L.N. 375 of 2007

EXTRADITION ACT
(CAP. 276)

Extradition (United States of America) Order, 2007

IN exercise of the powers conferred by article 7 of the Extradition Act, the Deputy Prime Minister and Minister for Justice and Home Affairs has designated the United States of America for purposes of Article 6 of the Extradition Act and has made the following order:-

Citation and commencement.

1. (1) The title of this Order is the Extradition (United States of America) Order, 2007.

(2) This Order shall enter into force on such day as the Minister shall order in the Gazette after the Treaty enters into force in accordance with the terms of the said Treaty.

Interpretation.

2. In this Order, unless the context otherwise requires -

"the Minister" means the Minister responsible for justice;

"the relevant Act" means the Extradition Act; Cap. 276.

"the relevant date" shall mean the date the Order enters into force;

"the Treaty" means the Treaty between the Government of Malta and the Government of the United States of America signed on the 18th May 2006 in Valletta, the terms of which are set out in the relative Treaty published in the Government Gazette dated the 13th November 2007.

Relationship between the Order and the relevant Act and transitory provisions.

3. The provisions of the relevant Act, 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 the United States of America 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, the United States of America subject to such conditions, exceptions, adaptations or modifications as are specified in this Order.

(2) The relevant Act and any applicable Treaty in force before the relevant date shall continue to apply to requests for the return of a fugitive criminal to the United States of America pending in Malta on the relevant date and to requests made by Malta to the United States of America before the relevant date, and any arrangement applicable between the United States of America and Malta before the relevant date shall also continue to apply to those requests:

Provided that Articles 2 and 16 of the Treaty shall apply to requests pending in Malta on the relevant date.

Amends article 8 of the relevant Act.

4. For the purposes of this Order, article 8(1)(a) of the relevant Act shall apply as if for the words "under that law" therein there were substituted the words "under Maltese law and under that law".

Minister may grant extradition.

5. When the laws of Malta do not provide for the punishment of an offence committed outside its territory in similar circumstances as those in which the offence for which extradition is sought is being requested, the Minister, at his discretion, may nevertheless grant extradition provided that all other applicable requirements for extradition are satisfied.

Amends article 10 of the relevant Act.

6. For the purposes of this Order, sub-article (3) of article 10 of the relevant Act shall be amended as follows:

(a) in paragraph (c) thereof, for the words "so dealt with." there shall be substituted the words "so dealt with; or";

(b) immediately after paragraph (c) thereof, there shall be added the following new paragraph:

"(d) any lesser included offence shown by its constituent elements to be an extraditable offence and based on the same facts as the offence for which extradition was ordered."; and

(c) the whole sub-article (3) shall be renumbered as paragraph (a) thereof, and immediately after paragraph (a) as renumbered there shall be added the following new paragraph:

"(b) When the description of the offence is altered in the course of proceedings, the extradited person shall only be prosecuted in so far as the offence, under its new description, is shown by its constituent elements to be an extraditable offence and is based on the same facts contained in the request

for extradition and is punishable by the same maximum penalty as, or a lesser maximum penalty than, the offence for which extradition was granted.".

Amends article 11 of the relevant Act.

7. For the purposes of this Order, paragraph (c) of sub-article (2) of article 11 of the relevant Act shall apply as if for the words "will be granted a new trial if he so requests;" therein there were substituted the words "was afforded an adequate opportunity to present a defence or that there are adequate remedies or additional proceedings available to such person after surrender;".

Substitutes article 12 of the Act.

8. For the purposes of this Order, for article 12 of the relevant Act, there shall be substituted the following:

"Temporary surrender.

12. If at any time in the extradition hearing the court is informed that the person in respect of whom a request for extradition has been received is charged with an offence in Malta, or is serving sentence in Malta for an offence, the court may:

(a) postpone the extradition hearing until the person has been discharged whether by acquittal or on the expiration of his sentence or otherwise; or

(b) temporarily surrender the person under conditions agreed to in writing with the authority making the request for extradition.".

Amends article 15 of the relevant Act.

9. For the purposes of this Order, sub-article (5) of article 15 of the Act shall be amended as follows:

(a) the whole sub-article (5) thereof shall be renumbered as paragraph (a); and

(b) immediately after paragraph (a) as renumbered, there shall be inserted the following:

"(b) When a person consents to his return under the preceding sub-article he must declare whether he waives any right he would have, apart from the consent, not to be dealt with in the United States of America for an offence committed before his return.".

Amends article 21 of the relevant Act.

10. For purposes of this Order, in sub-article (4) of article 21 of the relevant Act immediately after the word "has been made by another country" there shall be inserted the words "or international tribunal".

Amends article 22 of the relevant Act.

11. For the purposes of this Order, for sub-article (2) of article 22 of the relevant Act there shall be substituted the following-

"(2) A document shall be deemed to be duly authenticated for the purpose of this article if it bears the certificate or seal of the United States Department of Justice and shall be admissible in evidence in proceedings under the relevant Act without further certification, authentication or other legalization.".

Amends article 23 of the relevant Act.

12. For the purposes of this Order, article 23 of the relevant Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "any property" there shall be substituted the words "all items connected with the offence in respect of which extradition is granted, and any property"; and

(b) in sub-article (2) thereof, for the words""death or escape" there shall be substituted the words "death, disappearance or escape".

Amends article 25 of the relevant Act.

13. For the purposes of this Order, article 25 of the relevant Act shall be amended as follows:

(a) in paragraph (c) of sub-article (2) thereof, for the words "dealt with." there shall be substituted the words "dealt with; or";

(b) immediately after paragraph (c) of sub-article (2) thereof, there shall be added the following new paragraph:

"(d) any lesser included offence shown by its constituent elements to be an extraditable offence and based on the same facts as the offence for which extradition was ordered.";

(c) the whole sub-article (2) shall be renumbered as paragraph (a) and immediately after paragraph (a) as renumbered there shall be added the following new paragraph:

"(b) When the description of the offence is altered in the course of proceedings, the extradited person shall only be prosecuted in so far as the offence, under its new description, is shown by its constituent elements to be an extraditable offence and is based on the same facts contained in the request for extradition and is punishable by the same maximum penalty as, or

a lesser maximum penalty than, the offence for which extradition was granted.";

(d) in sub-article (3) thereof, for the words "forty-five" there shall be substituted the word "thirty"; and

(e) immediately after sub article (3) thereof, there shall be inserted the following new sub-article:

"Further extradition

(3A) The foregoing provisions of this article shall not prevent the further extradition of a person to a third State or international tribunal, if:

(a) that person leaves the territory of Malta after extradition and voluntarily returns to it; or

(b) that person does not leave the territory of Malta within 30 days of the day on which that person is in a position to leave.".

Undertaking by the Minister.

14. Where the minister has given an undertaking in connection to the temporary surrender of a person to Malta, and the undertaking includes terms that the person be kept in custody until the conclusion of any proceedings against him in Malta for an offence, a court may grant bail to the person in the proceedings only if it considers that there are exceptional circumstances which justify it.

Commissioner of Police may authorize transit.

15. (1) The Commissioner of Police may authorize transit through Malta of a person who is being surrendered to the United States of America or by the United States of America to a third State provided that the following information is furnished:

(a) a description of the person being surrendered;

(b) a brief statement of the facts of the case.

(2) When the transport of the surrendered person is to take place by air, it will only be necessary to provide the Commissioner of Police with the information required in sub-article (1) in the event that an unscheduled landing occurs.

Extradition for lesser offences.

16. When extradition is ordered for an extraditable offence, it shall also be ordered for any other offence specified in the request if such other offence is punishable by one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

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