



**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 Aaron M. Bugeja M.A. Law, LL.D. (melit)

The Police

(Inspector Mario Cuschieri)

vs.

Angelo Frank Paul Spiteri

(hereinafter referred to as the “Requested Person”)

Today the 15th January 2016

The Court,

Having seen the Bars to Extradition raised by the Defence namely :-

- (a) Prescription in terms of Regulation 13(1)
- (b) The rule of Speciality

1. **Prescription** –

Defence argued that Regulation 13(1)(b) of the Order regulated prescription or lapse of time. Prescription was governed by Maltese Law.

The Defence conceded that the offence mentioned in Article 222(1) of the Lithuanian Criminal Code that according to this Court substantially reflected Article 421 of the Companies Act, Chapter 386 of the Laws of Malta was not time barred. However this was not the case in respect of the other two offences deemed to be extraditable by this Court. The Defence explained how according to principles of Maltese Law it transpired that :-

- (a) The offence of **swindling** mentioned in Article 182(2) of the Lithuanian Criminal Code substantially reflected Article 308 of the Maltese Criminal Code. The punishment applicable to this criminal offence at the time of the alleged commission of the same was between seven months imprisonment and two years imprisonment. Hence according to Article 688(d) of the Maltese Criminal Code the criminal action was time barred by a period of five years from the date of the commission of the offence. Therefore this action was time-barred as the offence was allegedly committed in the year 2010. Furthermore the punishment established in Article 310(1)(a) of the Criminal Code was not

applicable on account of the fact that the offence of swindling in the Lithuanian Criminal Code did not provide for a higher degree of punishment depending on the value of the amount defrauded but simply referred to “high value” without specifying amounts. Therefore the longer prescriptive period of ten years applicable in terms of Article 688(c) of the Maltese Criminal Code was not applicable in this case.

(b) The offence of **forgery of a document or possession of a forged document** in terms of Article 300(1) of the Lithuanian Criminal Code was substantially the same as Article 189 of the Maltese Criminal Code. In this latter case, the punishment applicable to this criminal offence at the time of the alleged commission of the same was seven months imprisonment to one year imprisonment. Hence according to Article 688(d) of the Maltese Criminal Code the criminal action was time barred by a period of two years from the date of the commission of the offence. Therefore this action was time-barred as the offence was allegedly committed in the year 2001, as can be seen from paragraph 4 of the narrative part of the EAW. In any case, if in the worst scenario for the Requested Person this Court considered the date of the alleged commission of the offence to be between the 23/03/2011 and the 16/06/2011 then this criminal action was likewise time-barred on account of the fact that two year prescriptive period lapsed too.

The Prosecution rebutted the arguments propounded by the Defence on account of the fact that according to them there was no rule of prescription applicable in this case.

The Prosecution contended that Regulation 13(1)(b) of the Order had to be read in conjunction with Regulation 16 of the same Order and this by virtue of Regulation 13(2) which stated that Articles 14 to 22 applied for the interpretation of subarticle (1) of this Regulation 13. Regulation 16 stated that :-

16. A person's return to a scheduled country is barred by reason of prescription if prosecution for the offence in respect of which extradition is requested is barred by prescription according to the law of Malta and the acts constituting the offence for which extradition is requested fall within the jurisdiction of the Maltese criminal courts.

This means that in order for prescription to serve as a bar to surrender of the Requested Person two conditions had to be met -

- i. Prosecution for the offence in respect of which extradition is requested is barred by prescription according to the law of Malta **and**
- ii. the acts constituting the offence for which extradition is requested fall within the jurisdiction of the Maltese criminal courts.

Since in this case the acts constituting the offence for which extradition is requested do not fall within the jurisdiction of the Maltese criminal

courts, the plea of prescription as a bar to extradition cannot be entertained.

The Defence argued that prescription as a bar to extradition had to be read and understood in a logical manner as provided in Regulation 13(1)(b) of the Order. Defence contended that the interpretation given by the Prosecution stultified completely prescription as a bar to extradition. Defence contended that it could not be that the Law of prescription be deemed to be the law of the Issuing State, Lithuania in this case, as this would mean that the Maltese Court would have to know the laws of all the Member States governing prescription, which surely vary from one State to another. This did not make juridical sense. Consequently the Maltese Court was bound to consider prescription in the light of Maltese Law and no other Law.

Considers further :-

That in this particular case, it is true that Regulation 13(1)(b) of the Order is subject to both 13(2) as well as Regulation 16 of the same. Prescription as a bar to extradition has to be understood in the light not only of Regulation 13(1)(b) of the Order on its own – but it had to be read in conjunction with Regulation 13(2) and 16 of the Order. After all this applies to all bars for extradition mentioned in Regulation 13(1)

given that all these grounds are then amplified and explained in the Regulations 14 to 22 of the Order.

Now it transpires that Regulation 16 of the Order does not simply reflect what the Maltese legislator had in mind (or the UK model adopted as the basis for the transposition of the Framework Decision) but it faithfully reflects the Framework Decision itself. So much so that Article 4(4) of the Framework Decision that states : -

The executing judicial authority may refuse to execute the European arrest warrant:

where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;

Now in this particular case the executing judicial authority is this present Court. According to this Framework Decision, this Court may refuse to extradite the Requested person where it deems that the criminal prosecution of this person for one or more of the extraditable offences is subject to prescription according to the law of Malta (being the executing Member State **and** the acts constituting the criminal offence fall within the jurisdiction of that Member State (that is Malta) under its own criminal law.

This is what the Order states as well. No matter how illogical it may appear to the Defence, that is the Law.

This interpretation finds solace also in the interpretation given to this provision of the Order and the Framework Decision in the European Scrutiny Committee, *The UK's block opt-out of pre-Lisbon criminal law and policing measures*, HC 683, 7 November 2013, para 107 as quoted in a Briefing Paper to the House of Commons, bearing number 07016 of the 15th June 2015 written by Joanna Dawson and Sally Lipscombe entitled *The European Arrest Warrant*¹, wherein it is stated that :-

The basis of the European arrest warrant (EAW) is the 2002 [Council Framework Decision on the European arrest warrant and the surrender procedures between Member States](#) (the Framework Decision).¹ The Framework Decision superseded the previous extradition arrangements between EU Member States as set out in the Council of Europe's 1957 European Convention on Extradition (the ECE). The main intention behind the Framework Decision was to speed up the extradition process between Member States:

The purpose of the European Arrest Warrant (EAW) Framework Decision is to speed up the extradition process between Member States, reducing the potential for administrative delay under previous extradition arrangements. The EAW system has abolished "traditional" extradition procedures between Member States and instead adopts a system of surrender between judicial authorities, based on the principle of mutual recognition and mutual trust between Member States. The EAW removes certain barriers to extradition that existed under previous extradition arrangements – the 1957 Council of Europe Convention (ECE) – including the nationality of those sought and the statute of limitations, where the extradition offence would be time-barred under the law of the requested State.

Even in this advice it is clear that if the Law of prescription of Malta were to be applicable (to offences that would not also be subject to the jurisdiction of the Maltese criminal courts) this would be deemed to be going against the scope of the Framework Decision. Consequently the Prosecution's argument in this case holds.

¹ <http://researchbriefings.files.parliament.uk/documents/SN07016/SN07016.pdf>

The Court therefore declares that prescription cannot be deemed to be a bar to extradition in this particular case.

However, once that the Defence raised the pleas on each of the two extraditable offences, the Court deems that, for completeness sake, it ought to settle the pleas raised. While this may seem to be an unnecessary exercise, it goes to settle for good the points of contention in this case and the Court is elaborating the reasoning hereunder only for arguments' sake and completeness sake. So even if, *gratia argomenti* Maltese Law on prescription were to be applied to the current case : -

As for the crime of **swindling** in terms of Article 182(2) of the Lithuanian Criminal Code, the criminal action would not be subject to prescription in terms of Maltese Law on account of the fact that : -

(a) the narrative part relative to this offence is found in paragraph 2 from where it transpires that the alleged criminal offence was committed between the 4th November 2010 and the 13th July 2011. Applying the prescriptive period mentioned by the Defence to this case, it transpires that the five year period has not yet elapsed.

(b) In any case the Court considers that as the Lithuanian Judicial Authorities contend, they had issued coercive measures in the form of an arrest warrant against the Requested Person on the 11th June 2015. Now according to Article 693(2) of the Maltese Criminal Code : -

(2) The period of prescription is also interrupted by the warrant

of arrest or, where there are no grounds for the arrest, by the summons, although the warrant of arrest or the summons shall have had no effect on account of the fact that the party charged or accused had absconded or left Malta.

- (3) Where the period of prescription has been interrupted, it
- (a) shall recommence to run from the day of the interruption.

This therefore means that according to Maltese Law the period of prescription would have been interrupted on the 11th June 2015.

(c) furthermore the Court considers also that in this particular case, the narrative part of the EAW specifies the amount of the alleged financial damage caused by the alleged offence – which translated to Maltese Law, would fall under Article 310(1)(a) of the Criminal Code. This means that this Court is bound to take into consideration the provisions of Article 310(1)(a) of the Criminal Code, thus rendering the potential convict subject to the punishment of up to seven years imprisonment. This would carry a term of prescription of ten years as per Article 688(c) of the Criminal Code.

As for the crime of **forgery of a document or possession of a forged document** in terms of Article 300(1) of the Lithuanian Criminal Code, the Defence argues that this was deemed to be substantially the same as Article 189 of the Maltese Criminal Code. The Defence claims that the prescriptive period in this case is that of two years. Now :-

(a) as for the date that *gratia argomenti* would have to be taken into consideration by this Court as being the date when the offence was allegedly committed, the Court has no doubt that the Lithuanian Judicial Authorities specified the period between the 23/03/2011 and the 16/06/2011 as it clearly transpires in paragraph 4 of the narrative part of the EAW. It is true that later on they mentioned a date 17/06/2001 as being the date up to which the alleged forged document was allegedly held by the Requested Person until it was submitted to the Economic Crimes Investigation Division of the Lithuanian Police. But the Court notes that clearly this is a *lapsus computeri* and that this should read 17/06/2011. This is the date that comes exactly after the 16/06/2011 which refers to the period in question. In any case this mistake does not affect the substance as this Court deems that the Lithuanian Judicial Authorities had previously clearly indicated the period between the 23/03/2011 and the 16/06/2011 as being the relevant dates.

(b) Defence contends that even if these latter dates are taken into consideration for prescription purposes, the criminal action would have been prescribed by the two year prescriptive period in terms of Article 688(e) of the Criminal Code, given that the punishment in terms of Article 189 goes up to one year imprisonment. Now even here the Court begs to differ with this interpretation. Article 189 of the Criminal Code speaks about the punishment as being imprisonment from seven months to one year. Article 688(e)

providing a prescriptive period of two years applies in the case of crimes liable to imprisonment for a term of **less** than one year. Now for the crime under Article 189 a Maltese court of criminal jurisdiction can mete out a punishment of one year imprisonment. One year imprisonment is not “less than one year”. Therefore Article 688(e) of the Criminal Code does not apply to this case. The prescriptive period for the crime under Article 189 of the Criminal Code is that mentioned in Article 688(d) of the Criminal Code, that is the five year prescriptive period as this Article provides for the case of crimes liable to imprisonment for a term of **less** than four years but **not less** than one year. Similarly, one year is not less than one year. Hence the five year prescriptive period would be applicable in this case and the criminal action would not have been time-barred in any case.

Moreover, the Court took note of the written declaration filed to it earlier on today by the Lithuanian Judicial Authorities signed by the Deputy Chief Prosecutor Tomas Krusna wherein the Prosecutor General of the Republic of Lithuania declares that the extraditable offences in question are not time-barred in terms of the Law of the Republic of Lithuania.

Having considered the above, this Court rejects the plea that prescription constitutes a bar to extradition in this case.

Considers further that : -

The Defence raised the plea that in this case the rule of speciality is a bar to extradition. The Defence argued that there was no evidence presented showing that there was a speciality arrangement between Malta and Lithuania. Hence this operates as a bar to extradition in this case.

This Court considers that the rule of speciality is regulated by Regulation 13(1)(d) read in conjunction with Regulation 18 of the Order. Now, as this Court declared in other decrees touching this subject matter, Regulation 18 transposes Articles 27 and 28 of the Framework Decision. The position that emerges from this Framework Decision is that the Member States agreed that unless there is a declaration made by a Member State highlighting that they are derogating from the rule of speciality, this rule applies by default. This is also in line with the terms of notification made by Malta to the European Union on the adoption of this Framework Decision.² It transpires that Malta did not derogate from this rule and therefore the rule of speciality applies by default. This rule of speciality therefore operates in terms of the same Framework Decision in relation to all Members of the European Union. The rule of speciality therefore operates for Malta and is applied by

² <http://register.consilium.europa.eu/pdf/en/04/st12/st12438.en04.pdf>

Malta in such manner that the speciality arrangement between Malta and Lithuania is indeed the Framework Decision itself.

The plea that the rule of speciality is a bar to extradition in this case is being therefore rejected.

There being no other bars to extradition in this case, this Court therefore orders the extradition to proceed in order for the Requested Person to be surrendered to the Lithuanian Judicial Authorities in terms of the EAW issued in these proceedings.

The Defence requested to the Court to order that should the Requested Person be convicted of any or all of the extraditable offences and sentenced to a term of imprisonment, he is to serve this sentence in Malta. The Defence voiced its serious concerns about the judicial system of Lithuania as well as the imprisonment regime applicable in that jurisdiction and stressed that the imprisonment conditions are very harsh. A report issued on the 4th June 2014 by the Council of Europe Committee against Torture (CPT) censured the Lithuanian Authorities because of the very bad conditions and corrupt practices which haunt Lithuanian prisons and the whole law enforcement system. Defence Counsel quoted also the case of Liam Campbell whose extradition was not authorised by Mr Justice Burgess on account of the fact that his Court was satisfied that extraditing Campbell to Lithuania would

expose him to a real risk of inhuman and degrading treatment by reason of the jail conditions.

With all respect to the submissions made by the Defence, this Court is bound with the terms of reference specified by the Order. Once that there are no bars to extradition, it is bound to order the surrender.

Even if it wanted, this Court cannot do what Defence Counsel is requesting as there is nothing in the Order that authorises it so to do. It is true that the Article 5 of the Framework Decision :-

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

(3) where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

However this was not transposed in the Order itself. Therefore, given that the provisions of Article 5 of the Framework Decision do not have the force of a Regulation, this Article cannot be deemed to be directly applicable to the Maltese Courts. Once that the Legislator opted not to introduce this possibility by reference to the Executing State (that is Malta) it is not possible for this Court to make this condition in its decree ordering the surrender of the Requested Person.

Of course if the Requested Person feels that any human rights are going to be breached in his respect, as this Court is going to pronounce shortly, he is entitled to apply to the Competent Court for the appropriate rulings and orders.

This Court noted that the Deputy Chief Prosecutor of the Republic of Lithuania Tomas Krusna declared in writing that :

In case the competent court of the Republic of Malta decides to surrender Angelo Frank Paul Spiteri to the Republic of Lithuania on the basis of the European arrest warrant for the purpose of conducting criminal prosecution on the condition that after the judgment is passed the person will be have to be returned to the executing state in order to serve the custodial sentence (guarantee which is provided for in Article 5(3) of Council Framework decision of 13 June 2002 on European arrest warrant and the surrender procedures between the Member States), the Prosecutor General's Office of the Republic of Lithuania hereby ensures that this condition will be fulfilled.

Besides, it should be noted that the Republic of Malta and Republic of Lithuania have also ratified the European Convention of 21 March 1983 on the Transfer of Sentenced Persons.

This means that should the Requested Person be found guilty by a court of criminal jurisdiction in the Republic of Lithuania, he is entitled to lodge a request for a custodial sentence order in terms of the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union as well as the European Convention of 21 March 1983 on the Transfer of Sentenced Persons.

While this Court cannot order the Maltese Competent Authority, the Minister responsible for justice, the Lithuanian Judicial Authorities or the Lithuanian Minister responsible for justice to do anything on the lines requested by the Defence as abovementioned or make this Order of Committal subject to the condition requested by the Defence, it **recommends** to the same Authorities that, in the event of the Requested Person being prosecuted, convicted and sentenced to a custodial sentence by a court of criminal jurisdiction in the Republic of Lithuania in respect of any one or more of the extraditable offences abovementioned, to facilitate as much as reasonably possible all the procedures necessary for the issue, transmission, receipt, and processing of any judgment, sentence and request made by the eventual convict to have his custodial sentence served in the country of where he is national, that is Malta, and this in the spirit of mutual trust and co-operation as transpires in the text and preamble both 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 Title VI of the Treaty, as amended by Council Framework Decision 2009/299/JHA of the 26th February, 2009 as well as of Council Framework Decision 2008/909/JHA of 27 November 2008 on the on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial

sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

ORDER OF COMMITTAL

Consequently, this Court orders the return of Angelo Frank Paul Spiteri to the Republic of Lithuania on the basis of the European Arrest Warrant issued against him and commits him to custody while awaiting his return to the Republic of Lithuania and this in terms of Regulations 13(5) and 24 of the Order.

This Order of Committal is being made on condition that the present extradition of the Requested Person 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 Requested Person that :-

- (a) He will not be returned to the Republic of Lithuania 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.

Delivered today the 15th January 2016 in the Court of Justice Building, Valletta.

Aaron M. Bugeja