EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 5380/12
Melvin WEST
against Hungary

The European Court of Human Rights (Fourth Section), sitting on 25 June 2019 as a Chamber composed of:

Jon Fridrik Kjølbro, *President,*
Faris Vehabović,
Paul Lemmens,
Iulia Antoanella Motoc,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 18 January 2012,

Having regard to the partial decision of 14 April 2015,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the fact that the Government of the United Kingdom did not exercise their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1),

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Melvin West, is a British national, who was born in 1956 and lives in Loughton. He was represented before the Court by Mr G. Magyar, a lawyer practising in Budapest.

2. The Hungarian Government ("the Government") were represented by their Agent, Mr Z. Tallódi, Agent, Ministry of Justice.

A. The circumstances of the case

3. The applicant was born in 1956 and lives in Loughton in the United Kingdom.

4. The applicant, at the time using the name Melvin Nelson Perry, stole rare and ancient maps from the French National Library in Paris, France (on 26 October 1999 and 5 September 2000), the Széchényi National Library in Budapest, Hungary (between 16 and 18 August 2000) and the University Library in Helsinki, Finland (between 22 and 26 February 2001).

5. In Finland, the Helsinki District Court sentenced him to eighteen months' imprisonment on 4 September 2001. The Helsinki Court of Appeal upheld the judgment on 31 May 2002. Following the first-instance judgment the applicant returned to the United Kingdom.

6. In France, the Paris *Tribunal de grande instance* sentenced the applicant to three years' imprisonment on 15 February 2007. The judgment was adopted *in absentia*, following an unsuccessful attempt in 2005 to secure (by the means of a European arrest warrant issued by the French authorities on 14 March 2005) the presence of the applicant, who was at that time in detention in the United Kingdom.

7. On 31 August 2007 the French authorities issued a new European arrest warrant for the purposes of executing that custodial sentence.

8. On 9 December 2009 the competent Finnish authority issued a European arrest warrant against the applicant for the purposes of executing the remaining seventeen months of his custodial sentence. The request made it clear that under Finnish law, the statute of limitations required that he start serving his sentence before 30 May 2012.

9. On 1 April 2010 a third European arrest warrant was issued against the applicant, this time by the Hungarian authorities for the purposes of criminal proceedings instituted against him in Hungary.

10. On 17 September 2010 the applicant was arrested in the United Kingdom. Upon an analysis of his fingerprints, it was established that he had another identity under the name Mark Rowley. In execution of the European arrest warrant issued by the Hungarian judicial authorities, he was surrendered to Hungary on 8 December 2010. That surrender was not made subject to any conditions.

11. In Hungary, the applicant identified himself with a passport issued in the name of Melvin West. An analysis of his fingerprints showed that he was the same person as Melvin Nelson Perry and Mark Rowley.

12. The applicant appeared before the Buda Central District Court, which ordered his pre-trial detention for one month on 10 December 2010. The Budapest Regional Court upheld the first-instance decision on 13 December 2010.

13. On 27 December 2010 the Budapest Regional Court held a hearing concerning the applicant's surrender pursuant to the European arrest

warrants issued by the French and Finnish authorities. It ordered the applicant's "temporary transfer detention" (*ideiglenes átadási letartóztatás*) with the proviso that the measure would be applied at the end of the applicant's pre-trial detention – or, potentially, at the end of his detention after conviction – in Hungary and should be terminated if the European arrest warrants are not received in 40 days.

14. On 4 January 2011 the Buda Central District Court extended the applicant's pre-trial detention until 10 April 2011. The Budapest Regional Court upheld the decision on 10 February 2011.

15. Since the originals of both the French and Finnish European arrest warrants had meanwhile arrived in Hungary, on 27 January 2011 the Budapest Regional Court changed the applicant's postponed "temporary transfer detention" to ordinary "transfer detention" (*átadási letartóztatás*) and also ordered his "postponed surrender" (*halasztott átadás*) to Finland, within ten days of the end of his detention in Hungary.

16. The Regional Court considered that the postponement was justified by the interests of the on-going Hungarian prosecution. It moreover decided to give priority to the execution of the Finnish request, because in France the applicant (having been convicted *in absentia*) could still be retried, with the retrial taking place either during the execution of the Finnish sentence (by means of temporary surrender) or subsequent to it. It dismissed as irrelevant the applicant's argument that he had close ties with the United Kingdom and his wish to serve his sentences in that country. It pointed out that he would have the opportunity to request a transfer to the United Kingdom to serve his sentences, but only before the Finnish or French authorities. It also rejected the applicant's request for a reference for a preliminary ruling as regards the compatibility between the provisions governing the execution of European arrest warrants and the fundamental right to respect for private and family life. In this latter connection, the Regional Court reiterated that, as the applicant would have the opportunity to request a transfer to the United Kingdom, there was nothing warranting a referral to the CJEU.

17. The Budapest Regional Court's decision of 27 January 2011 was upheld by the Budapest Court of Appeal on 4 February 2011.

18. On 3 March 2011 a bill of indictment was preferred against the applicant by the Budapest I/XII District Public Prosecutor's Office.

19. On 29 March 2011 the Buda Central District Court extended the applicant's pre-trial detention until the end of the first-instance proceedings. On 13 May 2011 the Budapest Regional Court upheld the decision.

20. On 5 July 2011 the Buda Central District Court sentenced the applicant to sixteen months' imprisonment. The judgment became final the same day.

21. The applicant finished serving his sentence in Hungary on 29 August 2011 and, in accordance with the decision of 27 January 2011 of the

Budapest Regional Court, his transfer detention with a view to his surrender to Finland began on the same date (see paragraph 15 above).

22. However, the consent of the competent authority of the United Kingdom was required for the applicant's surrender to Finland (see section 32 of Act no. CXXX of 2003 on the Co-operation with the Member States of the European Union in Criminal Matters, implementing Article 28(4) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ("the Framework Decision")). On 27 June 2011 the Hungarian central authority requested proof of this consent from both the Finnish and French authorities. On 27 July and 29 August 2011 it reiterated its request to the Finnish authorities.

23. It appears from the case file that the competent Finnish authority attempted to obtain the consent of its British counterpart to the applicant's surrender to Finland from Hungary. However, on 19 July 2011 it was informed by the British authority that, according to its interpretation of the Extradition Act 2003 (see *West v. Hungary and the United Kingdom* (dec.), § 27, 14 April 2015), the request should have come directly from the Hungarian courts. On 30 August 2011 the British authority repeated that information to its Finnish counterpart, as well as to the Hungarian central authority.

24. On the same day, the Hungarian central authority sent a request to the competent authority of the United Kingdom, seeking, as a matter of urgency, the latter's consent to the applicant's surrender to Finland.

25. The British authority informed its Hungarian counterpart that it would not take a decision until 7 September 2011. This prevented the applicant from being surrendered to Finland within the ten-day time-limit stipulated in the Budapest Regional Court's decision of 27 January 2011 (see paragraph 15 above) (that is to say by 8 September 2011).

26. Therefore, on 5 September 2011 the Budapest Regional Court extended the time-limit, set 17 September 2011 as the new surrender date and held that the surrender should take place within ten days of this new date, that is to say by 27 September 2011. The Regional Court considered that, in accordance with the relevant provision (section 20(3) of Act no. CXXX of 2003), if the surrender of the requested person within the period originally specified was prevented by circumstances beyond the control of any of the Member States, a new surrender date had to be agreed and the surrender had to take place within ten days of the new date being agreed. In the court's view, the surrender proceedings concerned Hungary and Finland and the absence of consent from the United Kingdom was a circumstance beyond the control of Hungary or Finland.

27. The applicant submitted that on 31 August 2011 a district judge sitting at Westminster Magistrates' Court had invited him to make representations about the request for his surrender to Finland. He alleged

that the decision of the Magistrates' Court had been transmitted to the Hungarian central authority by fax the same day; but had not been served on him until 9 September 2011. However, no documents attesting these allegations have been submitted by the parties.

28. On 9 September 2011 the same district judge gave consent "in accordance with sections 54 and 55 of the Extradition Act 2003, to the [applicant] being dealt with [in Hungary] in respect of [another] offence".

29. On 15 September 2011 the applicant was surrendered to Finland.

30. The applicant appealed against the decision of the Budapest Regional Court of 5 September 2011. He argued, firstly, that his surrender to Finland (decided on 27 January 2011) had been unlawful, because the consent of the United Kingdom authorities had been required. Secondly, he was of the view that the extension of the time-limit for his surrender was also unlawful. He asserted that this was so because the absence of consent from the United Kingdom was neither beyond the control of any of the Member States (the United Kingdom being a Member State of the European Union) nor unpreventable (since the Hungarian authorities had had several months to obtain the consent). Thirdly, he claimed that the consent had been mistakenly given for his trial in Hungary in respect of another offence, and not for his surrender to Finland. Fourthly, he complained that he could not exercise his defence rights, because the decision of the Westminster Magistrates' Court inviting him to make representations about his surrender had not been served on him in sufficient time.

31. On 16 December 2011 the Budapest Court of Appeal upheld the first-instance decision of 5 September 2011 of the Budapest Regional Court. It was of the view that the extension of the applicant's transfer detention had been lawful. It considered it immaterial that the judge of the Westminster Magistrates' Court had "referred to [sections 54 and 55 of the Extradition Act 2003, instead of sections 56 and 57], potentially by mistake". It also observed that because the consent of the United Kingdom had already been obtained by 15 September 2011, the applicant's surrender to Finland had been lawful.

32. On 24 April 2012 a Finnish court requested a preliminary ruling in the applicant's case, which the CJEU gave on 28 June 2012. The applicant was later surrendered from Finland to France, where he had been convicted of theft and was sentenced to fifteen months' imprisonment by the Paris *Cour d'appel* on 4 April 2013.

A. Relevant domestic and European Union law and practice

33. Some relevant provisions of the domestic law of both Hungary and the United Kingdom, as well as the relevant provisions of European Union law, were set forth in the *West* decision (cited above).

34. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 ("the Framework Decision"), provides as relevant:

Article 23
Time limits for surrender of the person

"1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

...

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released."

35. The French version of Article 23(3) of the Framework Decision reads as follows:[1]

"Si la remise de la personne recherchée, dans le délai prévu au paragraphe 2, s'avère impossible en vertu d'un cas de force majeure *dans l'un ou l'autre des États membres*, l'autorité judiciaire d'exécution et l'autorité judiciaire d'émission prennent immédiatement contact l'une avec l'autre et conviennent d'une nouvelle date de remise. Dans ce cas, la remise a lieu dans les dix jours suivant la nouvelle date convenue."

36. In Hungarian, Article 23(3) of the Framework Decision and section 20(3) of Act no. CXXX of 2003 (that implemented the relevant rule of the Framework Decision in the domestic law) read as follows:

Article 23(3) of the Framework Decision

"Ha a keresett személy átadása a (2) bekezdésben előírt határidőn belül a tagállamok bármelyikének hatókörén kívül eső elháríthatatlan akadály miatt nem lehetséges, a végrehajtó és a kibocsátó igazságügyi hatóság haladéktalanul felveszi a kapcsolatot és új átadási időpontban egyeznek meg. Ebben az esetben az átadásra az így egyeztetett új időpontot követő 10 napon belül kerül sor."

Section 20(3) of Act no. CXXX of 2003

"Ha a keresett személy átadása a (2) bekezdésben előírt határidőn belül a tagállamok bármelyikén kívül eső elháríthatatlan akadály miatt nem lehetséges, új átadási időpontban kell megegyezni. A keresett személyt ebben az esetben az így megállapított új határnapot követő tíz napon belül kell átadni."

1. Italics added for emphasis.

37. On 28 June 2012 the Court of Justice of the European Union ("the CJEU") adopted a judgment concerning the applicant's case (C-192/12 PPU, ECLI:EU:C:2012:404), in which it held, among other things:

> "20. ... By decision of 27 January 2011, the Fővárosi Bíróság ([Budapest Regional Court]), after having found that the conditions for Mr West's surrender were fulfilled, both with regard to the arrest warrant issued by the Finnish judicial authorities and that issued by the French judicial authorities, adopted a decision ordering Mr West's surrender to the Republic of Finland. According to the file before the Court, the judicial authority of the United Kingdom granted its unconditional consent to that surrender.
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> ...
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> 44. It is furthermore common ground that Hungary, as the second executing Member State, when the European arrest warrant issued by the Finnish judicial authorities was executed for the purposes of Mr West's surrender to Finland, sought the consent of the first executing Member State to that surrender and that that Member State gave such consent.
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> ...
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> 54. Furthermore, as is clear from recitals 5 and 7 in the preamble to the Framework Decision, the purpose of the Framework Decision is to replace the multilateral system of extradition between Member States with a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, that system of surrender being based on the principle of mutual recognition ...
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> 55. That principle, which constitutes the 'cornerstone' of judicial cooperation, means that, pursuant to Article 1(2) of the Framework Decision, Member States are in principle obliged to give effect to a European arrest warrant. They are thus either obliged to execute, or may not refuse to execute, such a warrant, and they may make its execution subject to conditions only in the cases listed in Articles 3 to 5 of that Framework Decision. Equally, according to Article 28(3) of the Framework Decision, consent to a subsequent surrender may be refused only in those same cases ...
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> ...
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> 74. ...It thus appears that the fact that it may be impossible for a requested person to serve his sentence in the Member State of which he is a national or resident, or even in which he is staying, is inherent in the very wording of [Articles 4(6) and 5(3) of the Framework Decision].
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> 75. Moreover, it should be recalled that where, as in the case in the main proceedings, the requested person is a national or resident of the first executing Member State, that Member State may still rely on Articles 4(6) and 5(3) of the Framework Decision when taking a position both on the first and second request for surrender of that person. In such a case, the person concerned must, as the case may be, remain in the first executing Member State or be sent back, in accordance with the condition referred to in Article 5(3) of the Framework Decision, to that State or remain in the second executing Member State.
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> ...
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> 80. ...Article 28(2) of the Framework Decision must be interpreted as meaning that, where a person has been subject to more than one surrender between Member States pursuant to successive European arrest warrants, the subsequent surrender of that

person to a Member State other than the Member State having last surrendered him is subject to the consent only of the Member State which carried out that last surrender."

38. In the case of *Vilkas* (C-640/15), the CJEU adopted a judgment on 25 January 2017 (ECLI:EU:C:2017:39) containing the following passages:[2]

"21. ... Article 23(1) of the Framework Decision provides that the requested person is to be surrendered as soon as possible on a date agreed between the authorities concerned.

22. This principle is given concrete expression in Article 23(2) of the Framework Decision, which states that the requested person is to be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

23. The EU legislature nevertheless authorised certain exceptions to that rule by providing, first, that the authorities concerned are to agree on a new surrender date in certain situations defined in Article 23(3) and (4) of the Framework Decision and, secondly, that the surrender of the requested person is then to take place within 10 days of the new date thus agreed.

24. More specifically, the first sentence of Article 23(3) of the Framework Decision states that the executing and issuing judicial authorities are to agree on a new surrender date if the surrender of the requested person within the period laid down in Article 23(2) is prevented by circumstances beyond the control of any of the Member States ['force majeure' in the French version of the Framework Decision].

...

39. Accordingly, Article 23(3) of the Framework Decision is to be interpreted as requiring the authorities concerned also to agree on a new surrender date under that provision where the surrender of the requested person within 10 days of a first new surrender date agreed on pursuant to that provision is prevented by circumstances *beyond one of the Member States' control*.

...

45. ...[I]t is to be noted that there is a certain divergence between the various language versions of Article 23(3) of the Framework Decision as regards the conditions for applying the rule set out in the first sentence of that provision.

46. Whilst the Greek, French, Italian, Portuguese, Romanian and Finnish versions of that provision make the application of the rule conditional on it not being possible to carry out the surrender by reason of a case of force majeure *in one of the Member States concerned*, other language versions of the same provision, such as the Spanish, Czech, Danish, German, Greek, English, Dutch, Polish, Slovak and Swedish versions, refer instead to it not being possible to carry out the surrender on account of circumstances *beyond the control of the Member States concerned*.

47. The need for a uniform interpretation of a provision of EU law makes it impossible for the text of a provision to be considered, in case of doubt, in isolation but requires, on the contrary, that it should be interpreted on the basis of both the actual intention of the legislature and the objective pursued by the latter, in the light, in particular, of the versions drawn up in all languages ...

2. Italics added for emphasis.

48. In this context, it should be pointed out that the wording used in Article 23(3) of the Framework Decision has its origin in Article 11(3) of the Convention on simplified extradition procedure.

...

52. ...[V]arious factors contribute to demonstrating that the use in various language versions of that latter concept does not indicate that the EU legislature intended to make the rule set out in the first sentence of Article 23(3) of the Framework Decision applicable to situations other than those where the surrender of the requested person proves impossible by reason of a case of force majeure *in one or other of the Member States*."

In its operative part, the judgment provides as follows:

"Article 23(3) of Council Framework Decision ... must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, *the executing and issuing judicial authorities agree on a new surrender date* under that provision where the surrender of the requested person within 10 days of a first new surrender date agreed on pursuant to that provision proves impossible on account of the repeated resistance of that person, in so far as, on account of exceptional circumstances, that resistance *could not have been foreseen by those authorities* and the consequences of the resistance for the surrender could not have been avoided in spite of the exercise of all due care by those authorities, which is for the referring court to ascertain. ..."

COMPLAINTS

39. The applicant complained under Article 5 § 1 of the Convention that his prolonged detention in Hungary with a view to being surrendered to Finland had been unlawful. Under the same provision, he also submitted that the decision of the Hungarian authorities to surrender him to Finland had been unlawful as the consent of the United Kingdom authorities had not covered surrender to Finland but trial in Hungary, and, consequently, the subsequent detention in Finland had also been unlawful.

40. Under Article 6 § 1 of the Convention, he further contended that the Hungarian authorities had not enabled him to make representations about his surrender to Finland before the United Kingdom court.

41. Lastly, the applicant complained under Article 8 of the Convention that the Hungarian authorities had failed to consider the possibility of returning him to the United Kingdom to serve his Finnish sentence in his home country.

THE LAW

A. Complaint under Article 5 § 1 of the Convention on account of the prolongation of the applicant's transfer detention

42. The applicant complained that he had been deprived of his liberty, in breach of Article 5 § 1 of the Convention, as he had been kept in detention

in Hungary despite the fact that the time-limit for his surrender to Finland had expired. The Court considers that this complaint falls to be examined under Article 5 § 1 (f) of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
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> ...
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> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

1. The parties' submissions

(a) The Government

43. The Government submitted that the time-limit for the applicant's surrender to Finland had been lawfully extended until 17 September 2011 by the Budapest Regional Court's decision of 5 September 2011 (see paragraph 26 above) and that the surrender had been eventually executed within that time-limit, notably on 15 September 2011 (see paragraph 29 above). As regards, in particular, the lawfulness of the extension of the time-limit, they added that the decision had been based on circumstances that had been beyond the control of either of the authorities concerned by the European arrest warrant in question, that is to say the Finnish (issuing) and Hungarian (executing) authorities. In their view, the translation "circumstances beyond the control of *either* of the Member States"[3] more accurately reflected the meaning of the Hungarian expression ("*a tagállamok bármelyikén kívül eső elháríthatatlan akadály*") contained in section 20(3) of Act no. CXXX of 2003 on the Co-operation with the Member States of the European Union in Criminal Matters ("Act no. CXXX of 2003"; see *West* (dec.), cited above, § 26) that had been applied in the applicant's case, and was more in harmony with a complex, systematic and teleological interpretation of the underlying European law provision in question (Article 23(3) of the Framework Decision). They submitted that it would be far-fetched and distorted to interpret the expression "any of the Member States" as covering all the Member States of the European Union, irrespective of whether or not they had been involved in the surrender proceedings in question.

44. The Government also contended that the Hungarian authorities had taken all the necessary measures in order to obtain the requisite consent of the British authorities in sufficient time. Before 30 August 2011 (see paragraph 23 above) they had not been aware – and should not even have been aware, given that the issue at hand had been governed by the domestic

3. Italics added.

law of the United Kingdom – that British consent to a surrender requested by the Finnish authorities should be sought by their Hungarian counterpart.

(b) The applicant

45. The applicant submitted that the extension of his transfer detention had been unlawful, given that the circumstances leading to it had not been "beyond the control of any of the Member States", as required by the relevant laws. In his interpretation, the applicable criterion would have been met if the circumstances had been beyond the control of every European Union Member State, whichever of them might be chosen. However, his surrender within the normal time-limit had been prevented by the lack of consent of the British authorities, which had not been requested by the Hungarian authorities in time. He was of the opinion that these circumstances had not been "beyond the control of any of the Member States", as required by the relevant laws, because both Hungary and the United Kingdom were Member States of the European Union.

46. The applicant further submitted that at the material time both the Budapest Regional Court and the Budapest Court of Appeal had been entitled to refer a question on the interpretation of the Framework Decision for a preliminary ruling to the CJEU in order to clarify the legal rules applicable in the case. However, they had failed to do so and consequently the legal provision applied in his case had lacked the requisite "quality of law" and legal certainty. In the applicant's view, the respondent State could not be allowed to take advantage of that failure, potentially amounting to a violation of Article 6, with a view to avoiding the finding of a violation of Article 5.

2. The Court's assessment

(a) General principles

47. It is well established in the Court's case-law under the sub-paragraphs of Article 5 § 1 that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f), be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law but also, where appropriate, to other applicable legal norms, including those which have their source in international law (see *Medvedyev and Others v. France* [GC], no. 3394/03, § 79, ECHR 2010, and *Kholmurodov v. Russia*, no. 58923/14, § 84, 1 March 2016). Those norms may clearly also stem from European Union law (see *Thimothawes v. Belgium*, no. 39061/11, § 70, 4 April 2017).

48. Article 5 § 1 lays down the obligation to conform to the substantive and procedural rules enshrined therein (see, among other authorities, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008, and

Gallardo Sanchez v. Italy, no. 11620/07, § 36, ECHR 2015). The Court notes that a period of detention is, in principle, "lawful" if it is based on a court order (see *Ječius v. Lithuania*, no. 34578/97, § 68, ECHR 2000‑IX, and *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 116, ECHR 2005-II (extracts)).

49. Compliance with national law is not, however, sufficient in itself: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 136, 4 December 2018).

50. Moreover, the Court must ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *M.A. v. Cyprus*, no. 41872/10, § 198, ECHR 2013 (extracts), and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 92, 15 December 2016).

(b) Application of these principles to the present case

51. The Court observes that the applicant's transfer detention was extended by the Budapest Regional Court's decision of 5 September 2011 on the basis of section 20(3) of Act no. CXXX of 2003 (see paragraph 26 above). That decision was later upheld by the Budapest Court of Appeal (see paragraph 31 above). As such, the applicant's continued detention should therefore be in principle "lawful" within the meaning of Article 5 § 1 of the Convention. However, the Court must also ascertain whether the domestic law applied by the domestic courts satisfied the general principle of legal certainty (see paragraph 50 above).

52. The Court notes the parties' diverging views concerning the appropriate interpretation of the legal provision at issue.

53. In particular, the Government argued that the precondition for extending the applicant's transfer detention had been the existence of circumstances beyond the control of either of the authorities concerned by the European arrest warrant in question. For his part, the applicant

considered that the applicable criterion would have been met only if the circumstances had been beyond the control of every European Union Member State, whichever of them might be chosen – and emphasised that the United Kingdom was also a Member State of the European Union. The domestic courts disagreed with the applicant's interpretation of the relevant provision and were satisfied that the absence of consent from the United Kingdom was a circumstance beyond the control of Hungary and Finland.

54. The Court reiterates that it is primarily for the national authorities, especially the courts, to interpret and apply domestic legislation, if necessary in conformity with the law of the European Union. Unless the interpretation is arbitrary or manifestly unreasonable (see, for example, *Thimothawes*, cited above, § 71, and *Paci v. Belgium*, no. 45597/09, § 73, 17 April 2018), the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Rohlena v. the Czech Republic* [GC], no. 59552/08, § 51, ECHR 2015; see also, specifically in respect of EU law, *Ullens de Schooten and Rezabek v. Belgium*, nos. 3989/07 and 38353/07, § 54, 20 September 2011, and *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 110, 3 October 2014).

55. The Court observes that the wording of the domestic legal provision applied in the applicant's case, Article 20(3) of Act no. CXXX of 2003, is virtually identical to the Hungarian language version of the relevant EU law provision, Article 23(3) of the Framework Decision, which it was designed to implement (see paragraph 36 above). Having regard to the wording of both provisions, their purpose, as well as the various language versions of Article 23(3) of the Framework Decision, the Court finds nothing arbitrary or unreasonable in the domestic courts' interpretation. This is all the less so in light of the interpretation subsequently given by the CJEU to Article 23(3) of the Framework Decision (see paragraph 38 above). In this last respect, it notes in particular that, in its *Vilkas* judgment, the CJEU interpreted that provision as referring to situations where certain exceptional circumstances could not have been foreseen by "the executing and issuing judicial authorities" and where the surrender of a person proved impossible by reason of a case of *force majeure* "in one or other of the Member States" (see paragraph 38 above).

56. In the absence of any other argument on the applicant's side that would call into question the lawfulness of the prolongation of his transfer detention, the Court is therefore satisfied that the applicant's continued transfer detention in Hungary between 8 and 15 September 2011 (see paragraphs 25 and 29 above) was in compliance with the relevant domestic law giving effect to EU law and was therefore "lawful". It is further satisfied that the applicant's detention pursued a purpose consistent with sub-paragraph (f) of Article 5 § 1 of the Convention.

57. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

B. Complaint under Article 5 § 1 of the Convention on account of the applicant's surrender to Finland

58. The applicant further contended that his surrender to Finland had also been unlawful and, given that it had led to his continued detention in Finland, had constituted a violation of Article 5 § 1 of the Convention. He submitted in particular that his surrender to Finland had been based on an act of consent from the United Kingdom authorities that had been given not for the surrender but for his trial for another offence in Hungary.

59. The Court reiterates that in proclaiming the "right to liberty", paragraph 1 of Article 5 contemplates the physical liberty of the person, the key purpose of that provision being to prevent arbitrary or unjustified deprivations of liberty (see *De Tommaso v. Italy* [GC], no. 43395/09, § 80, 23 February 2017, and *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 84, 5 July 2016). It considers that a decision to surrender a person to another country to stand trial or serve a sentence does not in itself raise an issue under Article 5.

60. In the present case, the applicant's arguments relate to the content of the consent given by the United Kingdom authorities. The Court notes that on 30 August 2011 the Hungarian authorities specifically requested consent from the United Kingdom authorities to surrender the applicant to Finland and that on 9 September 2011 those authorities replied and granted consent. Notwithstanding any clerical error that this consent may have contained (that is to say, that it was given for trial in Hungary rather than surrender to Finland, or that it contained an erroneous reference) (see respectively, paragraphs 30 and 31 above), the Court does not find it unreasonable, having regard to the sequence of events, that the Hungarian authorities treated the letter from the United Kingdom authorities as consent to the surrender of the applicant to Finland as requested.

61. Moreover, to the extent that the applicant complained about the alleged unlawfulness of the continued detention in Finland, the Court notes that the present complaint is lodged against Hungary, not Finland.

62. The Court further notes that the applicant has not argued or substantiated that the decision to surrender him to Finland would expose him to a real risk of a flagrant breach of Article 5 in that country (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 233, ECHR 2012 (extracts)).

63. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

C. Complaint under Article 6 § 1 of the Convention

64. The applicant further complained that the Hungarian authorities had failed to grant him an opportunity to make representations about his surrender to Finland before the competent court of the United Kingdom. He relied on Article 6 § 1 of the Convention, which provides, in so far as relevant:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

65. The Court reiterates that extradition proceedings, including the procedure for executing a European arrest warrant, do not involve the determination of the applicant's civil rights and obligations or of a criminal charge against him within the meaning of Article 6 of the Convention (see for example *Peñafiel Salgado v. Spain* (dec.), 16 April 2002, *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 82, ECHR 2005-I; *Findikoglu v. Germany* (dec.), § 44, 7 June 2016). In particular, the procedure for executing a European arrest warrant replaces the standard extradition procedure between Member States of the European Union and pursues the same aim, namely the surrender to the authorities of the applicant State of a person who is suspected of having committed an offence or who is trying to escape justice after being convicted by a final decision (see *Monedero Angora v. Spain* (dec.), no. 41138/05, 7 October 2008).

66. Accordingly, this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4.

D. Complaint under Article 8 of the Convention

67. Lastly, the applicant complained that the Hungarian authorities had failed to consider the possibility of returning him to the United Kingdom to serve his Finnish sentence in his home country. In this connection, he argued that there had been a violation of his right to respect for family life, in breach of Article 8 of the Convention which provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

68. The Court notes that the applicant was surrendered by Hungary to Finland where he had been convicted and imposed a custodial sentence for criminal offences committed in Finland (see paragraph 5 above). It

reiterates that any lawful detention will inevitably restrict family life and private life (see, for example, *Dickson v. the United Kingdom* [GC], no. 44362/04, § 68, ECHR 2007-V; *Bagiński v. Poland*, no. 37444/97, § 89, 11 October 2005; *Klamecki v. Poland (no. 2)*, no. 31583/96, § 144, 3 April 2003; and *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X).

69. The Court further reiterates that the Convention does not grant detained persons the right of choosing their places of detention, and that the separation and distance from their families are inevitable consequences of detention (see *Selmani v. Switzerland* (dec.), no. 70258/01, 28 June 2001).

70. *A fortiori*, the Court considers that the Convention does not grant a right to avoid having to serve a prison sentence in a foreign country or to choose in which country a convicted person prefers to serve a sentence imposed.

71. Having regard to all the information in its possession, the Court therefore considers that the applicant's submissions do not disclose any appearance of a violation of his rights under Article 8 of the Convention.

72. It follows that this complaint is likewise manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 18 July 2019.

Marialena Tsirli
Registrar

Jon Fridrik Kjølbro
President