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C O N F I D E N T I A L BUENOS AIRES 06959

E.O. 12356: DECL: OADR

TEXT
TAGS: MOPS, PHUM, PREL, GE, AR
SUBJECT: ARGENTINE COURTS GRIND FORWARD ON EXTRADITION
- OF SUSPECTED NAZI WAR CRIMINAL: THE
- SCHWAMMBERGER CASE
-

1. (C) SUMMARY. EXTRADITION OF ACCUSED NAZI WAR CRIMINAL JOSEF SCHWAMMBERGER HAS BEEN PROCEEDING THROUGH ARGENTINE JUDICIAL SYSTEM SINCE ARREST IN NOVEMBER 1987. CASE IS COMPLICATED BY SCHWAMMBERGER'S ARGENTINE CITIZENSHIP IN HIS OWN NAME AND GOA INABILITY TO DENATURALIZE AS A FICTITIOUS IDENTITY. JUDICIAL SOURCES PREDICT EXTRADITION WILL NOT BE GRANTED UNTIL WELL INTO 1989. LOCAL JEWISH ORGANIZATIONS DO NOT ACCUSE GOA OF BAD FAITH, BUT EXPRESS FRUSTRATION AT PACE OF EXTRADITION AND URGE HIGH LEVEL POLITICAL DECISION TO EXPEDITE PROCESS. JUSTICE MINISTRY SENIOR OFFICIAL BELIEVES CASE IS PROCEEDING NORMALLY AND DENIES POLITICAL PUSH NECESSARY TO BRING ABOUT EXTRADITION. GOA OFFICIALS AWARE THEY ARE UNDER CLOSE SCRUTINY ON THIS CASE; ASSUMING HE LIVES LONG ENOUGH,

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SCHWAMMBERGER WILL PROBABLY BE EXTRADITED, BUT NOT BEFORE 1989. END SUMMARY.

2. (U) RECENT VISIT TO BUENOS AIRES BY SENIOR REPRESENTATIVES OF B'NAI B'RITH AND EXPECTED ARRIVAL JULY 3 OF B'NAI B'RITH ATTORNEY FROM U.S. SUGGEST INTERNATIONAL ATTENTION MAY SOON FOCUS AGAIN ON ACCUSED NAZI WAR CRIMINAL JOSEF FRANZ LEO SCHWAMMBERGER. FOLLOWING IS SUMMARY OF INFORMATION RELATING TO CASE FOR DEPARTMENT'S USE IN FIELDING INQUIRIES. REPORT IS SOLELY FOR INFORMATION PURPOSES, SINCE CASE IS SO FAR BEING HANDLED EXCLUSIVELY BY ARGENTINE AND FRG OFFICIALS.

3. (U) SCHWAMMBERGER WAS ARRESTED BY FEDERAL POLICE IN HUERTA GRANDE, CORDOBA PROVINCE, ARGENTINA 13 NOVEMBER 1987. ARREST WAS MADE PURSUANT TO 1972 FRG EXTRADITION REQUEST THROUGH FEDERAL PROSECUTOR IN STUTTGART AND ARGENTINE WARRANT ISSUED BY FEDERAL COURT IN CITY OF LA PLATA. IN DECEMBER 1987, SCHWAMMBERGER WAS TRANSFERRED TO THE OLMOS DETENTION FACILITY IN BUENOS AIRES WHERE HE HAS REMAINED EVER SINCE. HE IS CURRENTLY IN THE PRISON CLINIC BECAUSE OF A HEART CONDITION.

4. (U) ACCORDING TO FRG EXTRADITION REQUEST AND COURT RECORDS, THE SUSPECT WAS AN SS LIEUTENANT AND AUSTRIAN CITIZEN DURING THE SECOND WORLD WAR. HE WAS BORN 14 FEBRUARY 1912 IN SOUTH TYROL IN THE THEN AUSTRO-HUNGARIAN EMPIRE. HE IS CHARGED WITH MASS HOMICIDE, TORTURE, ROBBERY, AND BLACKMAIL WHILE SERVING AS COMMANDANT OF KZWADOW AND SZAMENOL GHETTOS IN WARSAW AND THE POLISH CONCENTRATION CAMP OF PRZEWYSL. RECORDS REFLECT EARLIER EXTRADITION REQUESTS FROM THE FRG IN 1960 FOR THE SAME CRIMES AND FROM AUSTRIA IN 1947 FOR ESCAPE FROM PRISON. SCHWAMMBERGER BECAME AN ARGENTINE CITIZEN IN 1965. HE HAS APPARENTLY NOT CHANGED HIS NAME OR IDENTITY SINCE BIRTH.

5. (U) LEGAL PROCEEDINGS AGAINST SCHWAMMBERGER IN ARGENTINA HAVE BROKEN INTO TWO SEPARATE ACTIONS:

-- THE LA PLATA FEDERAL COURT IS ADJUDICATING THE EXTRADITION. COURT DENIED BAIL IN DECEMBER 1987. SCHWAMMBERGER HAS RAISED FOLLOWING DEFENSES: (A) ARGENTINA-FRG TREATY DOES NOT PERMIT EXTRADITION OF AN ARGENTINE CITIZEN; (B) EXPIRATION OF FRG EXTRADITION REQUEST PRIOR TO ARREST; (C) DENIAL OF ALLEGED CRIMES; (D) DUE OBEDIENCE TO ORDERS; (E) INVALIDITY OF EXTRADITION REQUEST SINCE CRIMES WERE NOT COMMITTED IN FRG.

-- FEDERAL COURT IN CITY OF BUENOS AIRES IS HEARING JUSTICE MINISTRY PETITION TO TERMINATE

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SCHWAMMBERGER'S ARGENTINE CITIZENSHIP.
PROSECUTION ARGUES SCHWAMMBERGER WILLFULLY
CONCEALED MATERIAL INFORMATION AT TIME OF
NATURALIZATION IN 1965.

THE TWO CASES ARE PROCEEDING INDEPENDENTLY.
DECISION ON EXTRADITION IS UNLIKELY TO BE
C O N F I D E N T I A L SECTION 02 OF 02 BUENOS AIRES 06959

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REACHED UNTIL AFTER CITIZENSHIP DETERMINATION.
SOURCES IN JUSTICE MINISTRY BELIEVE CITIZENSHIP
CASE MAY CONTINUE WELL INTO 1989.

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6. (C) SOURCES IN ARGENTINE B'NAI B'RITH AND
NATIONAL JEWISH UMBRELLA ORGANIZATION DAIA HAVE
EXPRESSED PRIVATE FRUSTRATION WITH PACE OF
SCHWAMMBERGER CASE. B'NAI B'RITH VICE PRESIDENT
(SAMUEL KAPLAN) ARGUED THAT DELAY OF SEVERAL
YEARS COULD RESULT IN SCHWAMMBERGER'S NATURAL
DEATH BEFORE EXTRADITION. MUCH THE SAME HAPPENED
TO AN EARLIER SUSPECTED NAZI ARRESTED IN
ARGENTINA IN 1986 (KUTSCHMANN CASE). KAPLAN
ARGUED THE WHOLE POINT OF EXTRADITING WAS FOR
SCHWAMMBERGER TO STAND TRIAL AND SERVE AS
REMINDER THAT THOSE WHO VIOLATE HUMAN RIGHTS
WILL BE PUNISHED. THIS END IS NOT ACCOMPLISHED
IF SCHWAMMBERGER DIES BEFORE TRIAL. B'NAI
B'RITH DOES NOT QUESTION GOOD FAITH OF GOA, BUT
DOES BELIEVE EXTRADITION COULD BE EXPEDITED BY
A HIGH LEVEL POLITICAL DECISION.

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7. (C) KAPLAN INDICATED B'NAI B'RITH WAS SO
FRUSTRATED, THEY HAVE DELAYED ACTION ON THREE
MORE EXTRADITIONS. THE THREE ARE KAR KIRCHMANN,
EICHE HEINRICH, AND GUIDO
ZIMMER. LOCAL B'NAI B'RITH LEADERSHIP CONCLUDED
IT WAS POINTLESS TO MOVE ON THESE THREE CASES
WHILE GOA WAS STALLING ON SCHWAMMBERGER. HE
NOTED IN RESPONSE TO POLOFF QUESTION THAT B'NAI
B'RITH WAS NOT CERTAIN AS TO WHEREABOUTS OF
THE THREE SUSPECTS.

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8. (C) UNDER SECRETARY OF JUSTICE (RECONDO)
ARGUED DEFENSIVELY JUNE 30 THAT CASE WAS MOVING
ACCORDING TO ROUGH SCHEDULE WORKED
OUT IN 1987. EXTRADITIONS ARE ALWAYS COMPLICATED
LEGAL MATTERS. IF THE DEFENDANT RESISTS, HE
CAN ALMOST ALWAYS DELAY THEM FOR A YEAR OR MORE
THROUGH PROCEDURAL MOTIONS AND APPEALS.
RECONDO ASSERTED GOA WAS MOVING AS FAST AS A
COMPLICATED INTERNATIONAL CASE WOULD PERMIT.
JUSTICE MINISTRY WAS EVEN WILLING TO PRESS FOR

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EXTRADITION BEFORE CITIZENSHIP ISSUE WAS RESOLVED. HE STRONGLY DISPUTED SUGGESTION THAT HIGH LEVEL POLITICAL DECISION WAS NEEDED TO ACCELERATE PROCESS.

9. (C) COMMENT. WE UNDERSTAND B'NAI B'RITH USA WILL BE FACILITATING TESTIMONY BY SEVERAL FORMER VICTIMS OF **NAZI** CONCENTRATION CAMPS IN SCHWAMMBERGER CASE WEEK OF JULY 4 IN **ARGENTINA**. THAT TESTIMONY, COUPLED WITH FRUSTRATION BY ARGENTINE JEWISH COMMUNITY OVER SPEED OF CASE MAY PROVOKE CRITICISM IN WEEKS AHEAD. CASE APPEARS TO BE PROCEEDING AT A PACE COMMENSURATE WITH INEFFICIENT ARGENTINE JUDICIAL SYSTEM. ARGENTINE JUSTICE OFFICIALS ARE FULLY AWARE OF ACCUSATIONS THAT THEY HAVE HARBORED **NAZI** WAR CRIMINALS; THEY ARE EQUALLY AWARE OF POPULAR BELIEF THAT STRONG ANTI-SEMITIC STREAK RUNS THROUGH ARGENTINE SOCIETY. IF SCHWAMMBERGER LIVES THROUGH 1989, HE WILL PROBABLY BE EXTRADITED TO THE FRG.

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END OF MESSAGE

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