

- Extradition proceedings – mutual trust between EU member states*
 - *no guarantees necessary from requesting State*
 - *no inversion of proof*
- *proceedings for breach of European Convention of Human Rights*
 - *proceedings for breach of EU Charter of Fundamental Rights*
 - *inhuman and degrading treatment*



Application Number 133/2019

CIVIL COURT FIRST HALL (CONSTITUTIONAL JURISDICTION)

THE HON. MR. JUSTICE GRAZIO MERCIECA

Sitting of the 29th October, 2019

Interlocutory decree

CHRISTOPHER GUEST MORE

VS

ATTORNEY GENERAL

By an Application filed on the 29th July 2019 the applicant has requested this Court to declare that:

1. his right to a fair trial in terms of Article 39 of the Constitution and Article 6 of the European Convention of Human Rights has been breached;
2. if he is surrendered to the United Kingdom in order to be prosecuted for the offences mentioned in the European arrest Warrant and possibly found guilty and thus imprisoned, this would amount to a breach of his fundamental human rights as guaranteed by Article 36 of the Constitution of Malta and Article 3 of the European Convention of Human Rights;
3. if he is surrendered to the United Kingdom in order to be prosecuted for the offences mentioned in the European arrest Warrant and possibly found guilty and thus imprisoned, this would amount to a breach of applicant's fundamental human rights as guaranteed by Article 33 of the Constitution of Malta and Article 2 of the European Convention of Human Rights;
4. the judgments delivered in the proceedings entitled "The Police vs Christopher Guest More" by the Court of Magistrates on the 21st of June, 2019 and by the Court of Criminal Appeal on the 23rd of July 2019 breach Articles 36 and/or 39 of the Constitution of Malta and/or Articles 3 and/or 6 of the European Convention of Human Rights and consequently revokes, annuls and quashes the aforementioned judgments;

and consequently to give all those remedies which this Court may deem fit;

Having noted the Reply filed by the Attorney General on the 12th August, 2019;

Having ruled by a decree during the sitting of the 10th September, 2019, that all proceedings of this case be heard in English, in terms of article 3 of Chapter 189 of the Laws of Malta. The applicant had no objection that any acts presented up till then in the Maltese Language are not translated;

Having seen the decision of the Court of Magistrates delivered on the 21st June 2019, which ordered the return of the applicant to the United Kingdom on the basis of the European Arrest Warrant issued against him and committed him to custody while awaiting his return to the United Kingdom. The conduct for which the applicant was being sought was murder, false imprisonment and grievous bodily harm;

Having seen that applicant filed an appeal from the judgement abovementioned and by judgment delivered on the 23rd July 2019 the appeal was dismissed. During both the aforementioned proceedings, Christopher Guest More did not raise any bars to extradition and therefore the return of the applicant to the United Kingdom was not prohibited by any of the reasons mentioned in regulation 13(1) of Legal Notice 320 of 2004¹;

Having seen the documentary evidence produced by the applicant;

Having heard the submissions made by both parties;

Having seen the written submissions by the Attorney General filed on the 15th October 2019;

Having on the 10th October 2019 adjourned the case for today;

Having considered:

That one of the principal complaints of the applicant is that in the eventuality of his return to the United Kingdom and being found guilty, he will be kept in a UK prison where his fundamental human rights will be breached, specifically Articles 2 and 3 of the European Convention of Human Rights

¹ Pg 3 of The Police vs Christopher Guest More, Court of Magistrates – 21.06.2019 and Pg 54. ² Dok CG1 pg 122.

and Articles 33 and 36 of the Constitution of Malta.

That in support of the latter claims, the applicant exhibited:

(1) a number of documents, being submissions to the Committee Against Torture for consideration at the most recent session at the Howard League for Penal Reform, Uk prison population statistics, document on the safety in Custody Statistics – Death in Prison Custody, Assaults and self harm and an annual report by the Chief Inspector of Prisons for England and Wales.

(2) an informal copy of a judgment in joint cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru* involving Mr Aranyosi, a Hungarian national, and Mr Căldăraru, a Romanian national, who were the addressees of two European arrest warrants, issued – respectively – by the Hungarian and Romanian authorities in order to execute a judgement (Aranyosi) or to exercise the criminal action (Căldăraru). The two men were arrested in Bremen, Germany. Before the *Hanseatisches Oberlandesgericht in Bremen* the Court that had to decide on their surrender to Hungary and Romania, Mr Aranyosi and Mr Căldăraru claimed that, in the event of surrender, they would have been subject to conditions of detention in breach of Article 3 ECHR (“Prohibition of torture”, which corresponds to Article 4 of the EU Charter, “Prohibition of inhuman or degrading treatment”) and of the fundamental rights granted by EU law. They relied on judgments where the **European Court of Human Rights had found Hungary and Romania to be in breach of Article 3 ECHR**, because of the overcrowding of their prisons and the inhuman detention conditions therein. They also referred to a **report issued by the European Committee** for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In the light of the information received, the executing judicial authority found that there existed a risk of **violation of Article 4 of the Charter** for the individual concerned, the execution of the

European Arrest Warrant had to be postponed until it obtained the supplementary information that allowed it to discount the existence of such a risk;

Having considered:

That during the sitting of the 10th October 2019, the applicant, on the authority of cases C-404/15 and C-659/15 abovesited (hereinafter referred to as the “joint cases”), requested this Court to order the authorities of the issuing state to provide, within a time-window imposed by this Court (i) all information in relation to which prison shall applicant be held at in the eventuality of his return to the United Kingdom and (ii) information on the state which such prison is in;

That this Court agrees with the submission made by the respondent that the Application filed by the applicant does not include any claim based upon an alleged violation of the EU Charter of Fundamental Rights. Furthermore, this Court would like to add that Applicant’s claim was initiated by means of the special procedure of Application created by the legislator specifically for claims regarding alleged breaches of fundamental human rights under the Convention or the Constitution of Malta². Consequently, any consideration by this Court of a violation of the Charter would clearly be *extra petita*. Since the joint cases do not refer to a breach of the Convention, but of the Charter, they certainly do not bind this Court as a precedent or as a pronouncement, binding or at least authoritative, by a higher and more authoritative tribunal forming part of the EU structure, obliging it to request guarantees from the authorities of the requesting EU member State – in this case the United Kingdom. At least not within the parameters of the present proceedings as set

² S.L. 12.09, paragraph 2

out by the Applicant himself;

That these proceedings are being unfolded in the context of extradition proceedings exercised through the mechanism of the European Arrest Warrant, intended as a simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal judgements which enables the removal of the complexity and potential for delay inherent in the established extradition procedures.³ This mechanism is based on a high level of confidence between Member States of the European Union⁴. A national Court, such as this Court, must be careful not to betray this level of confidence. In accordance with this fundamental principle of mutual trust, there is no general principle that a state cannot surrender an individual unless satisfied that the conditions awaiting him in the receiving country are in full accord with each of the safeguards of the Convention.⁵ Whilst on the one hand the operation of Extradition proceedings must not in be breach of safeguards to fundamental human rights, such as protection from inhuman and degrading treatment, or the right to life, it lies on the Applicant to prove that extradition proceedings against him would lead to such a breach. An inversion of proof might obstruct the smooth and efficient operation of extradition proceedings in general and the European Arrest Warrant in particular. Therefore in the present proceedings, the onus of such a proof lies on the applicant in accordance with the general principles of the law of evidence;

Decision

For the above-mentioned reasons, the Court is not upholding the applicant's request for this Court to impose a time window upon the authorities of the

³ Recital 5 in the preamble of the Framework Decision

⁴ Recital 10 *ibidem*

⁵ *Soering v United Kingdom* (14038/88); Karen Reid, *A Practioner's Guide to The European Convention on Human Rights*, 5th Edition, 2015, 50-006

United Kingdom to provide all information in relation to which prison shall applicant be held at in the eventuality of his return to the United Kingdom and also for the issuing State to give information as to the state that this prison is in.

The case is put off for continuation.

Mr. Justice

Grazio Mercieca