

1979 May 19

[TRIANTAFYLIDIS, P.]

MICHAEL NICOLAOU LEOTSAKOS,

Applicant.

v.

1. THE MINISTER OF JUSTICE

2. THE DIRECTOR OF THE CENTRAL PRISONS,

Respondents.

(Application No. 17/79).

Extradition—Habeas Corpus—Fugitive—Circumstances rendering extradition unjust or oppressive—Greek subject convicted of two offences and sentenced to imprisonment in Greece—Detention order relating to his extradition—Section 9(2) of the Extradition of Fugitive Offenders Law, 1970 (Law 97/70)—Application for discharge on ground of trivial nature of said offences, on ground that accusations were not made in good faith or in the interests of justice and on ground that charges he is facing in Cyprus have not been disposed of or withdrawn—Sections 10(3)(1) and (c) and 11(2)(b) of the said Law—Fact that applicant was convicted and sentenced in his absence not sufficient to establish that he was charged in bad faith or in a manner which was not in the interests of justice—Prerequisites envisaged by said section 10(3)(a) and (c) not existing—Not open to Court to find that extradition of applicant would, having regard to all circumstances, be unjust or oppressive for any other reason—Because the finding that the extradition would amount to an unjust or oppressive measure must be related to one of the grounds set out in section 10(3)(a)(b) and (c)—Nolle prosequi entered in relation to each charge applicant is facing in Cyprus—Such charge to be treated as having been withdrawn—Application dismissed.

On March 19, 1979, the applicant, a Greek subject, was detained at the Central Prisons, in Nicosia, by virtue of an order made by the District Court of Limassol, under section 9(2) of the Extradition of Fugitive Offenders Law, 1970 (Law 97/70), in the course of

proceedings, under the said Law, for his extradition to Greece, where he is due to serve a sentence of eighteen months' imprisonment, which has been passed upon him for fraud, and a sentence of five months' imprisonment which has been passed upon him for escaping from lawful custody. On April 13, 1979, he applied for his release from such detention, through an application for an order of Habeas Corpus, under section 10* of the above Law. He relied on paragraphs (a) and (c) of subsection (3) of section 10**, and has contended, respectively, that the offences of which he has been convicted are of a trivial nature and that the relevant charges which were preferred against him in Greece amount to accusations which were not made in good faith or in the interests of justice, and that, consequently, his extradition would, having regard to all the circumstances, be an unjust or oppressive measure. He, further, contended that his extradition is precluded because of the provisions of paragraph (b) of subsection (2) of section 11 of the said Law which reads as follows:

- “ (2) An order of extradition shall not be made, under this section, in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence in the Republic, until—
- (a)
- (b) in the case of a person charged with an offence, the charge is disposed of or withdrawn and, any sentence of imprisonment that may have been passed upon him has been served (not being a suspended sentence) ”

Held, dismissing the application, (1) that the offences, in respect of which the applicant has been sentenced, cannot be treated as being of a trivial nature in the sense of section 10(3)(a) of Law

* Quoted in full at pp 280-82 *post*

** Section 10(3)(a) and (c) reads as follows

“(3) On any such application the Supreme Court may, without prejudice to any other jurisdiction of it, order the discharge from custody of the person under extradition, if it decides that—

- (a) by reason of the trivial nature of the offence of which he is accused or was convicted, or
- (b)
- (c) because the accusation against him was not made in good faith or in the interests of justice, his extradition would be, having regard to all the circumstances, an unjust or oppressive measure ”

97/70; that it has not been established that the accusations, in respect of which the applicant has been convicted and sentenced, were not made against him in good faith or in the interests of justice; and that, in this respect, it cannot be accepted that the fact that the applicant was convicted and sentenced in his absence is sufficient to establish that the applicant was charged in bad faith or in a manner which was not in the interests of justice, especially as there is nothing to show that he was convicted and sentenced in absentia in a manner which conflicted with the relevant provisions of Greek Law.

(2) That once the prerequisites envisaged by paragraphs (a) and (c) of subsection (3) of section 10 of Law 97/70 have not been shown to exist it is not really open to this Court to find that the extradition of the applicant would, having regard to all the circumstances, be unjust or oppressive for any other reason, such as the fact that there are pending in Cyprus civil proceedings against him because, in view of the way in which section 10(3) is drafted, it seems that the finding that the extradition would amount to an unjust or oppressive measure must be related to one of the grounds set out in the three paragraphs—(a),(b) and (c)—of subsection (3); and that, accordingly, the first contention of the applicant must fail.

(3) That in relation to each charge that the applicant was facing in Cyprus there has been entered a nolle prosequi; that, consequently, such charge may properly be treated as having been withdrawn, in the sense that it is no longer pending against the applicant; that, thus, it cannot be held that the provisions of paragraph (b) of subsection (2) of section 11 of Law 97/70 preclude, at present, the extradition of the applicant; and that, accordingly, the second contention of applicant must be dismissed.

Application dismissed.

Cases referred to:

- R. v. Governor of Pentonville Prison, ex parte Teja* [1971] 2 All E.R. 11 at pp. 22-23;
- Union of India v. Manohar Lal Narang and Another, Union of India v. Omi Prakash Narang and Another* [1977] 2 All E.R. 348 at pp. 361-362;
- Kakis v. Government of the Republic of Cyprus and Others* [1978] 2 All E.R. 634.

Application.

Application for an order of Habeas Corpus directing the release of the applicant from the Central Prisons, Nicosia, where he is being detained by virtue of an order made by the District Court of Limassol, under section 9(2) of the Extradition of Fugitive Offenders Law, 1970 (Law 97/70), in the course of proceedings, under the said Law, for his extradition to Greece.

E. Vrahimi, for the applicant.

V. Aristodemou, Counsel of the Republic, for the respondents.

Cuv. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. By means of the present application the applicant seeks an order of Habeas Corpus, which this Court is empowered to grant under Article 155.4 of the Constitution, as well as under section 10 of the Extradition of Fugitive Offenders Law, 1970 (Law 97/70).

The applicant, who is a Greek subject, is being detained at the Central Prisons, in Nicosia, by virtue of an order made by the District Court of Limassol, on March 29, 1979, under section 9(2) of Law 97/70, in the course of proceedings, under the said Law, for his extradition to Greece, where he is due to serve a sentence of eighteen months' imprisonment, which has been passed upon him for fraud, and a sentence of five months' imprisonment, which has been passed upon him for escaping from lawful custody.

His detention is lawful, being envisaged, *inter alia*, by Article 11.2(f) of the Constitution. The applicant has, however, sought to secure, by means of the present proceedings, his release from such detention by relying on the provisions of section 10 of Law 97/70, which read as follows:—

“ 10.—(1) Τὸ Δικαστήριον, ἐν πάσῃ περιπτώσει, καθ' ἣν ἤθελε διατάξει τὴν κράτησιν τοῦ ὑπὸ ἐκδοσιν προσώπου δυνάμει τοῦ ἀρθροῦ 9, θέλει πληροφορήσει ἅμα τὸν ἐνδιαφερόμενον, εἰς κοινὴν γλῶσσαν, περὶ τοῦ δικαιώματος αὐτοῦ ὅπως ὑποβάλλῃ αἴτησιν διὰ habeas corpus πρὸς τούτοις δὲ ἀμελλητί κοινοποιήσῃ τὴν τοιαύτην ἀπόφασιν τῷ Ὑπουργῷ.

(2) Πρόσωπον, οὗτινος διετάχθη ἡ κράτησις δυνάμει τοῦ ὡς εἴρηται ἀρθροῦ 9 δὲν δύναται δυνάμει τοῦ παρόντος Νόμου νὰ ἀποδοθῇ εἰς τὸ Κράτος ἢ τὴν χώραν, ἥτις ἠτήσατο τὴν ἐκδοσιν αὐτοῦ —

(α) ἐν πάσῃ περιπτώσει, μέχρις οὗ παρέλθῃ διάστημα δεκαπέντε ἡμερῶν ἀπὸ τῆς ἡμέρας, καθ' ἣν ἐξεδόθη τὸ περὶ ἐκδόσεως διάταγμα·

5 (β) ἐν ἣ περιπτώσει ἤθελεν ὑποβληθῆ αἴτησις διὰ habeas corpus ἐφ' ὅσον ἐκκρεμῆ ἢ ἐξέτασις τῆς ὑποβληθείσης αἰτήσεως.

(3) Τὸ Ἀνώτατον Δικαστήριον, ἐπιλαμβανόμενον τῆς τοιαύτης αἰτήσεως, δύναται, μὴ ἐπιηραζομένης οἰασδῆποτε ἐτέρας δικαιοδοσίας αὐτοῦ, νὰ διατάξῃ τὴν ἀποφυλάκισιν τοῦ ὑπὸ ἐκδοσιν προσώπου, ἐφ' ὅσον ἤθελε κρίνει ὅτι -

10 (α) λόγῳ τῆς ἀσημάντου φύσεως τοῦ ἀδικήματος, δι' ὃ διώκεται ἢ κατεδικάσθη· ἢ

15 (β) λόγῳ τῆς παρόδου μακροῦ χρόνου, ἀφ' οὗ ἐγένετο ἢ διαπραχθῆς τὸ ἀδικήμα, ἢ, ἀναλόγως τῆς περιπτώσεως, ἀφ' οὗ καταζητεῖται πρὸς ἐκτίσιν ποινῆς μετὰ καταδίκην αὐτοῦ· ἢ

20 (γ) λόγῳ τοῦ ὅτι ἢ κατ' αὐτοῦ κατηγορία δὲν ἐγένετο καλῆ τῆ πίστει ἢ ἐν τῷ συμφέροντι τῆς δικαιοσύνης ἢ ἀπόδοσις αὐτοῦ θὰ ἀπετέλει, λαμβανομένων ὑπ' ὄψιν ἀπασῶν τῶν περιστάσεων, ἀδικον ἢ καταπιεστικὸν μέτρον.

25 (4) Τὸ Ἀνώτατον Δικαστήριον, ἐπιλαμβανόμενον οἰασδῆποτε τοιαύτης αἰτήσεως, δύναται νὰ δεχθῆ συμπληρωματικὰ ἀποδεικτικὰ στοιχεῖα, σχετιῶν πρὸς τὴν ἀσκήσιν τῆς δικαιοδοσίας αὐτοῦ δυνάμει τοῦ ἀρθροῦ 4 ἢ δυνάμει τοῦ ἐδαφίου (3) τοῦ παρόντος ἀρθροῦ.

30 (5) Διὰ τοὺς σκοποὺς τοῦ παρόντος ἀρθροῦ, ἡ διαδικασία διὰ τὴν ἐξέτασιν αἰτήσεως ὑποβληθείσης διὰ τὴν ἐκδοσιν habeas corpus λογίζεται ἐκκρεμοῦσα μέχρις οὗ ἐκδικασθῆ ἢ κατ' αὐτῆς τυχὸν ἀσκηθεῖσα ἔφεσις, ἢ παρέλθῃ ἄπρακτος ἢ προθεσμία, ἐν ἣ δύναται νὰ ἀσκηθῆ τοιαύτη ἔφεσις, ἢ, ἐφ' ὅσον ἀπαιτεῖται ἄδεια διὰ τὴν ἀσκήσιν ἐφέσεως, ἢ προθεσμία ἐν ἣ δύναται νὰ αἰτηθῆ ἢ παροχὴ τῆς τοιαύτης ἀδείας "

35 ("10.-(1) The Court in every case where a person to be extradited is committed to custody under section 9, shall inform immediately such person, in ordinary language, of his right to make an application for habeas corpus and

moreover shall forthwith communicate its relevant decision to the Minister.

(2) A person committed to custody under the said section 9 cannot be extradited under this Law to the State or Country which has requested his extradition— 5

- (a) in any case, until the expiration of a period of fifteen days beginning with the day on which the order for his extradition was made;
- (b) if an application for habeas corpus is made, so long as proceedings on that application are pending. 10

(3) On any such application the Supreme Court may, without prejudice to any other jurisdiction of it, order the discharge from custody of the person under extradition, if it decides that— 15

- (a) by reason of the trivial nature of the offence of which he is accused or was convicted; or
- (b) by reason of the passage of long time since the commission of the offence, or, as the case may be, since he has become a wanted person in order to serve his sentence after having been convicted; or 20
- (c) because the accusation against him was not made in good faith or in the interests of justice, his extradition would be, having regard to all the circumstances, an unjust or oppressive measure. 25

(4) On any such application the Supreme Court may receive additional evidence relevant to the exercise of its jurisdiction under section 4 or under subsection (3) of this section.

(5) For the purposes of this section the proceedings in an application for habeas corpus shall be treated as pending until any appeal in those proceedings is disposed of or until the expiration of the time within which such an appeal may be brought, or, when leave to appeal is required, of the time within which such leave may be applied for”). 30 35

Counsel for the applicant has relied, in particular, on para-

graphs (a) and (c) of subsection (3) of section 10, above, and has contended, respectively, that the offences of which the applicant has been convicted are of a trivial nature and that the relevant charges which were preferred against him in Greece amount to
5 *accusations which were not made in good faith or in the interests of justice*, and that, consequently, his extradition would, having regard to all the circumstances, be an unjust or oppressive measure.

10 Law 97/70 appears to be modelled, to a considerable extent, on the Fugitive Offenders Act, 1967, in England (see Halsbury's Statutes of England, 3rd ed., vol. 13, p. 286) and was enacted soon after there had been ratified the European Convention on Extradition, by means of the European Convention on Extradition (Ratification) Law, 1970 (Law 95/70).

15 I cannot agree that the aforementioned offences, in respect of which the applicant has been sentenced, as was already stated, to terms of imprisonment of eighteen and five months, respectively, can be treated as being of a trivial nature in the sense of section 10(3)(a) of Law 97/70.

20 Nor can I agree that it has been established that the accusations, in respect of which the applicant has been convicted and sentenced, were not made against him in good faith or in the interests of justice; and, in this respect, I cannot accept that the fact that the applicant was convicted and sentenced in his absence is sufficient to establish that the applicant was charged in
25 bad faith or in a manner which was not in the interests of justice, especially as there is nothing to show that he was convicted and sentenced in absentia in a manner which conflicted with the relevant provisions of Greek Law.

30 Once the prerequisites envisaged by paragraphs (a) and (c) of subsection (3) of section 10 of Law 97/70 have not been shown to exist it is not really open to me to find that the extradition of the applicant would, having regard to all the circumstances, be unjust or oppressive for any other reason, such as the fact that
35 there are pending in Cyprus civil proceedings against him; because, in view of the way in which section 10(3) is drafted, it seems that the finding that the extradition would amount to an unjust or oppressive measure must be related to one of the grounds set out in the three paragraphs—(a), (b) and (c)—of
40 sub-section (3).

In this respect, it is to be noted that section 10(3) of Law 97/70 corresponds closely to section 8(3) of the Fugitive Offenders Act, 1967, in England, and in *R. v. Governor of Pentonville Prison, ex parte Teja*, [1971] 2 All E.R. 11, Lord Parker C.J. said (at pp. 22-23) the following:-

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“ Finally one comes to s. 8(3). That provides:

‘ On any such application the High Court or High Court of Justiciary may, without prejudice to any other jurisdiction of the Court, order the person committed to be discharged from custody if it appears to the Court that—(a) by reason of the trivial nature of the offence of which he is accused or was convicted; or (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or (c) because the accusation against him is not made in good faith in the interests of justice, it would, having regard to all the circumstances, be unjust or oppressive to return him.’

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The only ground on which it is suggested that this Court should act is by reason of the passage of time since the applicant is alleged to have committed the offences.

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What counsel for the applicant says is that, although the ground for discharging the applicant must be by reason of the passage of time, yet in deciding whether it would be unjust or oppressive to return him on that ground, one must consider all the circumstances; and the circumstances which he prays in aid here are not only the proceedings and decision of the Supreme Court in Costa Rica, but also the fact of this continuous adverse comment by Ministers and press alike of the applicant’s conduct from 1966 right up to date. He says that there is a real danger that, in the light of the publicity given, even, one would think, publicity which would amount in this country to contempt of Court, he will not have or may not have a fair trial, and, accordingly, that that is a circumstance which this Court should take into consideration in saying whether by reason of the passage of time it would be unjust or oppressive to return him.

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.....

I would only add that, as it seems to me, the wording of

5 s. 8(3) is very much narrower in its ambit than s. 10 of the Fugitive Offenders Act 1881, and I very much doubt that one is entitled to take into consideration as part of the circumstances anything which does not flow from or is unconnected with the passage of time. At the end of the day, having considered all the circumstances, it is only when by reason of the passage of time that it is thought unjust or oppressive to return the applicant”.

10 *In Union of India v. Manohar Lal Narang and another, Union of India v. Omi Prakash Narang and another*, [1977] 2 All E.R. 348, Viscount Dilhorne said (at pp. 361-362):-

15 “ Whether the application to the Court under s. 8(3) be on the ground of the triviality of the offence or of the passage of time or of mala fides, the Court is required to have regard to all the circumstances. In my opinion this can only mean circumstances relevant to the particular ground or grounds on which the application for release is based. Where that is sought by reason of the trivial nature of the offence, only circumstances relevant to the nature of the offence are to be regarded; for to order a person’s release on that ground it must appear to the Court that it would be unjust or oppressive to return him by reason of the trivial nature of the offence and not for any other reason. Where the application is, as it was in this case, on the ground that it was unjust or oppressive to return him by reason of the passage of time, I agree with Slynn J. that the circumstances to which regard may be had must be relevant to the question whether or not it would be unjust or oppressive to return a person because of the passage of time. (See also per Lord Parker C.J. in *R. v Governor of Pentonville Prison, ex parte Teja*¹).

35 It was argued for the applicants that the trivial nature of the offence, the passage of time and mala fides were ‘gateways’ and once through a gateway, the Court, after having regard to all the circumstances, could order the discharge of a fugitive if any circumstances existed which would render his return unjust or oppressive. In my opinion the language of s. 8(3) does not permit of any such interpretation. It does not say that where the offence is trivial, where there

¹ [1971] 2 All E.R. 11 at 23.

has been passage of time and where there has been lack of good faith, the Court can order the discharge if it appears that there are any grounds for concluding that his return would be unjust or oppressive. It can only do so by reason of triviality, passage of time or bad faith. If this contention is right, then the omission of the words 'or otherwise' has little significance and the power of the Court remains similar to that it had under the 1881 Act, despite the change of wording. I do not think this contention well founded and I reject it."

The *Teja* and *Narang* cases, *supra*, were referred to by the House of Lords in England in the later case of *Kakis v. Government of the Republic of Cyprus and others*, [1978] 2 All E.R. 634.

Counsel for the applicant has argued, also, that the extradition of her client is precluded because of the provisions of paragraph (b) of subsection (2) of section 11 of Law 97/70, which reads as follows:-

("11.-(1).

(2) Καθ' ὅσον ἀφορᾷ εἰς πρόσωπον, ὅπερ ἐκτίει ποινὴν φυλακίσεως ἢ κρατήσεως ἢ διώκεται δι' ἀδίκημά τι ἐν τῇ Δημοκρατίᾳ, δὲν δύναται νὰ ἐκδοθῆ, δυνάμει τοῦ παρόντος ἄρθρου, διάταγμα ἐκδόσεως, μέχρις οὗ -

11.-(1)

(α)

(β) ἐν δὲ τῇ περιπτώσει προσώπου διωκομένου δι' ἀδίκημά τι, ἐκδικασθῆ ἢ ἀποσυρθῆ ἢ κατ' αὐτοῦ προσαφθεῖσα κατηγορία καὶ ἐκτίσῃ τὴν τυχόν ἐπιβληθεῖσαν αὐτῷ ποινὴν φυλακίσεως (οὐχὶ ἐπ' ἀναστολῆς) "

("(2) An order of extradition shall not be made, under this section, in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence in the Republic, until-

(a)

(b) in the case of a person charged with an offence, the charge is disposed of or withdrawn and, any sen-

