

In the criminal case pending against O. K. for the execution of an international arrest warrant and provisional arrest for surrender, the **Budapest-Capital Regional Court of Appeal (Fővárosi Ítéltábla)** by its order made on the 6th January 2022 upheld the order of the Budapest-Capital Regional Court – establishing that the conditions of extradition are fulfilled in respect of the accused and ruling the arrest for surrender.

No further appeal lies from the order.

By its order made on the 14th of June 2021 the Budapest-Capital Regional Court (Fővárosi Törvényszék) ordered the provisional arrest of O. K., Slovakian-Canadian citizen accused for surrender and at the same time called the Canadian judicial authority to send the extradition request and the annexes thereof and also informed about the proceedings the Slovak Republic of which the accused is a citizen.

After the extradition request and the annexes thereof were received, the accused and his defense counsel argued that if the accused were extradited his life and physical integrity would not be guaranteed during his transfer and possible detention in Canada, as the victim had extensive criminal connections and his associates want to avenge P. T.'s death. In addition to that, the defense counsel claimed that there have been cases of corruption and crime at both the Hamilton police station and the Wentworth Detention Centre, which show that the authorities are failing to provide the security and protection expected. According to their plea, the Canadian authorities are unable to protect the life and physical integrity of the accused due to the abuses of office and the detention conditions, and on this basis they claimed the lack of conditions for extradition and requested the release of the accused under Section 14/A of the Legal Assistance Act (Nbjt.).

On the basis of additional information obtained in order to clarify the above, they have come up with new complaints, this time attacking both the Hamilton Police Department and the Hamilton-Wentworth Correctional Institute on grounds of corruption and then bias. For this reason, the court ordered to obtain further additional information to determine whether the Canadian authority could ensure the protection of O.K.'s life and physical integrity during his surrender procedure and subsequent detention, and that his rights to fair procedure could be safeguarded by impartial prosecuting authorities, even by designating either another police force or detention facility.

In their reply the Canadian judicial authorities explained in detail the rules of procedures, the custody protocol, the pre-trial procedure and the rights of the accused, the measures that could be taken to ensure the safety of the accused, also stating in their affidavit that if there is a threat to the life or physical integrity of the accused, the placement of the detainee will be reassessed, which could even result in him being placed in a new detention facility or held separately in extraordinary circumstances. The institution has the appropriate security experts and technical conditions to identify an emergency and take the appropriate measures.

Against such a background - and rejecting the defense's further request for evidence - the Budapest-Capital Regional Court concluded in its order that in respect of the accused O. K., the conditions for extradition are met in respect of International Arrest Warrant issued by the Ontario District Court and the extradition request of the Ministry of Justice of the Province of Ontario, and ordered the arrest for surrender of the accused, specifying that its start date is 12 July 2021 and it will last until the 12th of January 2022. The court also ruled that the rules of specialty are to be applied to the accused. At the same time, the court ordered to hand over the objects confiscated from the accused to the Canadian judicial authorities. The court established that once the order becomes final and legally binding, the court will send the documents to the Hungarian

Minister of Justice for making a decision on the extradition, and that the criminal costs incurred during the proceedings shall be borne by the Hungarian state.

Against the order - that the prosecutor took note of - the accused and his defense counsel filed an appeal without giving reasons, but which clearly aimed at the dismissal of the prosecutor's motion which was reflected in their statements made during the proceedings.

In its transcript the Appellate Chief Prosecution Office of Budapest-Capital motioned to affirm the contested decision.

The appeals filed are not substantiated.

The court acted very prudently regarding the application of the provisions of Article 13(4) of the Legal Assistance Act in its procedure and came to the conclusion that the Slovak judicial authorities did not wish to issue a European arrest warrant for the accused with the same content as the international arrest warrant presented by the Canadian judicial authority, stating that the prosecution of the accused by the Canadian authorities was in line with the criminal policy of the Republic of Slovakia. In view of this, it is not possible to extradite the accused to the Slovakian judicial authority.

No reason of exclusion as defined in Articles III-VII of the Convention on Extradition, and in Section 12 and Section 14 of the Legal Assistance Act, exists in respect of the extradition of the accused.

The court examined thoroughly the hindrances stated in Article 14/A of the Legal Assistance Act, and finally took the view that the concerns raised by the defense in respect of the fundamental rights had been allayed by the Canadian judicial authorities in their responses to the requests. The court of appeal considers that the information presented by the defense counsel did not in itself question at all the legal order of the requesting State or the guarantee of the rights of the accused.

The defense sought to prove the victim's criminal connections and thus the potential danger to the accused through press reports, photographs, material from private investigations and affidavits of the persons making the statements. All this "evidence" cannot be considered even in itself as objective, reliable, accurate and sufficiently up-to-date information on the conditions of detention in the Member State issuing the international arrest warrant. A newspaper report is not data, it is only a journalist's opinion, and the people interviewed on the side of the accused, for various reasons, are not impartial and unbiased, and therefore not suitable to testify to systemic or generalized confusion about the authorities and correctional institutions acting in the case of the accused. The victim's criminal connections cannot have the slightest influence on the impartial and unbiased proceeding of the state investigative and law enforcement bodies - and that alone can be relevant in an extradition case. Even if the latter is a fact, there is no basis for invoking safety of life and physical integrity to avoid extradition, as criminal relationships are not bound by national borders, which means that the accused would not be safe in practically any country in the world.

The protection of the detained person against unlawful attacks is a self-evident task of the prison regime of any democratic state, and there is no reason to make the requesting state account for it or to obtain sworn statements to this effect. Thus, the court had a good reason to reject the defense's requests for supplementary evidence on the victims' backgrounds and for additional

information in relation with M. V., who had made an affidavit on behalf of the Canadian judicial authority.

There was not even concrete danger in connection with the detention of the accused, the one-sided and abstract references of the defense and the least objective evidence presented in support of them are not suitable for establishing the existence of any reason for rejection specified in Article 14/A of the Legal Assistance Act. The court, therefore, established correctly and lawfully that the conditions for extradition have been met and ordered the arrest for surrender of the accused.

Budapest, 12 January 2022, Wednesday

*Budapest-Capital Regional Court of Appeal  
Press Secretariat*