



FIRST HALL ĊIVIL COURT

(Constitutional Jurisdiction)

JUDGE

HON. JOSEPH R. MICALLEF LL.D.

THIS DAY, Thursday, December 17th 2020

Case No. 11 (Const.)

Applic. No. 83/2015JRM

Glen James SCOTT

VS

L-ONOR. PRIM MINISTRU; L-Avukat Ġenerali, illum imsejjaħ l-Avukat tal-Istat; Il-Kummissarju tal-Pulizija; u Direttur Ġenerali – Qrati ta’ Malta u b’digriet tat-18 ta’ Frar, 2016, Jolanda Drobez interveniet fil-kawża “*in statu et terminis*”

The Court:

Having taken cognizance of the Application filed by Glen James Scott on the 13th of November, 2015, by virtue of which and for the reasons and

arguments therein mentioned, he requested that this Court (a) declare that he has suffered a breach of his fundamental human rights in terms of Article 1, First Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”) and article 37(1) of the Constitution of the Republic of Malta (hereinafter referred to as “the Constitution”) pursuant to the issue of a request raised by the District State Prosecutor of the Republic of Slovenia through a Note¹ dated October 29th 2015 for the seizure of a marine vessel named “*Blondy/Nauti Knights 88*” leased to him and another person, following criminal charges raised against him and the other person in the Courts of the Slovenian Republic and (b) issue such orders and directives as it deems necessary in order to safeguard the full enjoyment of his right in terms of the said Constitution and Convention;

Having seen the decree dated November 17th, 2015, whereby it ordered service upon respondents and set the application for hearing;

Having taken cognizance of the Reply filed jointly by the respondents, save for the Director-General (Courts), on November 30th, 2015, whereby, by way of preliminary pleas, they claim that (a) they are non-suited given that the applicant’s claim relates to a request put forward by the District State Prosecutor of the Republic of Slovenia dated 29th October, 2015, and not to any act or wrong-doing imputed to them; (b) for the reasons stated, insofar as the claim arises from a request put forward by the District State Prosecutor of the Republic of Slovenia, the Court does not enjoy competence to take cognizance of the applicant’s claims; (c) in so far as the claim relates to who has rights on the vessel and owing to the fact that the request put forward by the District State Prosecutor of the Republic of Slovenia is still pending before the Maltese Courts, the Court should refrain from exercising its special “constitutional” and “conventional” jurisdiction, in terms of Article 46(2) of the Constitution and of Article 4(2) of Chapter 319 of the Laws of Malta. As to the merits, and for the reasons stated, respondents deny that applicant has indeed suffered a breach of his rights under article 37 of the Constitution or under Article 1, First Protocol of the Convention;

Having taken cognizance of the Reply filed by the Director-General (Courts) on November 30th, 2015, whereby, by way of preliminary pleas, he submits the first two pleas put forward by the other respondents, namely (a) that he is non-suited, and (b) that the Court lacks jurisdiction to be seised of the case. Furthermore, respondent pleaded that (c) the Court should refrain from exercising its special jurisdiction, owing to the fact that the applicant has not exhausted all the ordinary remedies available to him at law for

¹ Issued under the European Convention on Mutual Assistance in Criminal Matters

a proper defence against the charges proffered against him. As to the merits, respondent denies that applicant has indeed suffered a breach of the rights he claims have been violated;

Having ruled by a decree during the hearing of December 1st, 2015, that all proceedings of this case be heard in English, in terms of article 3 of Chapter 189 of the Laws of Malta, and that judgment will be likewise delivered in English;

Having ruled by a decree *in camera* of December 29th, 2015², and for reasons therein stated, not to uphold the request put forward by the applicant on November 16th, 2015, to grant a provisional or interim remedy relating to the vessel in question;

Having ruled, during the hearing on January 14th, 2016³, that, before proceeding further into the merits, this Court should rule on the validity of the first three preliminary pleas of the respondents in their respective replies;

Having ruled by a decree of February 18th, 2016⁴, on a request to that effect in an application filed by Jolanda Drobez on January 14th, 2016, and for the reasons therein stated, to allow said Jolanda Drobez to intervene in the case “*in statu et terminis*”, and ordered that the records of the case be amended to reflect this change;

Having heard the evidence tendered by the parties, and the documentary evidence produced by them in relation to the three preliminary pleas under review;

Having authorised parties to file their submissions by way of written pleadings;

Having rejected by a decree of November 18th, 2016⁵, and for reasons therein stated, a request put forward by the applicant on October 21st 2016, to attach the records of the proceedings before the Magistrates’ Court to the records of this case;

Having taken cognizance of the Note of Submissions filed by respondents of May 18th, 2017⁶;

² Pg. 43 of the records

³ Pg. 58 of the records

⁴ Pg. 61 of the records

⁵ Pg. 190 of the records

⁶ Pp. 199 – 206 of the records

Having seen the Note of Submissions filed by applicant on the September 29th, 2017⁷, in reply to the Submissions filed by respondents;

Having put off the case for judgment regarding the said preliminary pleas;

Having Considered:

That this case calls into question the claim of a breach of the fundamental right to the peaceful enjoyment of one's possessions as a result of a request submitted by the District State Prosecutor of the Republic of Slovenia to the corresponding Maltese authorities, based on obligations emanating from two conventions on Mutual Assistance in Criminal Matters, to which Malta is signatory. The Slovenian authorities requested the return of a sea-going vessel held in Malta by the applicant, pending pre-trial criminal proceedings against him in Slovenia;

That applicant claims to be **suffering a breach of his fundamental human right to the peaceful enjoyment of his property** due to the fact that he has legal title to the vessel and the allegations that he is subject to criminal proceedings in Slovenia are frivolous, given that he has never been asked to appear before a Slovenian court. He further reiterates that this is purely a civil matter and falls outside the competence of the Court of Magistrates as a court of criminal inquiry;

That respondents rebut these claims by arguing that they are non-suited, and given that the claim arises out of a request put forward by the District State Prosecutor of the Republic of Slovenia, the Court cannot be seised of the matter to take cognisance of the applicant's claims. They further argue that the applicant has not exhausted all the ordinary remedies available to him at law for a proper defence against the charges put forward against him, consequently the Court should refrain from exercising its special "constitutional" and "conventional" jurisdiction, in terms of Article 46(2) of the Constitution and of Article 4(2) of the Convention. As to the merits, respondents deny that applicant has indeed suffered a breach of his rights under the Constitution the Convention;

That as to the relevant facts arising from the records, evidence shows that on April 3rd, 2013⁸, an agreement was entered between Nejc Turizem

⁷ Pp. 211 – 7 of the records

⁸ Docs "JD4" and "JD5" at pp. 56 – 7 of the records

d.o.o., as landlord, and company 88 Holdings Limited, as lessee, in relation to the lease of the vessel “*Blondy/ Nauti Knights 88*” for a period of three years. On the said agreement, 88 Holdings Limited was represented by Jette Scott. Simultaneously, Jette and Glen spouses Scott, entered into a Business Cooperation Agreement with Nejc Turizem d.o.o. whereby, amongst others, it was agreed that the vessel was to be used by the Scotts in Malta. The Scotts were also to effect monthly rental payments, and, after having secured payments above a certain amount, they had the option of acquiring the ownership thereof⁹;

That it results that the Scotts failed to effect punctually the rental payments due for a number of months, while applicant Glen Scott still retained possession of the vessel. This fact was reported by Nejc Turizem to the police authorities in Slovenia and on June 24th, 2015, criminal charges for misappropriation were raised against the Scotts. At some point during 2015, when the vessel was berthed in a Maltese port¹⁰, the vessel’s Slovenian owners proceeded to seize possession thereof;

That on two separate occasions, applicant filed proceedings before the Maltese Civil Court against NEJC Turizem d.o.o. and VBKS Leasing d.o.o for the issue of precautionary warrants of arrest of sea vessels, for the retention of the vessel in Malta, which requests were acceded to. This notwithstanding, since the warrants were not followed by the timely filing of a lawsuit, both warrants lapsed¹¹: the first warrant was withdrawn by the applicant, whilst the second, was rescinded by the Court following an application filed by NEJC Turizem d.o.o. and VBKS Leasing d.o.o. on the ground that the applicant failed to bring the action in respect of the right stated in the warrant within the prescribed period¹²;

That, yet again, applicant filed a third application, this time for the issue of a warrant of prohibitory injunction against NEJC Turizem d.o.o. and VBKS Leasing d.o.o., prohibiting them from removing the said vessel from Malta, however the application was rejected¹³;

That on October 29th, 2015¹⁴, the Slovenian authorities requested legal assistance from the Maltese authorities to return the vessel to Slovenia, and proceedings were instituted by the Police before the Court of Magistrates¹⁵.

That this lawsuit was filed on November 13th, 2015;

⁹ Paġġ. 11 and 12 of the records

¹⁰Evidence of Insp. Christopher Galea Scannura at p. 141 of the records

¹¹ Applications No. 1023/2015 and No. 693/2015

¹² P. 116 of the records

¹³ Application No. 1175/2015SC, pp. 28 to 36 of the records

¹⁴ Pp. 5 to 9 of the records

¹⁵ Evidence of Insp. Christopher Galea Scannura at p. 140 of the records

That as to the legal considerations applicable to this case, it is manifest that applicant bases his claims on the provisions of article 1, First Protocol of the Convention and article 37(1) of the Constitution. Applicant claims that the request by the Slovenian Authorities for legal assistance has breached his rights to the peaceful enjoyment of his possession to the vessel vested in him, and the allegations that he is subject to criminal proceedings in Slovenia are frivolous. He further reiterates that this is purely a civil matter and falls outside the competence of the Court of Magistrates as a Court of Criminal Inquiry;

That respondents, on the other hand, argue that the action filed by the applicant cannot stand for three very relevant reasons: firstly, they are non-suited; secondly, that the Court does not enjoy jurisdiction over the case; and, thirdly, that this Court should abstain from exercising its “special” constitutional jurisdiction in terms of Article 46(2) of the Constitution and Article 4(2) of Chapter 319 of the Laws of Malta since applicant had not exhausted all the other “ordinary” remedies which were and still are available to him to redress any perceived grievances;

That by virtue of **the first preliminary plea**, the respondents raise the question of their standing as the proper defendants to the applicant’s action. The main drift of the respondents’ argument relies on the fact that, what is being challenged in this case is the request submitted by the Slovenian authorities and not an action taken by either of them. In their Note of Submissions¹⁶, they clarify that for this reason, and because it was the State Advocate who acted on the request of the Slovenian authority, the respondent best suited to answer the applicant’s claims is the State Advocate;

The court notes that what the plea raises is the issue of whether the Prime Minister, Commissioner of Police and Director-General (Courts) can be sued in an action of his kind, in other words, whether they are a proper defendants in the action filed by the applicant. The Court does not hesitate to state that such a plea is well-founded. In similar circumstances, it has been stated¹⁷ that: “*14. Fil-kaz odjern il-mertu jikkonċerna l-obbligu internazzjonali tal-Istat Malti naxxenti minn trattat internazzjonali u li l-Istat Malti huwa firmatarju tiegħu, u għalhekk, huwa ċar li l-Istat għandu jkun rappreżentat mill-Avukat Ġenerali, anke tenut kont tal-fatt li l-materja tikkonċerna wkoll l-operat tal-qrati Maltin. Għaldaqstant ma kienx hemm il-ħtieġa li jiġharrek ukoll il-Ministru konvenut biex jirrappreżenta lill-Istat*”;

¹⁶ Note of Submissions of the respondents at p. 201 of the records

¹⁷ Const. 8.4.2019 in the case *Dr Joseph Giglio bhala mandatarju speċjali ta’ Rakhat Shoraz maghruf bhala Rakhat M Aliyev u Elnara Shorazova vs Avukat Ġenerali et*

For the above-mentioned reasons, the Court upholds the respondents' first plea and declares the Prime Minister, Commissioner of Police and Director-General (Courts) to be non-suited to stand as respondents in applicant's action. But holds that the action may proceed against the other defendant, namely the State Advocate, as a proper defendant;

Regarding the **third preliminary plea** raised by the respondents, namely that the Court should refrain from exercising its special jurisdiction, owing to the fact that the applicant had not exhausted all the ordinary remedies available to him at law for a proper defence against the charges proffered against him, respondents suggest remedies, of an administrative and civil nature, which were available to the applicant other than this action. Respondents refer to the action for judicial review under article 469A of the Code of Organisation and Civil Procedure and hold that there was nothing holding the applicant from questioning the legality of the action taken by the local authorities in adhering to the request of the Slovenian Authorities. Alternatively, with a precautionary warrant of arrest of sea vessels at hand, the applicant could have proceeded with instituting an action for damages suffered in bringing the boat back to Malta;

That, on the other hand, applicant rebuts these arguments by claiming¹⁸ that the action of judicial review was not an option given that what is being question is not an administrative act by a public authority but a civil law claim by the party intervening. Furthermore, he claims that any civil proceedings have to be filed in Slovenia and not Malta. Thus, there were no ordinary remedies open to him in Malta;

That when considering whether or not to exercise its exclusive jurisdiction, this Court has to be wary not to relinquish it unless and until it is fully convinced that there exist sufficient reasons which dictate that it should do so, considering that the exercise of such a discretion is an exception to the basic rule and duty of any court to hear and decide any question validly brought to its attention. Nevertheless, such a discretion has been provided for in the basic law of Malta expressly in order to enhance this special and specific jurisdiction, chiefly to protect it from unnecessary recourse where other remedies are available to the aggrieved party;

That the circumstances which a court has to consider before deciding to exercise its discretion not to hear a case on a "constitutional" or "conventional" issue are now well-established in our legal system and this

¹⁸ Note of Submissions p. 216 of the records

Court is refraining from elaborating further other than to refer to judgments pronounced in this regard by the country's highest court¹⁹;

That when it is claimed that an 'alternative ordinary remedy' is available to the aggrieved party, it has to be shown (by the party alleging such remedy) that the remedy referred to is accessible, satisfactory, effective and adequate to address the grievance²⁰. However, it does not have to be shown that a favourable outcome from such a remedy is assured or guaranteed, as long as the manner of achieving it can be pursued in a practical, effective and meaningful manner²¹;

That it considers the arguments raised by respondents as both valid and pertinent to the examination of the current plea. In the Court's opinion, an effective and adequate remedy available to the the applicant was indeed an action for judicial review in terms of section 469A of the Code of Organisation and Civil Procedure, whereby the applicant could request the quashing of the order to have the vessel seized and taken back to Slovenia. The Court does not see the applicant's point in attempting to challenge the "constitutional" effects of his being deprived of possession of the said vessel as a result of the request put forward by the Slovenian authorities, when he could have instituted the proper procedures to challenge the action taken by the local authorities in adhering to the request submitted to it by the Slovenian authorities. For some inexplicable reason which applicant has failed to explain to the Court, the reiterated requests made by applicant himself for the issue and execution of precautionary remedies (which were initially granted) betray the idea that even the applicant had entertained the prospect of pursuing those warrants with the requisite judicial actions, and which he failed to pursue;

That from what this Court understands to be the present situation, the procedures before the Court of Magistrates are as yet under way. This circumstance alone, in the light of the considerations just made, makes the inquiry into the alleged violations suffered by applicant utterly premature and of mere academic value, keeping in mind the specific legal provisions upon which the application relies;

That for the above-mentioned reasons, the Court finds that the third preliminary plea is worthy of consideration and valid and thus ought to be upheld;

¹⁹ Cons. 16.1.2006 in the case *Olena Tretyak vs Direttur tač-Ĉittadinanza u Expatriate Affairs*

²⁰ Cons. 5.4.1991 in the case *Vella vs Kummissarju tal-Pulizija et* (Kollez. Vol: LXXV.i.106)

²¹ F.H. Cons 9.3.1996 in the case *Clifton Borg vs Kummissarju tal-Pulizija* (unpublished)

That in view of this finding, the Court deems that an examination of the **second preliminary plea** would be utterly superfluous because, once the Court is going to abstain from exercising its “constitutional” or “conventional” jurisdiction to examine the merits of the applicant’s claim for a breach of his fundamental right to the peaceful enjoyment of his possessions, there would be no point in examining whether the matter of the request made by the Slovenian authorities falls or otherwise within the jurisdiction of the Maltese Courts;

For the above-mentioned reasons, the Court hereby declares and decides:

To uphold the first preliminary plea raised by respondents and declares the Prime Minister, Commissioner of Police and Director-General (Courts) to be non-suited to stand as respondents in applicant’s action;

To uphold the third preliminary plea raised by the respondents and declares that it is availing itself of its discretion to decline to exercise its “constitutional” and its “conventional” jurisdiction in terms of article 46(2) of the Constitution and article 4(2) of the European Convention Act (Chapter 319), on the basis that the applicant did not exhaust the ordinary remedies available to him to redress his grievance;

To abstain from considering the second preliminary plea, in view of the fact that the Court has upheld the third preliminary plea; and

To dismiss the application on the grounds above-mentioned, **with costs** against applicant, but entirely without prejudice to any remedy which applicant would be entitled to request at the proper time and if the need arises.

Read and delivered

**Hon. Joseph R. Micallef LL.D.,
Judge**

17th December 2020

**Marisa Bugeja
Deputy Registrar**

17th December 2020