

## **Slovenia, Higher Court of Ljubljana, I Kp 34149/2022, appellate, 16 February 2023, ECLI:SI:VSLJ:2023:I.KP.34149.2022**

Member State

 Slovenia

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Topic

mutual trust

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Sector

European Arrest Warrant

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Deciding Court Original Language

Višje sodišče v Ljubljani

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Deciding Court English translation

Higher Court of Ljubljana

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Registration N

VSL Sklep I Kp 34149/2022

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Date Decision

16 February 2023

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ECLI (if available)

ECLI:SI:VSLJ:2023:I.KP.34149.2022

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National Follow Up Of (when relevant)

N/A

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EU legal sources and CJEU jurisprudence

Charter of the European Union on Fundamental Rights, Articles 4, 19, 51.

Petruhhin, C-182/15, 6. September 2016

Aranyosi in C-404/15 and C-659/15 PPU, 5. April 2016

C-220/18 PPU, 25. July 2018

Dorobantu, C-128/18, 15. Oktober 2019

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## ECtHR Jurisprudence

Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 3.

Muršić v. Croatia, 20. Oktober 2016.

Torreggianni and Others v. Italy, 8. January 2013

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## Subject Matter

The Higher Court of Ljubljana has ruled on the request for the extradition of individual A. A. to the Republic of North Macedonia for conducting criminal proceedings related to the offense of abuse of official position and authority. The 1st instance court rejected the extradition and ordered that the foreign national remains in extradition detention due to concerns that torture or inhuman treatment could jeopardize his rights under Article 3 of the European Convention on Human Rights (ECHR). The decision was based on various reports about numerous systemic and general deficiencies in North Macedonia's prisons. These deficiencies included poor management and staff behaviour, lack of qualified personnel, low-quality healthcare for inmates, inadequate material conditions, a lack of purposeful activities for prisoners, as well as instances of inmates reporting insect bites (bedbugs) on exposed parts of their bodies. The Higher Court agreed with the decision to reject the extradition and upheld the decision of the 1st instance court.

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## Legal issue(s)

The primary question revolves around whether the extradition of the individual to the requesting state would constitute a violation of Article 3 of the ECHR as the individual would run a real risk of being subjected to torture, inhumane or degrading treatment or punishment if transferred to the requesting state.

The Court also had to deal with the issue of whether the extradition aligns with European Union standards for safeguarding human rights. This includes assessment of conformity with the EU Guidelines on the Prohibition of Torture and Other Cruel, Inhuman, or Degrading Treatment, and with the CJEU caselaw concerning the protection of the fundamental rights of individuals.

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## Request for expedited/PPU procedures

N/A

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## Interim Relief

N/A

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## National Law Sources

Criminal procedure Act (CPA), Articles 522, 522/1, 522/1-14, 527, 527/1.

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### Facts of the case

The Higher Court of Ljubljana considered a request for the extradition of a foreign national, A.A., to North Macedonia for the purpose of conducting criminal proceedings related to the crime of abuse of official position and authority under Article 353 of the Criminal Code of North Macedonia.

The 1st instance court reviewed this extradition request and decided that it could not be granted. The reason for such a conclusion was the concern that if the foreign national were to be extradited to the Republic of North Macedonia, he could be exposed to inhuman or degrading treatment, due to the poor conditions in the local prisons. The court found systemic and general flaws in these prisons, especially in the KPU Skopje Prison. These deficiencies included overcrowding, inadequate healthcare, poor hygiene conditions, and a likely risk of exposure to torture or inhuman treatment, which would lead to violation of human rights protected at both the international and national level. Due to these findings, the 1st instance court rejected the extradition of A.A. to the Republic of North Macedonia.

The public prosecutor challenged the decision before the Higher Court. She submitted a written opinion opposing to the decision of the 1st instance court to deny the extradition of A.A. to the Republic of North Macedonia. In her opinion the court should have granted the extradition and enforced the request of the Republic of North Macedonia.

After reviewing the public prosecutor's opinion, the response from A.A.'s defence and the contents of the case file, the Higher Court decided to uphold the decision of the 1st instance court.

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### Reasoning (role of the Charter or other EU, ECHR related legal basis)

The legal reasoning behind the decision of the Higher Court of Ljubljana revolves around the question of whether to grant the extradition request of the individual to the Republic of North Macedonia. There was potential for human rights violations in North Macedonian prisons. The decision is based on different legal sources, including the EU Charter, EU legal sources, and the ECHR, which are critical in determining the compatibility of the extradition with fundamental rights protection. The decision also considers other Council of Europe sources to assess North Macedonia's prison conditions.

The Higher court relied on the EU Charter, invoking the CJEU case *Petruhhin* (C-182/15, 6. 9. 2016), where the CJEU ruled that in such cases where a citizen of one EU member state faces potential extradition to a third country and claims a risk of inhuman or degrading treatment there, the provisions of the Charter of Fundamental Rights of the European Union (the Charter) must be considered, particularly Article 4, which prohibits torture or inhuman and degrading treatment.

Firstly, the Higher court found the Slovenian authorities were obliged to assess whether there was a genuine risk of violating Article 3 of the ECHR or Article 4 and 19 of the EU Charter, in case the individual were to be returned to Macedonia. This involved a close scrutiny into the possibility of human rights abuses and the risk of torture or inhumane or degrading treatment, which were

crucial factors in deciding whether the extradition request could be accepted.

Secondly, according to the Higher court, the Slovenian authorities must carefully assess the risk to the individual in the case of returning to the requesting country, especially when it involves a potential violation of human rights or the risk of torture, inhuman or degrading treatment. In this regard, the CJEU applies a two-tiered test established in the *Aranyosi and Caldaru* case (C-404/15 and C-659/15 PPU, 5. 4. 2016):

1. Examine systemic deficiencies: First, national courts must assess whether there are systemic deficiencies in the legal system or conditions in the requesting country that could, by themselves, pose a risk to the individual. However, the systemic deficiencies alone do not necessarily imply that a specific individual will be subjected to torture.
2. Individual risk: National courts must further examine whether there is an individual risk to the person being exposed to torture, inhuman or degrading treatment in their specific case. It is crucial to examine where the individual will be placed and what the conditions are like there. For this purpose, the state must request information from the requesting state.

In this case, the 1st instance court did so. However, Macedonian authorities provided only a very general response, explaining the technical characteristics of prison facilities (KPU Skopje) and giving an assurance that the individual at hand would not be subjected to inhumane or degrading prison conditions. The Higher court found that the 1st instance court considered several reports and findings from different independent experts and organizations, including reports from the European Committee for the Prevention of Torture (CPT). It found that conditions in North Macedonia's prisons are often inadequate and that there is a risk of inhuman or degrading treatment. After the initial unsatisfactory reply, the 1st instance court requested the Macedonian authorities to provide more specific information about the size of the prison cells and the current occupancy rate, but no answer was given. The Higher court rejected the claim of the state prosecutor that the 1st instance court found that the conditions in the KPU Skopje prison were getting better recently. It relied on the most recent reports from the European Commission and of the Helsinki committee for human rights that both found no meaningful change has occurred in the prison conditions from the latest CPT reports of May and July 2021. The Higher court therefore ruled that the Macedonian explanations (assurances) did not dispel doubts and concluded that the individual risk persisted. As a result, the extradition was denied.

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### Relation of the case to the EU Charter

The EU Charter was not merely used to support the reasoning, but it was cited as a legally binding parameter in this case. The Higher Court used the EU Charter to provide legal justification for its decision. The Charter was used to establish the legal obligation to uphold fundamental rights, and it played a central role in the decision to deny extradition to North Macedonia based on the risk of violations of Article 4 and Article 19(2) of the EU Charter.

One thing the court didn't consider when applying EU charter was the individual citizenship. It consistently referred to the individual as a foreigner, which could imply the individual might not be an EU citizen. If the individual was truly an EU citizen, then the Charter indeed applies (as in the *Petruhhin* case), but if the individual was a foreigner from a third country, then the Charter would not be applicable in this case.

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### Relation between the EU Charter and ECHR

The reference to the ECHR and EU Charter in this case served to demonstrate courts' commitment to comprehensive human rights protection, harmonization with international obligations, and a comparative analysis of human rights standards. The decision did not explicitly refer to the relation between the ECHR and the Charter. However, the central role the Higher court accorded to both instruments in this case, implicitly testifies that in the eyes of the Higher court, both international documents provide an equal level of protection and are mutually reinforcing.

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### Use of Judicial Interaction technique(s)

Comparative reasoning with foreign legislation or foreign caselaw and mutual recognition.

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### Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

N/A

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### Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The court particularly focused on ensuring that the decision aligns with Article 3 of the ECHR, which guarantees that every prisoner is held in conditions that respect human dignity, that the mode of execution of the measure does not lead to distress or hardship exceeding the level of suffering inherent in inevitable imprisonment, and that the prisoner's health and well-being are adequately ensured, taking into account the practical requirements of imprisonment. Legal reasoning underlying the decision of the Higher Court in Ljubljana was deeply rooted in the ECHR, the EU Charter, and the case law of both the ECHR and the CJEU. The Court demonstrated its commitment to protecting fundamental rights and ensuring that extradition decisions within the EU are made in full compliance with these fundamental legal instruments.

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### Strategic use of judicial interaction technique (purpose aimed by the national court)

The Higher court used judicial interaction techniques that involved the interpretation and application of fundamental rights written in the EU Charter, particularly in relation to Article 3 ECHR and Article 4 of the Charter. The Court relied on the standards, developed by both supranational courts to assess the conditions in which an individual would be detained in the requesting state of North Macedonia and determined whether those conditions would violate the fundamental rights protected by the EU Charter. The use of these international documents allows for stronger argumentation against the opinion of the state prosecutor than if the Court had only relied on the Constitution. Additionally, it enhances international recognition and legitimacy of the judicial decision and highlight a commitment to universal human rights values.

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### Impact on Legislation / Policy

N/A

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### Notes on the national implementation of the preliminary ruling by the referring court

N/A

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Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

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Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

N/A

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Did the national court take into account national case law on fundamental rights?

N/A

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If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

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Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

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Impact on national case law from the same Member State or other Member States

N/A

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Connected national caselaw / templates

See CJC database:

- Slovenia, Supreme court of the Republic of Slovenia, judgment XI Ips 38913/19, supreme, 18 October 2019, ECLI:SI:VSRS:2019:XI.IPS.38913.2019.1 - <https://cjc.eui.eu/data/data/data?idPermanent=681&trial=1>
  - Slovenia, Administrative Court, Judgment I U 1351/2020, 21 October 2020, ECLI:SI:UPRS:2020:I.U.1351.2020.20 – <https://cjc.eui.eu/data/data/data?idPermanent=527&trial=1>
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Other

N/A

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(Link to) full text

[https://sodnapraksa.si/?q=listin\\*&database\[sovs\]=sovs&database\[iesp\]=iesp&database\[vdss\]=vdss&data](https://sodnapraksa.si/?q=listin*&database[sovs]=sovs&database[iesp]=iesp&database[vdss]=vdss&data)

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Author

Lea Šefarin, University of Ljubljana (UL)

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History of the case: (please note the chronological order of the summarised/referred national

judgments.)

1. District Court in Krško, order no. I Kpd 34149/2022 of 6 July 2022 (not publicly available)
  2. High Court in Ljubljana, order no. I Kp 34149/2022 of 16 February 2023
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