

CASE N° CO/688/2015

Facts

The appellant was the subject of an European Arrest Warrant (EAW) for the purpose of serving a sentence, issued in March 2013 by France and addressed to the United Kingdom. He was deemed to be the principal of an organized criminal group facilitating the illegal entry and stay of migrants in Great Britain. He directed the criminal network via telephone, from the United Kingdom. In December 2011, he was convicted and sentenced *in absentia*, in France, for crimes committed in 2006. He was entitled to a re-trial upon return. The defendant was detained in the United Kingdom in July 2014.

The case concerns the appeal against the decision of the British competent court, ordering the appellant's surrender to France. *

Elements of success

- International cooperation
- Balancing human rights vis-à-vis administration of criminal justice
- Positive obligations of the State

Challenges

- Support and protection to vulnerable victims
- Mental health assistance
- Time lapse between offending and legal proceedings

Background

The appellant was born in Kurdistan. He escaped persecution in Iraq by being smuggled into the United Kingdom, where he arrived in 1999. He allegedly suffered considerable mistreatment, including physical and sexual abuse while staying in State institutions. At a certain stage, he escaped and went to France, where he engaged in migrant smuggling activities. He was convicted twice in France for migrant smuggling and served custodial sentences. He later returned to the United Kingdom. He was, at the time of the proceedings, married, with children, and worked in a car wash. He was paid very little but his income made a significant difference to the family's budget. The appellant had learning difficulties and a story of depression and health issues. He had already tried to commit suicide.

Key issues

- ❖ International cooperation (EAW)
- ❖ Right to family and private life
- ❖ Prohibition against torture and other cruel, degrading or inhuman treatment

Investigation

The deciding Court relied on the testimony of the appellant and his wife as well as expert evidence (regarding the appellant's mental health). The representative of France was also heard and provided evidence in respect of France's capacity to set up preventive measures to avert suicide.

Reasoning

On appeal, the legal counsel contended the appellant's surrender would be oppressive in the light of his mental condition, there being a very high risk that he would commit serious acts of self-harm, including suicide. A separation from his wife and children would likely be permanent because of his immigration status. His surrender would thus constitute a disproportionate interference with his right to family and private life (Article 8 European Convention on Human Rights).

For the mental condition of the appellant to make his surrender/extradition unjust, oppressive or in breach of Article 3 European Convention on Human Rights (prohibition against torture and other cruel, degrading or inhuman treatment), (i) the mental condition must be linked to a risk of a suicide attempt if the surrender order were to be made, (ii) a 'substantial risk' that the appellant would commit suicide must be ascertained. A key issue in this context regards the measures in place in the requesting State to prevent any attempt at suicide from being successful. A person does not escape a sentence of imprisonment simply by invoking high risk of suicide. The Executive branch is responsible for implementing measures to care for the prisoner. When the requested person is being transferred to the requesting state, arrangements are made by the Serious Organised Crime Agency (SOCA) with the authorities of the requesting state to ensure that during the transfer, as appropriate, adequate arrangements are in place to prevent self-harm.

France has provided credible assurances it held adequate preventive measures as required under British precedent. The

onus to prove the contrary lies with the appellant. He did not prove differently. This aspect is particularly important because – even though not being related exclusively or specifically to cases of migrant smuggling – it draws attention to States' positive obligations under human rights law (notably, Universal Declaration of Human Rights, European Convention on Human Rights, International Covenant on Civil and Political Rights). Migrants that have been the object of smuggling are likely to require tailored State proactive assistance, whether or not they engage in criminal behaviour.

Re the right to family and private life, only exceptionally compelling features will make the interference with family life consequent upon extradition disproportionate to the objective served thereby. The appellant's wife had already been able to cope with his absence during the time he served his prior custodial sentences. The interests of the children are a primary consideration. However, there was little evidence as to the appellant's bonds with his children or the parenting he was able to offer. Conversely, the offences in respect of which the EAW was issued were of some age but not insignificant. Involving organised criminal activity in migrant smuggling, they must be categorised as serious offending. In the instant case, this is all more so the case given the prior convictions of the appellant, in France, for the same type of crime. This weighs very heavily against the appellant in the balancing exercise carried out under the auspices Article 8 European Convention on Human Rights.

Verdict/Decision

Appeal dismissed. The execution of the EAW, and consequent surrender of the defendant to France, was ordered.

Opinion

International judicial cooperation is critical in the effort of bringing migrant smugglers to justice, particularly given the inherent cross-border nature of this crime type. This case provides an example of best practice in assessing the fundamental rights of the appellant vis-à-vis the administration of justice in respect of migrant smugglers. It further underlines the positive obligations of States in ensuring the accused/convicted person's human rights.

Notes

* See also SHERLOC Case Law Database on Smuggling of Migrants, Case Nr CO/4107/2014.