

**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**

Member State

 Slovenia

Topic

mutual trust

Sector

Judicial Interaction Techniques; European Arrest Warrant; Asylum, role of national higher courts.

Deciding Court Original Language

Vrhovno sodišče Republike Slovenije

Deciding Court English translation

Supreme court of the Republic of Slovenia

Registration N

XI Ips 38913/19

Date Decision

18 October 2019

ECLI (if available)

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National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

CJEU judgment C-216/18 PPU of 25 July 2018 (LM case, Celmer case)

ECtHR Jurisprudence

N/A

Subject Matter

Request for extradition, Turkey, membership in an illegal armed organisation, political crime, asylum granted in Germany in 1997, German citizen, grounds for refusal of the extradition request, extradition detention, competence of the Minister of Justice, the courts or both.

Legal issue(s)

The Supreme court had to determine the correct interpretation of domestic law in a case concerning a German national, whose extradition was sought by Turkey. He has been previously granted asylum by Germany. The central issue was whether the courts can review the grounds for non-execution of the extradition request already in the initial phase, when they decide on whether the person should be put in extradition detention, or whether such review is exclusively in the hands of the Minister of Justice.

Request for expedited/PPU procedures

N/A

Interim Relief

N/A

National Law Sources

Constitution, Article 20

Criminal procedure Act (the CPA), Articles 524 (3), 530 (3), 201 (1) (1), 371

Constitutional court, Decision U-I-221/00 of 29 June 2000; Decision Up-899/05 and U-I-304/05 of 10 November 2005.

Facts of the case

The Republic of Turkey has issued an international arrest warrant for the requested person, Mr I.K., a Turkish citizen of Kurdish nationality, for the offence of membership of an illegal armed organisation under Article 168 (2), in conjunction with Articles 31 and 33 of the Turkish Penal Code, No 765 (2), in conjunction with Article 53 of the Turkish Penal Code, No 5237, and Article 5 of the Law on the Prevention of Terrorism. By decision of 5 September 2019, the investigating judge of the District Court of Koper ordered extradition detention against the requested person pursuant to Article 524 (3) of the Criminal Procedure Act (the CPA) on the ground of detention under Article 201 (1) (1) of the CPA (risk of absconding). The Extraordinary Chamber of the District court of Koper dismissed the appeal of the defence counsel of the requested person as unfounded. The defence counsel lodged a request for an extraordinary legal remedy, called the review of legality (sl. zahteva za varstvo zakonitosti) before the Supreme court. The defence counsel argued that Mr. I. K. was granted asylum in the Federal Republic of Germany in 1997 based on the same historical events and legal proceedings in Turkey in 1995 as those referred to in the international arrest warrant. He added that after the arrest of the requested person by the Slovenian security authorities, Interpol deleted the red flag because it considered that the persecution was political or ethnically motivated. The Supreme court agreed with the defence counsel and quashed the decision of the District court of Koper, but did not remand the case thereto for fresh adjudication, since the extradition detention was already terminated before the decision of the Supreme court.

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

The Supreme court (the SC) first outlined the national legislation applicable to the case at hand. Under Article 524(3) of the CPA, the court can deny an extradition detention if it clearly follows from the extradition request that it should not be granted. Actually, it is the authority of the Minister of Justice to deny extradition if the extradition is for a political or military offence, or if there is a likelihood that the person whose extradition is sought would be subjected to torture or inhuman or degrading treatment or punishment in the requesting State (Article 530 (3) of the CPA). However, an interpretation of the national law that would give the power to take into account the grounds for non-execution of the extradition request exclusively to the MoJ and under which the national courts, when they determine the necessity of the extradition detention, would not be able to *prima facie* verify the grounds for refusal of the extradition, would be contrary to the nature of the extradition detention and the Constitution. If such interpretation was adopted, the person could be detained with no prospect of being extradited, meaning no legitimate aim could be attained with the arrest in such a case. This would be contrary to Article 20 of the Constitution (the right to personal liberty). Moreover, the amendment of the CPA (CPA-N), even though not yet applicable, clearly shows that the courts cannot ignore the circumstances, otherwise for the MoJ to verify, when they decide on the extradition detention. Furthermore, the CJEU judgment C-216/18 PPU of 25 July 2018 (LM case, Celmer case) allows under certain circumstances, despite the principle of mutual trust, that the EU member state refuses to transfer a person under the EAW to another EU members state, if there is a risk of violation of fair trial in the requesting state. This means *a fortiori* that the courts should have the right to refuse extradition on the basis of a political crime or the right to asylum to a third country, which seeks to execute the sentence issued in *absentia*. The Supreme court thus established that the courts have the authority under Article 524 (3) of the CPA to refuse/terminate an extradition detention if there are *prima facie* grounds to believe that one of the circumstances later determined by the MoJ under Article 530 (3) are present.

The SC then analysed the reasons for the decision of the investigation judge of the District court of Koper and the Extraordinary chamber of the same court. It found that they both operated under a wrong assumption that it is for the MoJ to verify the grounds for non-extradition and not for the courts when they decide on the extradition detention. Therefore, they were wrong when they concluded that the right to asylum cannot influence the decision on the extradition detention. They also ruled that the person at hand was granted German citizenship and is thus not entitled to asylum any more. Due to the wrong preposition that the review of circumstances for non-execution is exclusively a matter for the MoJ, they ignored the reasons underlying the decision of the German authorities to grant the applicant asylum. These reasons (circumstances) can still apply today and play a paramount role in determining the lawfulness of the extradition detention. Both the investigation judge and the extraordinary chamber also failed to take into account the alleged political nature of the crime due to the wrong interpretation of the relevant domestic law, as was already explained above.

Relation of the case to the EU Charter

The SC does not mention the Charter, even though it was clearly applicable in the case, which concerned a German citizen (a Kurd from originally from Turkey). The SC seems to not be aware of the CJEU jurisprudence in this field (e.g. CJEU, Petruhhin, C-182/15, 6 September 2016).

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

Consistent interpretation

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

N/A

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

The SC refers to the CJEU's LM case (Celmer) as an argument to support its interpretation of the domestic legislation. (see part "reasoning" of this case note). The SC also invokes the caselaw of the Constitutional court for the same purpose.

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

The SC relied on the LM case and the decision of the Slovenian constitutional court to interpret the national law in a human-rights law compliant manner. It bestow upon the ordinary courts the right to refuse extradition detention on the basis of the reasons requiring non-extradition, which was to be determined by the MoJ in a later phase of the extradition procedure. It used the reference to the CJEU and the Constitutional court to strengthen its interpretation and to give it a higher level of legitimacy. At the same time, the SC essentially decided on the question of how the competence should be shared between the executive (the MoJ) and the judiciary in the extradition procedure.

Impact on Legislation / Policy

N/A

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

N/A

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

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

N/A

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

N/A

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

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

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

N/A

Connected national caselaw / templates

See CJC database:

- Slovenia, Higher Court of Ljubljana, I Kp 34149/2022, appellate, 16 February 2023, ECLI:SI:VSLJ:2023:I.KP.34149.2022 – <https://cjc.eui.eu/data/data/data?idPermanent=678&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

(Link to) full text

[http://www.sodnapraksa.si/?q=id:2015081111433444&database\[SOVS\]=SOVS&database\[IESP\]=IESP&d](http://www.sodnapraksa.si/?q=id:2015081111433444&database[SOVS]=SOVS&database[IESP]=IESP&d)

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

1. Investigation judge of the District court of Koper, order of 5 September 2019 (not publicly available)
 2. Extraordinary chamber of the District court of Koper, order of ? (not publicly available)
 3. Supreme court of the Republic of Slovenia, judgment XI Ips 38913/19 of 18 October 2019
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