

1983 April 5

[TRIANTAFYLIDES, P.]

IN THE MATTER OF AN APPLICATION BY ALBERT
BANTING FOR AN ORDER OF HABEAS CORPUS AND
FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI.
(Application No. 9/83).

*Habeas Corpus—Extradition—Remand into custody for purposes
of extradition—European Convention on Extradition (Ratification)
Law, 1970 (Law 95/70) and the Extradition of Fugitive Offenders
Law, 1970 (Law 97/70)—An order of habeas corpus could be
5 sought even if the detention was not ordered under section 9(5)
of Law 97/70—Article 11.2(f) and (7) of the Constitution.*

Following his remand into custody, by the District Court
of Paphos, for the purpose of his extradition, under the provi-
sions of the European Convention on Extradition (Ratification)
10 Law, 1970 (Law 95/70) and the Extradition of Fugitive Offenders
Law, 1970 (Law 97/70), the applicant sought an order of habeas
corpus on the ground that the remand was invalid.

Counsel for the Republic raised the preliminary objection that
the application was premature because it was only when a
15 person has been deprived of his liberty under the provisions of
section 9(5) of Law 97/70 that an application for habeas corpus
may be made, under section 10 of Law 97/70, in proceedings
for extradition; and it was common ground that at present the
detention of the applicant was not based on an order made
20 under the said section 9(5).

On the preliminary objection:

Held, that an order of habeas corpus could be sought even
if the detention was not ordered under section 9(5) of Law 97/70
(see Article 11.2(f) and (7) of the Constitution); accordingly
25 the preliminary objection cannot be sustained.

Order accordingly.

Cases referred to:

Kyriakides v. Republic, 1 R.S.C.C. 66 at p. 75.

Application.

Application for an order of habeas corpus by Albert Banting following his committal to custody awaiting extradition by a Judge of the District Court of Paphos and for leave to apply for an order of certiorari.

5

Ph. Valiantis with *Chr. Christofides*, for the applicant.

M. Photiou, for the Republic.

Cur. adv. vult.

TRIANTAFYLIDIS P. read the following judgment. By this application there is being sought, inter alia, an order of habeas corpus on the ground that an order which was made by the District Court of Paphos on the 29th March 1983 and by means of which the applicant was remanded into custody for the purpose of his extradition, under the provisions of the European Convention on Extradition (Ratification) Law, 1970 (Law 95/70), and the Extradition of Fugitive Offenders Law, 1970 (Law 97/70), is invalid.

10

15

After I had heard counsel for the applicant and when counsel for the Republic was commencing his address he raised the preliminary objection that this application is premature because, as he has argued, it is only when a person has been deprived of his liberty under the provisions of section 9(5) of Law 97/70 that an application for habeas corpus may be made, under section 10 of Law 97/70, in proceedings for extradition; and it is common ground that at present the detention of the applicant is not based on an order made under the said section 9(5).

20

25

In view of the nature of these proceedings I thought it fit to afford immediately to counsel for the applicant an opportunity to reply to the aforesaid preliminary objection of counsel for the respondent; and after having thus heard both counsel I have reached the conclusion that the objection of counsel for the respondent cannot be sustained:

30

I am of the view that an order of habeas corpus could be sought even if the detention was not ordered under section 9(5), above. But, in any case, the detention of the applicant would only be treated as being compatible with the Constitution if it is the detention of a person who is an alien and against whom action is being taken for the purpose of extraditing him as

35

envisaged by Article 11.2(f) of the Constitution; and, at this stage, irrespective of whether or not the sub-judice remand order is otherwise invalid, I have to assume—as nothing has been submitted to the contrary—that the detention of the applicant
5 is of such a nature as to come within the scope of the said Article 11.

Once, however, the detention of the applicant is to be regarded as coming within Article 11 then due effect has to be given to paragraph 7 of such Article 11, which provides that “every
10 person who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a Court and his release ordered if the detention is not lawful”.

It is correct that in the said paragraph 7 it is not specified
15 what is the remedy to be sought by way of “proceedings”, but I have no doubt in my mind that one kind of such proceedings is an application for an order of habeas corpus under Article 155.4 of the Constitution, such as this application (see, inter alia, in this respect, too, *Kyriakides v. The Republic*, 1
20 R.S.C.C. 66, 75).

Therefore, I do not think that the present application, even assuming—though this is not so—that it could not be made under section 10 of Law 97/70, cannot be entertained on the
25 ground that it is premature.

Application dismissed.