CONSTITUTIONAL COURT

Judges

THE HON. CHIEF JUSTICE JOSEPH AZZOPARDI
THE HON. MR. JUSTICE GIANNINO CARUANA DEMAJO
THE HON. MR JUSTICE ANTHONY ELLUL

Sitting of Friday, 27th March, 2020.

Number: 11

Application Number: 133/19GM

Christopher Guest More

v.

The Attorney General

1. By application filed on the 29th July, 2019 the applicant requested the Civil Court, First Hall to:-

> *"1. Declares that 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.Declares that if Christopher Guest More is surrendered to the United Kingdom in order to be prosecuted for the offences mentinoed in the European Arrest Warrat and possibly found guilt and thus imprisoned, this would amount to a breach of applicant's fundamental huma rights*

as guaranteed by article 36 of the Constitution of Malta and Article 3 of the European Convention of Human Rights;

"3. Declares that if Christopher Guest More 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. Declares that the judgments delivered in the proceedings entitled 'The Poice 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;

"5. To give all those remedies which this Honourable Court may deem fit".

2. The respondent replied.

3. By judgment delivered on the 9th January, 2020 the Civil Court dismissed applicant's application. The Court is reproducing the relevant part of the judgment:-

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

4. On the 14th January, 2020 the applicant filed an appeal from the judgment.

Facts of the case.

5. The applicant is wanted for purposes of prosecution by the judicial authorities of England and Wales to stand trial for allegedly committing criminal offences amongst which are murder, conspiracy to murder, manslaughter, causing grievous bodily harm with intent, conspiring to cause grievious bodily harm with intent, causing grievious bodily harm and false imprisonment.

6. On the 21st May, 2004 a European Arrest Warrant (EAW) was issued by Roy Anderson, District Judge (Magistrates' Courts) (Leeds Magistrates Courts, PO Box 97, Westgate, Leeds). Furthermore, on the 13th May, 2018 a Schengen Information System Alert was issued for the purposes of arrest and surrender or extradition in terms of article 26 SIS II Decision.

7. The applicant was apprehended in Malta and by a decision delivered on the 21st June, 2019 the Court of Magistrates (Malta) ordered the extradition of the applicant.

8. On the 23rd July, 2019 the Court of Criminal Appeal dismissed applicant's appeal, and ordered his surrender to the British Judicial authorites.

9. Applicant is currently in custody awaiting his return to the United Kingdom.

10. By a letter dated 29th August 2019 Phil Copple (Director of General (Prisons) HM Prison and Probation Service) declared that:

> *"Based on the likely trial location in the North West of England and his likely categorisation as Category A prisoner as per Prison Service Instructions (PSI) 09-2015 Initial Categorisation of potential and provisional Category A prisoners (Annex A) it is therefore likely that he would be held in HMP Manchester"*

11. In the letter he confirmed that HMP Manchester has an operational capacity of 1072 places and *"held 992 prisoners on this day"*. He also gave details on the size of the smallest and largest cells in that prison.

12. He also confirmed that if convicted and sentenced, *".... it is most likely that Mr More will be placed into a dispersal prison none of whicha re in the North West of England as that is consistent with his assessed security categorisation and sentence length. None of these prisons are cited in the submission"*.

13. By another letter dated 18th October 2019, the same official gave further information (fol. 285), amongst which is that all prison cells in HMP Manchester are occupied by one prisoner and also catering arrangements. According to

him there are two different types of cells in the unit where the appellant will be placed if sent to HMP Manchester; *"The smallest of which contains an integral toilet is 8.23 m2 and the larger cell has a separate toilet annex and has a total floor space of 10.45m2"*. He also confirmed, based on the likely trial location in the North West of England and his applicant's likely categorisation as Category A prisoner, it was likely that applicant *"... would be held in HMP Manchester"*. Moreover, if convicted and sentenced to prison, it is most likely that applicant would *".... be placed into one of a number of high security prisons (HMP Full Sutton, Frankand, Whitemoor, Long Lartin, Belmarsh and Wakefield). None of these prisons are cited in the submission"*.

Considerations.

14. Appellant complains that if he is surrendered to the requesting country his fundamental right as protected under 3 of the European Convention of Human Rights and article 36 of the Constitution will be breached. Article 3 provides:

> *"No on shall be subjected to torture or to inhuman or degrading treatment or punishment"*.

15. The corresponding provision in the Maltese Constitution is article 36.

16. The European Arrest Warrant is constructed on a basis of mutual trust. The starting point is a presumption that any Member State is able and willing to

fulfil its obligations in the absence of clear, cogent and compelling evidence to the contrary. Article 1 of Framework Decision 2002/584, entitled *'Definition of the European arrest warrant and obligation to execute it'*, provides

> *"1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.*
>
> *"2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.*
>
> *"3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [EU]."*

17. The Framework Decision 2002/584 sought to establish a simplified and more effective system to surrender a person convicted or suspected of having committed a crime, thereby facilitating cooperation in the objective for the European Union to become an area of freedom, security and justice. This is obviously based on trust which must exist between the Member States.

18. This notwithstanding there are exceptional circumstances when limitations may be placed on the principles of mutual recognition and mutual trust. In this respect the Grand Chamber of the European Court of Justice on the 25th July, 2018 in the decision C-216 (preliminary reference), stated:

> *"44. ..... the Court has acknowledged that, subject to certain conditions,* ***the executing judicial authority has the power to bring***

> ***the surrender procedure established by Framework Decision 2002/584 to an end where surrender may result in the requested person being subject to inhuman or degrading treatment within the meaning of Article 4 of the Charter*** *(see, to that effect, judgment of 5 April 2016, Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 104)*
>
> *"For that purpose, the Court has relied, first, on Article 1(3) of Framework Decision 2002/584, which provides that the framework decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Articles 2 and 6 TEU and, second, on the absolute nature of the fundamental right guaranteed by Article 4 of the Charter (see, to that effect, judgment of 5 April 2016, Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 83 and 85)".*

19. In **Ahorugeze v Sweden** (App no. 37074/09) decided on the 27th October, 2011 the European Court of Human Rights noted:

> *"84. It is the settled case-law of the Court that* ***extradition by a Contracting State may give rise to an issue under Article 3****, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. The establishment of such responsibility inevitably involves an* ***assessment of conditions in the requesting country against the standards of Article 3 of the Convention****. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has – as a direct consequence – the exposure of an individual to proscribed ill-treatment (see Soering v. the United Kingdom, judgment of 7 July 1989, Series A no. 161, pp. 35-36, §§ 89-91, and Mamatkulov and Askarov v. Turkey [GC], nos. 46827/99 and 46951/99, ECHR 2005-I, § 67).*
>
> *"85. It would hardly be compatible with the "common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble refers, were a Contracting State knowingly to surrender a person to another State where there were* ***substantial grounds*** ***for believing that he would be in danger of being subjected to torture or inhuman or degrading treatment or punishment*** *(see the above-*

> *cited Soering, pp. 34-35, § 88, and Mamatkulov and Askarov v. Turkey, § 68).*
>
> *"86. In determining whether substantial grounds have been shown for believing that a real risk of treatment contrary to Article 3 exists,* ***the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained proprio motu. If the applicant has not been extradited or deported when the Court examines the case, the relevant time for the assessment of the existence of such a risk will be that of the proceedings before the Court*** *(see Chahal v. the United Kingdom, judgment of 15 November 1996, Reports of Judgments and Decisions 1996-V, p. 1856, §§ 85-86, and Mamatkulov and Askarov v. Turkey, cited above, § 69).*
>
> *"87. Furthermore,* ***ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3****. The assessment of this minimum is, in the nature of things, relative;* ***it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration and its physical or mental effects*** *(see the above-cited Vilvarajah and Others, p. 36, § 107, and Mamatkulov and Askarov v. Turkey, § 70).*

20. In the case **Ananyev v Russia** (Application no. 42525/07) decided on the 10th January, 2012, the European Court of Human Rights confirmed that for the purposes of Article 3 ill-treatment must attain a minimum level of severity, and depends on all circumstances of the case,

> *"139..... such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.....*
>
> *"140. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see Pretty v. the United Kingdom, no. 2346/02, § 52, ECHR 2002-III, with further references)".*

21. Appellant referred to official reports which he claims:

> *"expose the damning conditions of prisons in the United Kingdom in general. In a report published on the 25th of April 2019 by the Ministry of Justice entitled 'Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to March 2019 Assaults and Self harm to December 2018' reveals that 'Annual assault incidents reached a record high of 34,223 incidents in 2018 a 16% increase from 2017. Of the 34,223 incidents, there were 3,918 serious assault incidents, an increase of 2% from the previous year. When speaking of serious assaults applicant is referring to amongst other assaults: sexual assaults, assault requiring outside prison hospitalisation, concussions or internal injuries, fractures and assaults leading to temporary or permanent blindness.*
>
> *"In addition, other reports issued by HM Inspectorate of Prisons expose that 'Overcrowding varies between the functional types of establishments and is highest in male local prisons where 28% of prisoners lived in crowded conditions". In fact the said Inspectorate concluded that too many inmates lived in cells that are far too small with inadequate ventilation. In a briefing paper entitled 'UK Prison Population Statistics' published by the House of Commons on the 23rd of July, 2019 it was divulged that as at May 2019, 62% of prison establishments were overcrowded. In total, overcrowded prisons held 8,700 more prisoners thant the Certified Normal Accomodation of these establishments"*.

22. In his declarations Mr Copple confirmed that if convicted and sentenced to a term in prison, the applicant will most likely be sent to high security prisons "*(HMP Full Sutton, Frankand, Whitemoor, Long Lartin, Belmarsh and Wakefield)".* Although the reports that appellant referred to[1] confirmed various problems in prisons in the United Kingdom (such as deaths, assualts, self harm and overcrowding), no evidence was produced with regards to the prisons mentioned by Mr Copple in his second letter. There is no proof that in any one of the prisons referred to by Mr Copple there are the deficiencies referred to above.

[1] Page 5 of the appeal application.

23. In the appeal application it was also stated that during 2019 a Dutch court[2] refused a request for extradition due to fears of inhuman and degrading conditions in HMP Liverpool prison. The Court notes that no evidence was produced with regards to the conditions in that prison. Furthermore, there is no proof that appellant will be staying there. The same refers to HMP Bedford and HMP Birmingham. Mr Copple himself confirmed that HMP Liverpool is not a Category A prison whereas HMP Birmingham is outside the North West region an *"... so the likelihood of him being housed in these other prisons is remote"* (letter dated 18th October, 2019).

24. As regards to the period of detention in HMP Manchester, the appellant referred to what he describes as a damning report published in 2017 by the Independent Monitoring Board. He referred to that part of the report (**annual report 2016-2017**) published in 2017 by the Independent Monitoring Board. The prison was described as:

> *"... 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"*.

25. Appellant referred to this report in his note of final submissions filed in the Civil Court, First Hall.[3]

[2] Details relating to the case were not provided.
[3] A note filed on the 29th November, 2019.

26. The Independent Monitoring Board is composed of members of the public who monitor the day-to-day life in prison, ensuring that proper standards of care and decency are maintained. Copple's response to the Independent Monitoring Board 2017 report on HMP Manchester is (fol. 262):

> *"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****"*.

27. Mr Copple confirmed that persons detained in the prison will also have the opportunity and are expected to spend a significant part of the day, *"out of their cells engaged in useful activity for example in workshops, classes or other activities"*.

28. With respect to the report of the Independent Monitoring Board which appellant quoted from, there was a subsequent report covering the period 1 March 2017 to 28 February 2018. This is the last report published by the Board that deals with HMP Manchester. A report that is in the public domain, and wherein it is stated that:[4]

[4] In this paragraph those parts of the text that are in italics are extracts taken from the report published by the Independent Monitoring Board.

i. *"The IMB Board at HMP Manchester is satisfied that the prison operates to all relevant regulations and guidelines, and the prison's own locally established principles, in ways which are fair and just to its prisoners"*. Representation of prisoners is encouraged in meetings, and the complaints process is fair.

ii. *"The Board recognise many significant changes within the prison during the reporting period and would congratulate the Governor, his Management Team and prison staff in being able to deliver an effective package of improvements during what has been a very challenging period"*.

iii. *"the treatment of prisoners and the placing of their well-being as a core priority cannot be in any doubt"*.

iv. HMP Manchester supports programmes to prepare prisoners for release ('The Through the Gate' programme).

v. Staff training has been introduced for the introduction of *'body worn cameras'*. Although not all staff have this equipment, an increasing number of staf go on duty wearing the new equipment. This has provided prison officers with more safety, and a drop in violence on staff.

vi. Staff sickness has been recorded at the lowest after much hard work by the Governor and senior managers of HMP Manchester.

vii. Positive drug tests have reduced during the reporting year, by 8%.

viii. Healthcare service (including mental health and social care) is provided by Greater Manchester West NHS Foundation, and described as excellent. Unfortunately, from 23,632 medical appointments booked by prisoners, nearly a quarter of them were recorded as *"did not attend"*. The reasons were not established although they may vary due to staff shortages, court appearances, visits, transfers and exams in education.

ix. Parts of the prisons are in poor conditions; *"7.3 Regular rota visits by Board members have evidenced sustained periods of no heating or hot water for showers on wings, broken tiles in shower cubicles, broken windows and cells not in use due to damage or outstanding repair. Maintenance issues have been a regular factor throughout the prison. When these events did occur, the prison takes emergency steps to rectify the situation where possible. The Board will monitor this in the next reporting period*".

x. Another observation was that there is still a vermin problem, and a lack of decent dining accomodation. With regards to the vermin problem, the Board noted that bins were placed in the prison cells. However, unfortunately the prisoners were throwing food out of the windows of their prison cell.

xi. With regards to safety, the Board said that the majority of prisoners felt safe in the prison and *"raised very few concerns around their own personal safety"*.

xii. HMP Manchester has an inclusive approach in the way it encourages prisoners to engage in discussing their concerns and issues that are based on their wing experiences. There is a constructive joint working between the staff and prisoners. Prisoners also have the opportunity to file complaint forms, although there are times when they are not answered.

xiii. A high standard of education is provided to learners.

xiv. As regards to work opportunities, an increase in prisoner attendance at work was recorded from 53% to 71% in the reporting year.

29. After having reviewed this final report together with the assurances made by Mr Copple in his two letters, the Court certainly cannot conclude that if the appellant spends his pre-trial detention at HMP Manchester, he is at a real risk of suffering inhuman and degrading treatment. Although it is evident that inHMP Manchester there still are matters that need to be addressed in order to improve the living conditions for prisoners, in certain problem areas reasonable progress has been made. Obviously more has to be done, for example with regards to ensuring that all areas are kept clean and food is not thrown out of window cells. This notwithstanding based on the evidence produced the Court is not satisfied that there is sufficient proof to conclude that the conditions of detention will exceed the threshold of severity required by Article 3 of the Convention.The same reasoning applies with regards to Article 36 of the Constitution.

30. Although in the appeal application reference was made to article 2 of the Convention and article 33 of the Constitution (the right to life), no arguments were made in that respect. Furthermore, in the final part of the application no request was made to declare that his extradition to the United Kingdom would breach his fundamental right to life.

31. The second complaint of the appellant relates to article 6 of the European Convention of Human Rights and Article 39 of the Constitution. He argues that article 73A of the Extradition (Designated Foreign Countries) Order (Subsidiary Legislation 276.05) is in breach of the said provisions. In his application he explained that:

> *"Applicant again stresses that it is Article 73A of Subsidiary Legislation 276.05 of the Laws of Malta, i.e. a specific provision relating to extradition law, and not the extradition proceedings themselves which are being challenged under the limb of Article 6 of the ECHR and Article 39 of the Maltes Constitution and therefore the argument that the right to a fair hearing is inapplicable in the context of extradition proceedings cannot be made in the present case"*.

32. For the purposes of this appeal, the relevant part of Article 73A of Subsidiary Legislation 276.05 is sub-article (3) which provides:

> *"A document is duly authenticated if (and only if) one of these applies –*
>
> *"(a) it purports to be signed by a judge, magistrate, anyother judicial authority or an officer of the scheduledcountry;*
> *"(b) it purports to be authenticated by the oath* ***or affirmation of a witness****:*

> *"Provided that subarticles (2) and (3) do not prevent a document that is not duly authenticated from being received inevidence in proceedings under this Order"*.

33. Appellant argues that under the Maltese law of evidence, *".... both from a civil as well as from a criminal law standpoint, witness statements can only be accepted as relevant and admissible evidence* ***if such statements are confirmed by the oath****"*. He contends that the fact that regulation 73A provides that an *'affirmation'* is sufficient, the protection afforded by article 6 of the Convention and article 39 of the Constitution are not guaranteed.

34. However, appellant in his appeal application did not propose any argument with the first court's reasoning, that *".... 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"*.

35. The Court of Criminal Appeal referred to Article 632 of the Criminal Code which distinguishes between the phrase 'to swear' and 'solemnly affirm':

> *"The form of oath to be administered to witnesses shall be the following:*
>
> *You A. B.* ***do swear (or do solemnly affirm)*** *that the evidencewhich you shall give, shall be the truth, the whole truth, andnothing but the truth. So help you God"*.

36. A distinction which is also found in the Affirmations Act (Chapter 245).

37. The Court of Criminal Appeal concluded that:-

> *".... regulation 73A of the Order does not mention solemn affirmation, but refers only to affirmation, which as mentioned above, does not carry the morally binding nature of an oath at Maltese Law.....* ***This Court considers all the witness statements produced in these proceedings as constituting affirmations for the purposes of regulation 73A of the Order****. The witness statements exhibited purport to have been made in England subject to a declaration that the statement is true to the best knowledge and belief of the declarant and that if it is tendered in evidence, he will be liable to prosecution if he shall have wilfully stated in it anything which he knew to be false or did not believ to be true"*.

38. In extradition proceedings the Court is not establishing the innocence or guilt of the requested person. It is the duty of the Court dealing with the extradition proceedings, to decide issues relating to the admissibility of evidence presented in those proceedings, and that is what the Court of Criminal Appeal did.

39. Article 6 of the European Convention provides:

> *"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...*
>
> *"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
>
> *"3. Everyone charged with a criminal offence has the following minimum rights:*
>
> *"(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
>
> *"(b) to have adequate time and facilities for the preparation of his defence;*

> *"(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
>
> *"(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him"*.

40. The extradition proceedings do not involve the determination of a criminal charge. In this respect reference is made to the case of **Trabelsi vs Belgium** (Application no 140/2010) decided on the 4th September, 2014 wherein the European Court of Human Rights stated:-

> *"160. The Court reiterates that extradition proceedings do not involve determining an applicant's civil rights and obligations and do not relate to the merits of any criminal charge against him or her within the meaning of Article 6 § 1 of the Convention (see Raf v. Spain (dec.), no. 53652/00, 21 November 2000; Peñafiel Salgado v. Spain (dec.), no. 65964/01, 16 April 2002; Sardinas Albo v. Italy (dec.), no. 56271/00, ECHR 2004-I; Cipriani v. Italy (dec.), no. 22142/07, 30 March 2010; and Schuchter, decision cited above). Therefore Article 6 § 1 of the Convention is inapplicable to the impugned extradition proceedings.*
>
> *"161. Consequently, this part of the application is incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 35 § 3 a), and must be dismissed in pursuance of Article 35 § 4".*[5]

41. In another case (**Raf vs Spain**, application no. 53652/00 decided on the 21st November, 2000) the applicant argued that article 6(1) had been

[5] See also the Grand Chamber decision in the case **Phillip Harkins vs the United Kingdom** (71537/14) decided on the 15th June, 2017.

breached due to the length of time the extradition proceedings had taken. The European Court of Human Rights held:

> *"..... extradition proceedings do not concern a dispute (contestation) over an applicant's civil rights and obligations or the determination of a criminal charge against him or her within meaning of Article 6 of the Convention".*

42. However, there have been cases where the issue might exceptionally arise in circumstances where the individual would *"113..... **risk suffering a flagrant denial of a fair trial in the requesting country.** The principle was set out in Soering v the United Kingdom (cited above, 113) and has been subsequently confirmed by the Court in a number of cases (see, for instance, Mamatkulov and Askarov, cited above, 90-91)"*. This is certainly not the case under review. Another instance would be where for example it transpires from the evidence produced during the extradition proceedings, that the requested person was subjected to a flagrant unfair trial. Appellant's complaint is not based on such considerations.

43. The Court also notes that the identification of the appellant as the person whose extradition is requested, was not only based on witness statements but also on documents of finger prints which the Court concluded match the finger print images taken from the appellant during the extradition proccedings (vide fol. 105 *et seq*).

For these reasons the Court rejects the appeal filed by the appellant and confirms the judgment delivered by the Civil Court, First Hall on the 10th September, 2019. All costs are at the charge of the appellant.

Joseph Azzopardi Chief Justice	Giannino Caruana Demajo Judge	Anthony Ellul Judge

Deputy Registrar
gr