

- *Extradition*
- *Inhumane prison conditions in the requesting State (UK)*



CIVIL COURT, FIRST HALL
(CONSTITUTIONAL JURISDICTION)

THE HONOURABLE
MR. JUSTICE GRAZIO MERCIECA LL.D.

Sitting of the 9th January 2020.

Application Number 133/19 GM

Christopher Guest More

VS

The Advocate General

The Court,

Having seen the application submitted by Christopher Guest More who, having premised that:

1. A Schengen Information System Alert was issued for the purposes of his arrest and surrender or extradition in terms of Article 26 SIS II Decision number GBP 180000120706000001 dated 13th May 2018 and a European Arrest Warrant

(EAW) issued by the District Judge, Leeds Magistrates' Courts. According to these documents he is wanted for the purposes of prosecution by the judicial authorities of England and Wales for the alleged commission of criminal offences.

2. The Court of Magistrates (Malta) noted that there were no bars to extradition, and by means of a decision dated 21st June 2019 it proceeded, as a court of committal, to commit him to custody while awaiting his return to the United Kingdom.

3. The Court of Appeal (Inferior Jurisdiction) by judgement dated 23rd July 2019 dismissed his appeal, ordered his surrender to the judicial authorities of the United Kingdom, and ordered that he be kept in custody to await his return to the United Kingdom.

4. The Maltese Courts aforementioned admitted as evidence documents not confirmed on oath, in breach of article 6 of the ECHR and article 39 of the Constitution.

5. In UK prisons he would be subjected to inhuman and degrading treatment in breach of articles 2,3, 33 and 36 of the ECHR and the Constitution because of disturbing prison conditions.

Applicant is requesting this Court to declare that:

1. his right to a fair trial in terms of article 39 of the Constitution of Malta and article 6 of the European Convention of Human Rights has been breached.

2. if he is surrendered, found guilty and imprisoned, there would be a breach of article 36 of the Constitution of Malta and article 3 of the European Convention of Human Rights.

3. if he is surrendered, found guilty and imprisoned, there would be a breach of article 33 of the Constitution of Malta and article 2 of the European Convention of Human Rights.

4. the aforementioned judgements of the Court of Magistrates (Malta) and the Court of Appeal 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 revoke them.

5. and to give all those remedies which it may deem fit;

Having noted that The Advocate General pleaded that:

1. applicant's claims are frivolous and vexatious.

2. regarding the 4th claim, Articles 39 of the Constitution and 6 of the ECHR are not applicable in the context of extradition proceedings.

3. the 3rd claim is unfounded because there is no death penalty in the United Kingdom.

4. regarding the 2nd claim, Articles 36 of the Constitution and 3 of the ECHR, applicant did not prove that he would be subject to inhuman and degrading treatment in a UK prison.

5. regarding applicant's 1st claim, in extradition proceedings formalities are reduced to the minimum; the authenticity of documents exhibited is attested by the stamps thereon. These are matters of criminal procedure and not of fair hearing. There is no absolute right to cross-examination;

Having taken cognisance of all the records of the case;

Having heard the oral submissions of defence counsel of both parties;

Having noted the Decree issued on the 29th October 2019 declining request by applicant to impose a time window upon the authorities of the United Kingdom to provide all information in relation to which prison would applicant be held in if returned to the UK and the state of that particular prison;

Having noted that during the same sitting, applicant rested his case whilst respondent declared he had not further evidence to produce. The Court authorised the presentation of written submissions by each party and the case was put off for judgement for today;

Having considered:

That defendants' first plea is that the present application is frivolous and vexatious because it is a repetition of the claims raised before the courts of criminal jurisdiction and this is not a court of third instance. Whilst this assertion is not entirely devoid of truth, applicant raised issues, such as the danger of subjection to inhuman and degrading treatment in UK prisons, which cannot be lightly dismissed as frivolous and vexatious. The first plea is therefore unfounded;

That, regarding the second and fifth pleas, according to various judgements of the European Court¹, extradition proceedings do not involve the 'determination' of an individual's guilt or innocence and therefore do not fall within the provisions of Article 39 of the Constitution or article 6 of the ECHR. This Court (presided by another judge) came to the same conclusion.² The second plea is therefore valid;

That, regarding the third plea, the right to life is not guaranteed merely by the absence of the death penalty in the requesting State. Respondent himself seems to acknowledge this, and in his final note of submissions concedes that Art 2

¹ H v. Spain 15.12.1983; Kirkwood v UK 12.03.1984; Mamatkulov v. Turkey 04.02.2005; Monedero Angola v. Spain 07.10.2008

² Philip Mifsud v. Avukat Generali 23.02.2015 (not appealed)

EHCR not only imposes the negative obligation upon States not to carry out the death penalty, but the positive obligation to protect the right to life and, regarding the matter in issue before this Court, to provide humane prison and detention conditions;

That, regarding the fourth plea, applicant has, in support of his claim that UK prisons lack the standards expected by Articles 2 and 3 of the Convention, produced a number of official government reports by UK public bodies: The Howard League for Penal Reform, The House of Commons, the Ministry of Justice and Her Majesty's Chief Inspectorate of Prisons for England and Wales. Although these were not confirmed on oath, applicant submits in his final note of submissions that these constitute valid evidence, citing in his support a judgement of the Maltese Constitutional Court which took into consideration, as part of the evidence, a report published by an *ex parte witness* even though it was not confirmed on oath³.

That this Court sees no reason to depart from the abovementioned pronouncement of the Constitutional Court and deems the documentary evidence abovementioned, produced by applicant, admissible. Ironically, applicant has demanded the admissibility of this evidence produced by himself whilst at the same time claiming breach of article 6 of the ECHR and article 39 of the Constitution due to the production of documents not confirmed on oath;

That in the course of these proceedings, the Attorney General exhibited, by way of two separate notes, two letters sent to him by Phil Cople; the Director of General (Prisons) HM Prison and Probation Service, dated 29th August 2019 and 18th October 2019⁴. In the first letter, Mr. Cople indicated that if convicted and

³ Angelo Frank Paul Spiteri v L-Avukat Generali 18.07.2017

⁴ marked as DOC AG 1 and DOC AG 2 respectively

sentenced in the UK, it is likely that the applicant would be held in HMP Manchester. In these two letters, Mr. Copple claims that should Mr Guest More be placed in the aforementioned prison, he would be held in acceptable conditions, which do not constitute inhuman and degrading treatment. To sustain his claims, Mr Copple also attached, together with these letters, a number of reports, the most recent of which bears an issue date 4th March 2015. Applicant rebutted, in his final note of submissions, by citing a more recent report, exhibited by him, published in 2017, prepared by the Independent Monitoring Board founded by virtue of the UK Prisons Act 1952, wherein HMP Manchester was described as follows:

“The desire to provide decent, humane, safe accommodation in which prisoners may find a degree of self-respect is extremely difficult to achieve when faced with the squalid, vermin-infested, damp environment more reminiscent of Dickensian England that parts of HMP Manchester are becoming.

Prisoners and staff should not be expected to live and work within such environmentally unhealthy residential premises”;

That to this assertion, the respondent countered that in the assurance given by the Director General (Prisons) of the UK and in so far as the report issued by the Independent Monitoring Board 2017 is concerned, in the declaration dated 29th August 2019 (exhibited as ‘Doc AG 1’) it is stated that:

“Clean and decent living conditions is seen as a priority for HMP Manchester with the Governor and SMT taking personal interest in ensuring that high standards are achieved and maintained. Since the IMB report of 2017 the cells on A, B, C, D and G wings are now fully equipped, and the shower replacement programme has been completed on all but one residential unit. Additional cleaning parties have been put in place to ensure that litter is

collected regularly and there has been an increase in the frequency of pest control contractor visits to assist in the eradication of vermin. Strategic leadership, governance and support of the improvements continue to be provided by the Governor and he is supported by both the Executive Director for Long Term High Security prisons and the PGD. In summary I believe that should Mr Guest More be placed in HMP Manchester he would be held in acceptable conditions, which certainly do not constitute inhuman or degrading treatment”.

This declaration was issued in August 2019; that is, after the Report dated 2017 exhibited by the applicant. In this respect, the respondent submits that the reports exhibited by the applicant were contested by the respondent and declarations were issued by the UK authorities rebutting the same reports exhibited by the applicant. Indeed the declarations made by the UK authorities, which declarations are specific and concern the actual prison where the applicant will be accommodated, weaken the reports submitted as evidence by the applicant. Notwithstanding the reports exhibited by applicant regarding prison conditions in general throughout the UK, from the evidence produced, it does not result that applicant would, if extradited to the UK, be subjected to inhuman and degrading treatment if held in the particular prison in which he is most likely to be detained;

For the above-mentioned reasons, the Court hereby declares and decides to dismiss the Application on the grounds abovementioned, with costs against applicant.

Read and delivered.

THE HON. MR. JUSTICE
GRAZIO MERCIECA