



MALTA

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

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

Sitting of the 26<sup>th</sup> October, 2005

Number. 884/2005

The Police  
(Superintendent Peter Paul Zammit)  
(Inspector Dominic Micallef)  
vs  
Geryl Serge

Today the 26<sup>th</sup> October 2005.

THE COURT

Having seen the request made to this Court to proceed against Geryl Serge and his arraignment under arrest, in regard to his extradition to Belgium in accordance with the European Arrest Warrant issued against him for the serving of a period of detension following a judgement after a trial in connection with the participation in a criminal organization in a number of armed robberies which offence is listed as scheduled conduct in Schedule 2 of Legal Notice 320 of 2004 listed in the said Warrant

with respect to which his surrender to Belgium is being sought.

Having seen the certificate issued by the Attorney General in accordance with the law (Page 10 vide acts) as well as the above mentioned arrest warrant (Page 11 et seq of the acts).

Having heard the same requested person contest the issue of the same warrant and not consent to his extradition to Belgium (Page 3 of the same acts).

Having seen the relative acts.

Having heard the submissions of the parties.

Having considered

That from the same acts the following facts can be seen to result:

- a) During the arraignment of the requested person in front of this Court on the 3<sup>rd</sup> of October 2005 the Court, in accordance with Article 10 (2) of Legal Notice 320 of 2004 (Hereunder referred to as the Order) verified that the requested person arraigned in front of it was the same person specified in the arrest warrant and arraigned as a consequence of his being served with the same warrant.
- b) During the same sitting, it results from the record of the proceedings that the requested person did not consent to his extradition.
- c) During the sitting of the 14<sup>th</sup> of October 2005 this Court 'seduta stante' delivered a decree in connection with Article 12 of the same Order, wherein it was declared and decided that the offences in question are all extraditable and therefore this Court would proceed to decide this case on the basis of article 13 of the same Order.
- d) It appears that the person to be extradited is contesting his extradition to Belgium on the basis of Article 13(1) (c) as well as Article 23 of the same Order.

e) Article 13 (1) (c) is one of the prohibitions specified in the Order and if it results, the Court would have to discharge the requested person. This prohibition refers to “prescription or lapse of time” and is defined under Article 16 (1) (2) of the same Order as being “.... if prosecution for the offence, in respect of which extradition is requested, is barred by prescription according to the laws of Malta and the acts constituting the offence for which extradition is requested fall within the jurisdiction of the Maltese Criminal Courts” and “... for the reason mentioned in paragraph (b) of the Article 20 of the relevant Act if, having regard to all the circumstances it would be unjust or oppressive to return him”. From this article as quoted “verbatim” as regards the parts relevant to this case, it is obvious that in this case, prescription cannot act as a bar to the extradition of the requested person because a) Article 16 (1) refers to the prosecution of the offence and not to the enforcement of a final judgement as in the present case. Therefore it is clear and evident that this article is not applicable to this case. b) Article 16 (2) which refers also to Article 20(b) of Chapter 276 of the Laws of Malta mentions “... if, having regard to all the circumstances it would be unjust or oppressive to return him”. In this regard, the Court of Criminal Appeal (per Vincent De Gaetano Judge) in a decision delivered on the 6<sup>th</sup> of January 2004 referred to this matter and 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 requested person to be extradited, such a decision would not be ‘unjust’ in his regard. As to whether this would be ‘oppressive’ the requested person produced evidence alleging that should he be extradited, to Belgium, in order to serve the term of imprisonment, already imposed on him, by the competent Belgian Court, he would be subject, potentially to loss of life, having been

the subject of threats from his accomplices. In this regard, although the Court can understand the situation he would be placed in, should the requested person be extradited to Belgium, it would be the responsibility of the competent Belgian Authorities to safeguard the requested person and take all the necessary measures to ensure the safety of the requested person. Certainly, such a situation cannot amount as a bar to extradition, since it cannot, in any way, be considered as 'oppressive'.

f) The defence also referred to Article 23 of The Order in the sense that if the Court decides that the extradition is not barred by any of the specified prohibitions, it must proceed to see that the requested person was in fact, convicted in his presence. In this regard, the requested person has alleged that from the acts of this case, it does not result, beyond a reasonable doubt, that he was judged in his presence. The Court would like to emphasise that it is a basic tenet of criminal proceedings in Malta that an accused person is to be tried and sentenced in his presence and all evidence is to be produced also when he is present in Court, this general rule being subject to very few exceptions (vide for example articles 402 (7) and 405 (4) of the Criminal Code). In regard to the present case, the Court would like to refer to :

i) The statement made by the requested person to the Maltese Police (vide page 7 of the acts) wherein he stated that after judgement was delivered on the 9<sup>th</sup> of October and he was condemned to ten years imprisonment, the co-accused "... uttered some words such as Dead man walking" towards him.

ii) The arrest warrant in question which is proof of its contents wherein it is specifically stated (vide page 13 *ibid*) "Decision rendered ...." with the words "in absentia" struck off and instead the words "judgement after trial" being used. From this it can be concluded on the basis of probability that the person requested was not tried in his absence but in his presence.

#### Having considered

That after this Court made reference to all the facts at issue, it results that there exists no bar in accordance with

Informal Copy of Judgement

the law for the requested person to be extradited to Belgium so that he would serve his term of imprisonment in accordance with the judgement referred to in the warrant relative to this case.

Therefore for the above reasons and motivations the Court, having seen article 24 of Legal Notice 320 of 2004, orders that the requested person GERYL SERGE be kept under custody to await his extradition to Belgium. Moreover, The Court after having seen Article 32 of the same Order is informing the same person that he will not be extradited before seven (7) days commencing from this Order and that he can appeal to the Court of Criminal Appeal and that if he feels that his human rights have been, are being, or are going to be infringed, he has a right to seek a remedy or redress under Article 46 of the Constitution of Malta or under Chapter 319 of the Laws of Malta.

**< Final Judgement >**

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