

L.N. 49 of 2010

**EXTRADITION ACT
(CAP. 276)**

Extradition (Arab Republic of Egypt) Order, 2010

IN exercise of the powers conferred by article 7 of the Extradition Act, the Minister for Justice and Home Affairs has made the following order:-

Citation and
commencement.

1. (1) The title of this Order is the Extradition (Arab Republic of Egypt) Order, 2010.

(2) This order shall be deemed to have come into force on the 18th December, 2009.

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;

"the relevant date" means the 18th December, 2009;

"the Treaty" means the Treaty between the Government of Malta and the Government of the Arab Republic of Egypt signed on the 20th May, 2004 in Cairo, the terms of which are set out in the relative Treaty published in the Gazette dated the 11th December, 2009.

Designation for
the purposes of
article 6 of the
relevant Act.

3. For the purposes of article 6 of the Extradition Act, the Minister has designated the Arab Republic of Egypt.

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

4. 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 Arab Republic of Egypt 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 Arab Republic of Egypt subject to such conditions, exceptions, adaptations or modifications as are specified in this Order.

5. 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".

Amends article 8 of the relevant Act.

6. For the purposes of this Order, article 10 of the relevant Act shall be amended as follows:

Amends article 10 of the relevant Act.

(a) for sub-article (1) thereof, there shall be substituted the following:-

"10. (1) A person shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, if it appears to the Minister or to the court of committal -

(a) that the offence of which that person is accused or was convicted is an offence of a political character or an offence connected with a political offence; or

(b) that the request for his return (though purporting to be made on account of an extraditable offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or

(c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions; or

(d) that there are serious reasons to believe that if returned, he may be subjected to a judicial process which does not conform with the minimum guarantees inherent to a fair trial; or

(e) that the punishment provided or the sentence awarded for the offence for which a person's return is being requested, is of a nature which is not applicable under Maltese law.";

(b) immediately after paragraph (b) of sub-article (3) thereof, there shall be inserted the following:

"(b *bis*) a differently denominated offence based on the same facts as the offence for which extradition was granted, provided that such offence is extraditable; or"; and

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

"(3A) When the description of the offence charged is altered in the course of proceedings, a person shall not be returned under this Act to any country, or committed to or kept in custody for the purpose of such return, unless provision is made by the law of that country, or by an arrangement made with that country, that the extradited person will only be dealt with insofar as the offence, under its new description, is shown to be an extraditable offence and is based on the same facts contained in the extradition request."

Amends article
11 of the
relevant Act.

7. For the purposes of this Order, in sub-paragraph (c) of sub-article (2) of article 11 of the relevant Act, after the words "and" there shall be inserted the words "such person has not had sufficient notice of the trial or".

Amends article
23 of the
relevant Act.

8. For the purposes of this Order, in sub-article (2) of article 23 of the relevant Act, for the words "death or escape" there shall be substituted the words "death, disappearance or escape".

Amends article
25 of the
relevant Act.

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

(a) immediately after paragraph (b) of sub-article (2) thereof, there shall be inserted the following:

"(b *bis*) a differently denominated offence based on the same facts as the offence for which extradition was granted, provided that such offence is extraditable; or"; and

(b) immediately after sub-article (3) of article 25 of the relevant Act there shall be added the following:

"(3A) (a)When the description of the offence charged has been altered in the course of extradition proceedings, a person returned to Malta shall only be dealt with insofar as the offence, under its new description, is shown to be an extraditable offence and is based on the same facts contained in the extradition request.

(b) A person returned to Malta may not be extradited to a third State for any offence committed prior to extradition to Malta unless the requested country consents.";

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

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

(ii) that person does not leave the territory of Malta within 45 days of the day on which that person is in a position to leave."

10. (1) The Commissioner of Police may authorize transit through Malta of a person who is being surrendered to the Arab Republic of Egypt by a third State or by the Arab Republic of Egypt to a third State provided that the following information is furnished:

Commissioner of Police may authorize transit.

(a) a description of the person being surrendered;

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

(2) The information in sub-article (1) may be transmitted to the Commissioner of Police by any means capable of producing a written record.

(3) 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.

(4) A person being conveyed through Malta in the course of his extradition or removal as a convicted prisoner from one country to another shall be kept in custody during the period of transit.

(5) Transit may be refused if the person being surrendered is a citizen of Malta.

(6) Transit may be postponed if the person being surrendered is sought by Malta for the purpose of prosecution and if the Arab Republic of Egypt consents to the said postponement.

11. If the request for extradition concerns several distinct offences, each offence being punishable by the requesting and the requested countries' laws by imprisonment, in the case that some offences do not meet the condition relative to the sentence's duration laid down in article 8(1)(a) of the relevant Act, extradition may also be granted for the latter offences.

Extradition for offences punishable by lesser penalty.

12. A person shall not be returned to the Arab Republic of Egypt if any one of the following occurs:

Refusal of surrender.

(a) where it has been decided not to prosecute the person for the acts in respect of which the person's return is requested;

(b) there has been a decision, in Malta, to discontinue any criminal proceedings instituted against the said person for the same acts;

(c) the person sought is still being investigated, in Malta, for the said acts."
