**COURT OF MAGISTRATES (MALTA)  
AS A COURT OF CRIMINAL INQUIRY**

**MAGISTRATE DR.  
JOSEPH A. APAP BOLOGNA**

Sitting of the 4<sup>th</sup> October, 2005

Number. 800/2005

The Police  
(Superintendent Peter Paul Zammit)  
(Inspector Christopher Pullicino)  
(Inspector Sandro Zarb)  
(Inspector Mario Haber)

vs

Wang Wei,  
Carmelo Borg  
Lin Yi

Today the 4<sup>th</sup> of October 2005.

THE COURT

Having seen the European arrest warrant issued by the Tribunale di Modica against Wang Wei, Carmelo Borg and Lin Yi, wherein it is stated that the same persons are wanted by the Italian Authorities, a Scheduled Country in terms of Article 5 of Legal Notice 320 of 2004, for offences

of participation in a criminal organization and for trafficking in human beings, which offences are listed as scheduled conduct in Schedule 2 of Legal Notice 320 of 2004 listed in the said Warrant with respect to which their surrender to Italy is being sought (Page 8 to page 16 *ibid*).

Having seen the certificate issued by the Attorney General in accordance with Article 7 of the same Legal Notice (Page 7 of the Acts).

Having seen the request for the extradition to the above mentioned Judicial Authority of the three persons above mentioned (page 3 of the Acts).

Having heard the same persons declare that they are not consenting to the extradition being sought in their regard, by means of the present proceedings.

Having heard the witnesses and having seen the documents produced by the Prosecution.

Having seen the two decrees given as one by this Court, wherein 'inter alia' it was decided that the present proceedings against LIN YI be adjourned 'sine die' in accordance with Article 28 of the above mentioned Legal Notice and that the same proceedings against Carmelo Borg and Wang Wei be continued so that " ... the parties make their submissions in regard to the issues as stated above (in the same decision) in accordance with Articles 12 and 13 of the Order.

Having seen its other decree delivered on the 27<sup>th</sup> of September 2005 wherein this Court decided that these proceedings be continued.

Having heard the same Wang Wei and Carmelo Borg declare, through their legal counsel, that "... they do not have evidence to produce but this only with regard to Article 13 of the legal Notice in question .... " and this without prejudice to what has been put down in the records of proceedings during the sitting of the 27<sup>th</sup> of September 2005.

Having heard the submissions of the parties both verbally as well as in writing as results from the records of proceedings of the sitting held on the 29<sup>th</sup> of September 2005.

Having considered

That at this stage it would be opportune to refer to the following facts as resulting from the acts:

a) During the first sitting held on the 10<sup>th</sup> of September 2005 it can be said that the Court dealt with what is referred to as “The Initial Hearing” regulated by Articles 10 and 11 of the Order. In fact during this sitting it was established that the warrant of arrest issued by the Italian Judicial Authority referred to the three persons brought before this Court. In this regard it is to be noted that this point was in no way contested as can be seen from the records of the proceedings during this sitting. Moreover it was ascertained that the persons against whom the same arrest warrant was issued were not consenting to their extradition. Finally, The Court saw to it that all the relevant documents were attached to the acts of this case in accordance with Article 9 of the Order, namely the above mentioned certificate to be issued by the Attorney General.

Having considered

That on the conclusion of the initial hearing the Court proceeded to the next stage of the proceedings, namely “the Extradition Hearing” regulated namely by Articles 12 and 13 of the same Order. In this regard, as can be seen from the decree given by this Court on the 22<sup>nd</sup> of September 2005, this Court referred to these articles and stated that at this stage it must decide whether the offence or offences specified in the warrant are extraditable or not. If the decision on this point is in the negative, it would proceed to discharge the person or persons whose extradition is being sought. However if the Court decided in the affirmative, it would proceed to examine the matter as to whether such an extradition is prohibited because of what is specifically stated in Article 13. In this regard, as can be seen from the same decree,

the hearing of the case was put off for the submissions of the parties in regard to these issues in accordance with the aforesaid Articles 12 and 13. However during the sitting of the 22<sup>nd</sup> of September 2005, another request was made by learned defence counsel referring to the staying or otherwise of these proceedings for the reason stated therein. This Court therefore had to decide this point which it duly did on the 27<sup>th</sup> of September 2005 and therefore put off the hearing for the final submissions of the parties.

Having considered.

That in this regard, the only point submitted by the learned defence counsel is that the proceedings have been rendered null and void since Article 12(2) of the Order was not adhered to “and such requisite cannot be rectified at this stage of the proceedings since in accordance with Article 12(4), the Court, in the sitting of the 27<sup>th</sup> September 2005 had already proceeded to Article 13 of the said legislature”. It would be useful, here, to quote these two sub-articles mentioned above. The first one in fact has already been in actual fact quoted in the decree consisting of two decisions as stated above, given by this Court on the 22<sup>nd</sup> of September 2005 and refers as to whether the offence or offences are extraditable or not. In regard to Article 12(4) *ibid*, this states that if the Court decides that the question (under Article 12 (2) *ibid*) is in the affirmative, it must proceed under Article 13, that is to say to decide whether any of the above prohibitions apply to this case. In this regard the defence is alleging that this Court has not adhered to what is stipulated under Article 12 (2) and seemed to imply that this Court should have first of all and by means of a separate decree, declared the offences in question to be extraditable or not and then subsequently, by means of a second decree, declare whether such extradition is barred and prohibited by Article 13 of the Order. However this Court considered the following facts as resulting from the acts:

i) As already referred to above, it had already put off the “extradition hearing” so that the parties make their submissions in regard to the issues as stated in the

decree being referred to and delivered on the 22<sup>nd</sup> of September 2005 and this “in accordance with Article 12 and 13 of the Order”. However during the same sitting held on the 22<sup>nd</sup> of September 2005, another request was made by the defence referring to the suspension of these proceedings, which request was decreed on the 27<sup>th</sup> of September 2005. Here, this case was again put off for the submissions of the parties.

ii) From the above it is clear that to date the Court had not given its decision on the basis of Article 12 of the Order.

iii) It is to be pointed out that this case is the first to be brought before the Maltese Courts under the new procedure as regulated by Legal Notice 320 of 2004 and in dealing with this matter, having no previous jurisprudence or parliamentary debate to guide it in interpreting Article 12 and 13, the same Court proceeded to do this “arbitro bon viri” and to interpret these articles accordingly.

iv) It is clear that this Court is bound to, first of all, declare whether the offences in question are extraditable or not, and if, and only if in the affirmative, proceed to see if the prohibitions listed under Article 13 are applicable or not to the case in question. In this regard, there is nothing in the law which precludes this Court from deciding these two issues, by delivering one decree, deciding all the issues involved, and not two separate decrees, as seems to be alleged by defence counsel. It is to be borne in mind that the Court considered whether such an interpretation could be prejudicial to the persons involved with the answer in the negative. During these proceedings this procedure was already used by this Court when, by a decree given on the 22<sup>nd</sup> of September 2005, beside denying a request made by the defence, also ordered that these proceedings be suspended and adjourned ‘sine die’ vis-a-vis LIN YI for the reasons specified therein and no objection was raised in this regard.

v) This Court, therefore cannot accept what is in fact the only submission raised by the defence.

Having considered

That vis-a-vis Article 12, the Court, at this stage, noted that no evidence or legal submissions were brought to its notice and which would enable it to decide that the offences listed in the European Arrest Warrant are not extraditable offences in accordance with Article 12 and Schedule Two (2) of the Order. In actual fact these two offences are specified in the same Schedule Two (2) and are numbered respectively one (1) and two (2). In view of this, the offences specified in the same warrant are to be considered as extraditable offences.

Having considered

That the Court will now proceed to decide as to whether any of the prohibitions specified in Article 13 of the Order are applicable or not to this case. Again here no evidence or legal submissions were brought to the notice of the Court indicating that any of these prohibitions can be considered as applicable to this case.

Having considered

That therefore this Court is satisfied that Carmelo Borg and Wang Wei can be extradited as stated in the warrant in question.

Therefore the Court orders that in accordance with Article 24 of Legal Notice 320 of 2004, Carmelo Borg and Wang Wei, as described in the same arrest warrant, be kept under custody to await their extradition to Italy. Moreover, in accordance with Article 32 ibid, it is informing the same persons that they will not be extradited before the expiration of seven days commencing from the date of this Order and that they can appeal to the Court of Criminal Appeal and that if they feel that their human rights have been, are being, or are going to be infringed, they have a right of redress under Article 46 of the Constitution of Malta or under Chapter 319 of the Laws of Malta.

Informal Copy of Judgement

**< Final Judgement >**

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