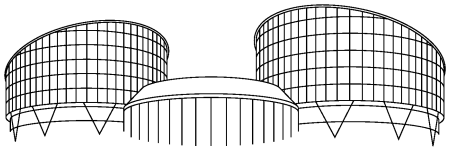

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CORALLO v. THE NETHERLANDS

(Application no. 29593/17)

JUDGMENT

STRASBOURG

9 October 2018

This judgment is final but it may be subject to editorial revision.

In the case of Corallo v. the Netherlands,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Dmitry Dedov, *President,*
Alena Poláčková,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 18 September 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 29593/17) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Francesco Corallo, is a Dutch national who was born in Italy in 1960. At the time of lodging the application, he was detained in Sint Maarten in the Caribbean part of the Kingdom of the Netherlands. He is currently staying in Italy.

2. The applicant was represented before the Court by Mrs C. Reijntjes-Wendenburg, a lawyer practising in Maastricht. The Dutch Government ("the Government") were represented by their Deputy Agent, Mrs K. Adhin, from the Ministry of Foreign Affairs.

3. On 20 April 2017 the applicant applied to the Court requesting an interim measure under Rule 39 of the Rules of Court, terminating his detention in the Philipsburg Police Station in Sint Maarten. The Court rejected this request on 24 April 2017.

4. On 24 April 2017 the application was communicated to the Government.

5. On 12 July 2017 the Court rejected a second request by the applicant for an interim measure under Rule 39, terminating his detention in the Philipsburg Police Station.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. On 21 November 2016 the Civil and Criminal Court (*Tribunale Civile e Penale*) of Rome decided to issue a warrant for the applicant's arrest, as he was suspected of tax evasion, money laundering, embezzlement and

membership of a transnational criminal organisation. On 13 December 2016, *via* a "Red Notice" issued through Interpol, the Italian judicial authorities requested the applicant's provisional arrest (*voorlopige aanhouding*) for the purpose of extradition. On the same day the applicant was arrested in Sint Maarten, brought before the Procurator General (*procureur-generaal*) and detained in Philipsburg Police Station.

7. On 15 December 2016 the applicant was brought before the investigating judge (*rechter-commissaris*), who found the continuance of the applicant's provisional arrest lawful.

8. In the days following his arrest the applicant was visited several times by a doctor, who found that the applicant had received treatment for a malignancy on his tongue in 2015, and that this should be monitored regularly. In addition, the applicant's blood pressure was too high. He was prescribed medication, and after a few days the applicant's blood pressure had sufficiently decreased. According to a letter from the doctor to the public prosecutor, dated 23 December 2016, the applicant was in good health, was not experiencing any exacerbations of past ailments at that time, and his blood pressure was responding well to medical treatment. The doctor concluded that there were no medical impediments to the applicant's detention.

9. On 19 December 2016 the applicant lodged an application with the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba (*Gemeenschappelijk Hof van Justitie van Aruba, Curaçao, Sint Maarten en van Bonaire, Sint Eustatius en Saba*, hereinafter "the Joint Court"), requesting the suspension of his detention. The applicant argued under Article 5 § 1(f) of the Convention that deprivation of liberty should be the *ultimum remedium*, in that a person should only be deprived of his liberty when this was strictly necessary and the aim pursued could not be achieved in a less restrictive manner. In his opinion, his fragile state of health and considerable business interests in Sint Maarten opposed (a continuation of) his detention. The Procurator General opposed suspension of the applicant's detention, arguing that there was a high risk of absconding, given that the applicant was a wealthy businessman in whose home two identity cards from Columbia and the Dominican Republic had been found during a search, and that he had use of a private jet in the United States of America. Against this background, only deprivation of liberty could prevent the applicant from finding ways to evade extradition.

10. On 20 December 2016 the Sint Maarten prosecution authorities apparently decided to transfer the applicant from Sint Maarten to Curaçao, another country within the Kingdom of the Netherlands. The applicant filed an appeal against that decision with the Joint Court.

11. On 4 January 2017 the Joint Court rejected the applicant's request for suspension of his detention. It found that, under Article 5 § 4 of the Convention, it was competent to examine the lawfulness of the applicant's

detention. It noted that the applicant had not established that he was unable to receive adequate medical care in detention or that his business interests were at risk. It further took into account that the Italian authorities had not yet filed a formal extradition request, whereas the forty-day time-limit for doing so under Article 16 § 4 of the European Convention on Extradition had not yet expired. The Joint Court, taking all interests at stake into consideration – including the Procurator General's substantiated claim that there was a high risk of absconding – decided to reject the applicant's request for suspension of his detention. No further appeal lay against that decision.

12. On 12 January 2017 the formal request for the applicant's extradition to Italy, dated 30 December 2016, was received by the Minister Plenipotentiary of Sint Maarten (*Gevolmachtigd Minister van Sint Maarten*).

13. On 3 February 2017 the Procurator General filed a request for the applicant's extradition with the Joint Court. A hearing was initially fixed for 21 March 2017 but, at the applicant's request, was rescheduled for 16 May 2017.

14. On 7 February 2017 the applicant filed a fresh application with the Joint Court, requesting that his detention be either terminated or suspended. He argued, *inter alia*, that the prospects of his extradition being found permissible were at best highly doubtful, in the absence of guarantees by the Italian authorities that he would be allowed to serve a possible prison sentence in Sint Maarten or elsewhere in the Kingdom of the Netherlands and that a sentence imposed in Italy would be converted into a penal sanction prescribed by Dutch law for the same offence. He further argued that his serious health condition – considered in the light of the inadequate medical care and hygiene in the detention centres of Sint Maarten, as found by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in various reports – and his considerable business interests necessitated suspension of his detention pending extradition. He lastly argued that the police cells in which he had been held since 13 December 2016 were neither intended nor suitable for longer periods of detention.

15. On 22 February 2017 the Joint Court accepted the applicant's appeal against the decision of 20 December 2016 to transfer him to Curaçao. It found that the Procurator General of Sint Maarten was not competent under the applicable statutory provisions to have free use of the detention facilities in other countries within the Kingdom. It therefore quashed the decision of 20 December 2016 and prohibited the Sint Maarten Public Prosecution Department or the Procurator General from transferring the applicant from his place of detention in Sint Maarten to another place of detention in another country within the Kingdom.

16. On 8 March 2017 the Joint Court rejected the applicant's request of 7 February 2017. As regards the permissibility of the extradition request, it considered that it could not act in anticipation of the actual extradition procedure. The question before it at that time concerned the lawfulness of the detention pending extradition. On this point, it found that all formalities for the applicant's detention pending extradition had been satisfied. It noted that the Procurator General was opposed to terminating or suspending the detention, arguing that there was still a high risk of absconding. It further noted that the personal situation of the applicant relating to his medical situation and business interests – the grounds he relied on in his request – had already been taken into account in its decision of 4 January 2017, and it did not appear that, two months later, there were facts or circumstances which should lead to another conclusion. Lastly, the Joint Court saw no reason to grant the applicant bail.

17. On 13 March 2017 the applicant was visited by a dentist, who diagnosed a gum/periodontal infection around a tooth which had to be extracted. In addition, the dentist prescribed antibiotics and a disinfectant for irritated gums. The dentist recommended that the applicant be provided with vitamin B and iron to cope with vitamin and mineral deficiencies. He further recommended that the applicant be seen by a dentist every three to four months to avoid similar infections. On 3 April 2017 the dentist reported that the infection had subsided but the build-up of plaque was already visible again, and this was probably due to the lack of possibilities for adequate oral hygiene.

18. Meanwhile, on 21 March 2017 the applicant had lodged a new petition with the Joint Court, requesting either termination or suspension of his detention, or a transfer to the sickbay at Point Blanche Prison in Sint Maarten. Relying on a CPT report of 25 August 2015 (see paragraph 29 below) and the Court's considerations in the case of *Muršić v. Croatia* ([GC], no. 7334/13, §§ 138-41, ECHR 2016), the applicant argued that there was at least a strong presumption that the conditions of his detention should be regarded as contrary to Article 3 of the Convention. On this point, he submitted that for three months he had been staying in a cell measuring 16 square metres which he often had to share with five or sometimes even six other persons. Furthermore, the cells were dark and unhygienic and there was a foul smell. He further submitted that the unhygienic circumstances had caused the infection diagnosed by the dentist on 13 March 2017.

19. On 12 April 2017 the Joint Court rejected the applicant's request of 21 March 2017. It noted that the Procurator General opposed the request, submitting that it was a fact of common knowledge that the prison infrastructure of Sint Maarten offered room for improvement, but that this was the responsibility of the Minister of Justice of Sint Maarten. The applicant could be transferred to Curaçao, where the conditions of detention were better, but the applicant had opposed such a transfer. If he consented to

a transfer, he could find himself a spacious single-occupancy cell in Curaçao within a matter of days. The Joint Court further noted that on two previous occasions it had considered and rejected requests filed by the applicant to suspend or terminate his detention, and it found no substantial change of (personal) circumstances warranting a different finding as regards the applicant's deprivation of liberty. In this respect the Joint Court took into account that during the hearing on 4 April 2017, on which his request was examined, it was confirmed that the applicant by that time was no longer detained in a multi-occupancy cell, but in a single-occupancy cell, that he daily received vitamins and that, if he wished so, he could see a doctor or dentist. It also took into account that, in reply to an explicit question it had put to him about a possible voluntary transfer to Curaçao, the applicant had indicated that this was not an option for him. Lastly, it found no medical reason for the applicant to be transferred to the sickbay of Point Blanche Prison.

20. On 20 April 2017 the applicant was visited by his general practitioner, who, in a written statement dated 23 April 2017, expressed surprise at the fact that the applicant had only been seen by a doctor once whilst in detention. The general practitioner found that the applicant's blood pressure was too high. In addition, he found that the scar caused by the surgical removal of the malignancy on the applicant's tongue could give cause for concern, and recommended that the applicant be seen by a specialist as soon as possible.

21. On 20 June 2017, following a hearing held on 16 May 2017, the Joint Court declared the applicant's extradition permissible on the basis of the facts as set out in the decision of 21 November 2016 of the Civil and Criminal Court of Rome, facts which also constituted criminal offences under the laws of Sint Maarten. Having found that the extradition request complied with the applicable formal and material requirements, the Joint Court advised the Governor (*Gouverneur*) of Sint Maarten to proceed with the applicant's extradition to Italy. The applicant filed an appeal in cassation with the Supreme Court (*Hoge Raad*).

22. On 23 June 2017 the Joint Court rejected a fourth request by the applicant for suspension of his detention pending extradition. The applicant had filed that request during the hearing of 16 May 2017, arguing, *inter alia*, that his detention was not or was no longer compatible with his rights under Article 3, Article 5 and Article 6 § 2 of the Convention because of the deplorable conditions and duration of his detention, and the lack of justification for his detention. The Joint Court noted, amongst other things, that the applicant was a very wealthy man who had travelled extensively in the past and who apparently had close ties with the Dominican Republic, from where extradition would not be possible. It further noted that the applicant had been detained at Philipsburg Police Station since his arrest because, being a wealthy man, he could not be held in the remand centre of

Point Blanche Prison for safety reasons, which, in the circumstances, justified his detention at the Philipsburg Police Station. In respect of the duration of his detention at that facility, the Joint Court noted that, although on legal grounds it had prohibited the Sint Maarten Prosecution Department from transferring the applicant – who had fiercely opposed such a transfer – to a place of detention in another country within the Kingdom of the Netherlands, it remained open to the applicant to consent voluntarily to such a transfer. It further held that, despite the critical submissions of the defence about the applicant's conditions of detention, and taking all circumstances of the case at hand into account, the detention situation was not unlawful.

23. On 4 August 2017, after the applicant had withdrawn his appeal in cassation on 21 July 2017 without indicating any specific reason, the Governor of Sint Maarten approved the applicant's extradition. On 16 August 2017 the applicant was extradited to Italy.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional background

24. Until 10 October 2010 the Kingdom of the Netherlands consisted of three countries, namely the Netherlands, Aruba and the Netherlands Antilles. The Netherlands Antilles consisted of the islands Bonaire, Curaçao, Sint Maarten, Sint Eustatius and Saba. Between 2000 and 2005 referenda were held on all the islands of the then Netherlands Antilles on the status of each island within the Kingdom. Except for Sint Eustatius, all the islands voted for the dissolution of the Netherlands Antilles. The islands reached a final agreement on a new constitutional order within the Kingdom of the Netherlands on 15 December 2008. The Netherlands Antilles ceased to exist when the amended Charter for the Kingdom of the Netherlands (*Statuut voor het Koninkrijk der Nederlanden*) entered into force on 10 October 2010.

25. In the new constitutional structure, in accordance with the outcome of the referenda, Curaçao and Sint Maarten acquired the status of countries within the Kingdom, making them full, autonomous partners within the Kingdom and responsible for their own national government and legislation. Aruba retained the separate country status it had already had since 1986. Bonaire, St Eustatius and Saba (also collectively referred to as "the BES Islands") have become a special municipality (*openbaar lichaam*) of the Netherlands.

B. Relevant domestic law of Sint Maarten

26. Article 3 of the Constitution (*Staatsregeling*) of Sint Maarten reads:

"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

27. Article 27 of the Constitution of Sint Maarten, in so far as relevant, provides as follows:

"1. All persons have the right to personal liberty. No person may be deprived of his liberty other than under rules to be imposed by a legal regulation as referred to in Article 81(f) and 81(g), in the event of: ...

g. lawful arrest or detention of persons against whom action is being taken with a view to deportation or extradition. ...

3. Everyone who is deprived of his liberty shall be entitled:

a. 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; ..."

28. Article 30 of the Constitution of Sint Maarten reads in its relevant part, as follows:

"1. All persons who are deprived of their freedom shall be treated humanely and with respect for the dignity inherent to the human person.

2. Barring exceptional circumstances, suspects shall be kept separate from convicted offenders and may claim separate treatment in accordance with their status as a non-convicted person. ..."

III. RELEVANT INTERNATIONAL MATERIAL

29. Relevant extracts of the report of the CPT on its visit to the Caribbean part of the Kingdom of the Netherlands from 12 to 22 May 2014 (CPT/Inf (2015) read as follows:

"SINT MAARTEN ...

229. Access to a doctor is not a right provided for in the CCP (Code of Criminal Procedure in force on Sint Maarten) and the Police Code of Conduct (Article 17) only places a duty on police officers to consult with a doctor if necessary. Nevertheless, in practice, persons detained at Philipsburg Police Station could request access to a doctor or a nurse who were on call 24 hours a day. Further, it appeared that the nurse visiting sentenced prisoners every day could also examine police detainees. However, there was no screening of detained persons and requests to see a doctor were not always followed up promptly. For example, the delegation met an elderly man who appeared to have suffered a broken finger at the time of his arrest some 10 days prior to the delegation's visit and who had still not been seen by a doctor or a nurse.

The CPT recommends that persons deprived of their liberty by the police be expressly guaranteed the right of access to a doctor from the very outset of deprivation of liberty. ... Further, all persons remanded at Philipsburg Police Station should undergo a proper medical assessment for as long as it is used as a remand facility.

4. Philipsburg Police Station

230. Since the 2002 visit, a new police detention facility has been constructed at the back of the Police Station. The facility consists of 12 cells with an official capacity of 26 places.

At the time of the visit, the detention facility was under the operational responsibility of Point Blanche Prison, staffed by four prison officers during the day (7 a.m. to 7 p.m.) and three prison officers at night. All persons held by the police for more than a few hours would be transferred to this facility. However, the facility was also being used to hold remand and sentenced prisoners due to the overcrowding and on-going renovations at Point Blanche Prison. When the delegation visited the facility, it was holding seven persons considered to be under police custody (i.e. who had been detained for less than 10 days since their apprehension), three juveniles and 16 prisoners. Numbers often exceeded the official capacity; for example, there had been 31 persons held the night prior to the delegation's visit.

231. The conditions of detention were extremely poor. The cell area was dark and dank; cells had little access to natural light and the artificial lighting in the corridors was insufficient for reading purposes; there was inadequate ventilation and many of the sanitary annexes in the cells emitted a foul smell. In several cells, there was leakage from the sanitary annexes, which were not fully partitioned from the rest of the cell. In the larger cells (16 m²) there were two sets of bunk beds for four persons but it was quite usual for an additional two or three persons to be kept overnight in these cells, sleeping on a mattress on the floor. Many of the mattresses were dirty and worn, or consisted of broken pieces of foam held together by a sheet. Moreover, during the first 10 days of detention (the period considered as police custody) staff confirmed that detained persons were not provided with sheets, a pillow or a towel. A number of persons displayed rashes all over their bodies. There were also no call bells in the cells which meant that detained persons had to shout repeatedly to attract the attention of staff, often resulting in terse exchanges.

The situation was exacerbated by the fact that there was no regime in place. Sentenced inmates were offered two periods of up to one hour each in a courtyard and those in police custody up to one hour. There were no other activities and no access to television or radio.

Some people had been held in these conditions for several months.

The CPT recommends that urgent steps be taken to improve the conditions of detention at Philipsburg Police Station, in particular:

• all detained persons should be provided with at least 4 m² of living space per person in multi-occupancy cells;

• all detained persons should be provided with their own bed;

• all detained persons should be provided with a sheet, pillow and towel from the moment they are accommodated in this facility, as well as with hygiene products and cleaning materials for the cell;

• ventilation and access to natural light should be improved;

• all sanitary annexes should be partitioned up to the ceiling and leaking toilets and pipes repaired;

• all cells should be equipped with a call bell.

Moreover, the CPT recommends that persons should not be detained at Philipsburg Police Station in excess of three days and in any event never longer than 10 days. The facility is totally inappropriate for holding remand and sentenced prisoners, and the CPT recommends that they be moved to alternative accommodation as soon as possible."

30. On 25 August 2015 the CPT published the response of the Netherlands Government to its findings. In respect of the recommendations concerning the right of access to a doctor, the Government stated:

> "The Minister of Justice will bring the above recommendations to the attention of the St Maarten Police Force. Under the terms of article 3 of the Constitution of St Maarten, no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 30 of the Constitution states that all persons who have been deprived of their liberty must be treated humanely and with respect for the inherent dignity of the human person. Articles 41 and 48 of the code of conduct for the St Maarten Police Force state that the Minister of Justice shall take steps to ensure that a person taken into custody has access in any case to essential medical care and that police officers must consult a doctor if the person in custody asks for medical assistance or if there are any indications that the person requires such assistance. Finally, police officers are obliged to notify a doctor specified by the person in custody at the latter's request. The officer may not impose any restrictions on the doctor in relation to the medical examination or treatment.
>
> It should be added that on the basis of article 10 of the Prison Rules, detainees are entitled to be treated by a qualified doctor or dentist of their own choice, at their own expense, if they so request. It is a basic principle in this regard that no police officer will be present during any medical examination of a detainee, provided this is not prejudicial to the security situation."

31. As regards the recommendations in respect of the conditions of detention in Philipsburg Police Station, the response reads:

> "In spite of the limited capacity and financial resources, the government will attempt to comply with these recommendations in the short term. To achieve this, the detention facility at the Police Station will need to be renovated and equipped with the necessary additions. In view of current financial constraints, it is not possible to indicate a concrete timeframe for these improvements."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that the conditions of his detention at Philipsburg Police Station had amounted to treatment proscribed by Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

33. The Government contested that argument.

A. Admissibility

34. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

35. The applicant submitted *inter alia* that he had been detained in a multi-occupancy cell of 16 square metres from 13 December 2016 until 29 March 2017, and from 4 to 12 April 2017. During those periods he had shared this cell with 5 to 6 persons. For the other parts of his detention period in Sint Maarten he had been held in a single-occupancy cell of 12 square metres. The toilet in the multi-occupancy cell had leaked and had not been covered. Detainees had partitioned off the sanitary area with towels and sheets. The multi-occupancy cell had been equipped with two sets of bunk beds for four detainees. It was the rule rather than the exception that one or two additional detainees were held in the cell, who during the night would sleep on mattresses on the floor. As regards the single-occupancy cell, the applicant submitted that the cell was not even furnished with basic equipment, such as a cupboard, table and chair. He further submitted that there had been no structure to the detainees' days, that medical care had been insufficient, and that he had been kept locked in his cell for twenty-three hours a day. He also pointed out that the building structure of the cells had not provided for direct access to natural light or ventilation.

36. The Government submitted that, following the publication of the CPT report on its visit in May 2014, improvements had been made to the detention facilities of Philipsburg Police Station, taking into account the recommendations formulated by the CPT. As regards the applicant's situation, the Government submitted that the he had been individually detained in a cell of almost 12 square meters, that he had been provided with sheet, towel and that he had purchased a pillow *via* the inmate canteen programme, that he had been provided with hygiene products and that there were no leakages. According to the Government, this meant that of the CPT's recommendations only the requirement of a call bell had not been fulfilled. As regards the conditions prior to this situation, when the applicant had been detained in the multi-occupancy cell, the Government submitted that it was unable to comment for lack of detailed information. The Government admitted that the circumstances under which the applicant had been detained in Sint Maarten had not been ideal, but submitted that the conditions in which he had been held pending his extradition to Italy had not been of such a nature that he should be regarded as having been subjected to treatment prohibited by Article 3 of the Convention.

37. The Court notes that the applicant has been kept in detention in poor conditions and that his description of these conditions has not been disputed by the Government. The Court has further noted the findings of the CPT in respect of the detention facility where the applicant has been held pending the extradition proceedings and the Government's response to these findings (see paragraphs 30-31 above).

38. The Court refers to the principles established in its case law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, ECHR 2016, and *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 163-67, ECHR 2016 (extracts)). It reiterates in particular that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3 and may disclose a violation, both alone or taken together with other shortcomings (see *Muršić*, cited above, §§ 122 and 141, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 149, 10 January 2012).

39. The Court has examined all the material submitted to it and noted, in particular, that the applicant has been detained for more than eight months – of which 114 days in a multi-occupancy cell – in a detention facility of which the CPT considered that persons should not be detained there for more than three days and in any event never longer than ten days as the facility at issue is totally inappropriate for holding remand prisoners (see paragraph 29 above). Although the Government submitted that the recommendations of the CPT had been fulfilled to a large extent and that the detention conditions in the Philipsburg Police Station had been improved, it was unable to specify this statement in respect of the applicant's claim relating to the multi-occupancy cell, for lack of detailed information (see paragraph 36 above). In these circumstances that Court considers that there has been a breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 AND ARTICLE 6 § 2 OF THE CONVENTION

40. The applicant further complained under Article 5 and Article 6 § 2 of the Convention that the Joint Court had failed to conduct an adequate examination of the possibility of suspending his detention. In its relevant part, Article 5 provides:

> "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: ...
>
> ... (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. ...

> ... 4. Everyone 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 ..."

41. The Court reiterates at the outset the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. It is for that reason that the Court has repeatedly stressed in its case-law that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law, but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness (see *Chahal v. the United Kingdom*, 15 November 1996, § 118, *Reports of Judgments and Decisions* 1996-V). However, Article 5 § 1 (f) does not demand that detention be reasonably considered necessary, for example, to prevent the individual from committing an offence or fleeing. It is therefore immaterial whether the underlying decision to expel can be justified under national or Convention law (see *Chahal*, cited above, § 112; *Slivenko v. Latvia* [GC], no. 48321/99, § 146, ECHR 2003-X; *Sadaykov v. Bulgaria*, no. 75157/01, § 21, 22 May 2008; and *Raza v. Bulgaria*, no. 31465/08, § 72, 11 February 2010). However, any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under that provision. In other words, the length of the detention for this purpose should not exceed what is reasonably required (see, *Chahal*, cited above, § 113; *A. and Others v. the United Kingdom* [GC], no. 3455/05, §§ 164, 19 February 2009; *Mikolenko v. Estonia*, no. 10664/05, § 63, 8 October 2009; and *Raza*, cited above, § 72).

42. In the present case, the applicant was detained for extradition purposes between 13 December 2016 and 16 August 2017, for a total period of eight months and three days. After having received a formal request for extradition from the Italian authorities, the Prosecutor General filed a request for the applicant's extradition on 3 February 2017 with the Joint Court. A hearing on the permissibility of his extradition was initially scheduled for 21 March 2017, but, at the applicant's request, was rescheduled for 16 May 2017 (see paragraph 13 above). On 20 June 2017, the Joint Court declared the applicant's extradition permissible. The applicant filed an appeal in cassation with the Supreme Court, which he withdrew on 21 July 2017. On 4 August 2017 the Governor of Sint Maarten approved the applicant's extradition and on 16 August 2017 he was extradited (see paragraphs 21 and 23 above).

43. Taking into account these circumstances, the Court has found no evidence indicating any arbitrariness in respect of the applicant's detention pending extradition, or, more particularly, bad faith, deception or unjustified

delays in respect of the authorities' conduct (see, *a contrario*, *Bozano v. France*, 18 December 1986, § 60, Series A no. 111, and *Čonka v. Belgium*, no. 51564/99, § 41, ECHR 2002‑I).

44. Further noting the reasoned decisions by the Joint Court on the applicant's requests for suspension or termination of his detention from which it transpires that the applicant's personal circumstances as well as the Prosecutor General's substantiated claim that there was a high risk of absconding were taken into account and balanced (see paragraphs 11, 16, 19 and 22 above), the initiative taken by the Sint Maarten prosecution authorities to transfer the applicant to Curacao, and the expeditiousness of the extradition proceedings, the Court is of the opinion that the facts of the case do not disclose any appearance of a violation of his rights under Article 5 of the Convention.

45. It follows that this part of the application must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

46. In so far as the applicant alleges a violation of Article 6 § 2 of the Convention, which guarantees the right to the presumption of innocence, the Court reiterates that this right is one of the elements of a fair criminal trial guaranteed by Article 6 § 1 (see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308, and *Natsvlishvili and Togonidze v. Georgia*, no. 9043/05, § 103, ECHR 2014 (extracts)). The Court further reiterates that the words "determination ... of a criminal charge" in Article 6 § 1 of the Convention relate to the full process of examining an individual's guilt or innocence in respect of a criminal offence, and not merely, as is the case in extradition proceedings, to the process of determining whether or not a person may be extradited to a foreign country (see, for instance, *Raf v. Spain* (partial dec.), no. 53652/00, ECHR 2000-XI).

47. Having considered the applicant's submissions under Article 6 § 2 in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of this provision.

48. It follows that this part of the application must also be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

50. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

51. The Government disputed that claim.

52. Having regard to the specific circumstances of the case and in particular that it is undisputed that it was possible for the applicant to seek a voluntary transfer to another detention facility within the Kingdom of the Netherlands whereas his refusal to do so has remained unexplained by him, the Court, ruling on an equitable basis, awards EUR 5,000 euros for the non-pecuniary damage sustained by the applicant.

B. Costs and expenses

53. The applicant also claimed EUR 9,449.11 for the costs and expenses incurred before the Court, including EUR 2,520 for two successive requests for an interim measure under Rule 39 of the Rules of Court.

54. The Government disputed that claim, submitting that the costs concerning the two requests for an interim measure, both rejected by the Court, should not be taken into account..

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the above criteria and bearing in mind that the two successive Rule 39 requests have been rejected and that the applicant's complaints under Article 5 and Article 6 § 2 have been declared inadmissible, the Court awards, making its own assessment on an equitable basis and on the information contained in the case file, the applicant EUR 5,500 for his costs and expenses, plus any tax that may be chargeable.

C. Default interest

56. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 of the Convention concerning the conditions of the applicant's detention at Philipsburg Police Station admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months the following amounts:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 5,500 (five thousand and five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Dmitry Dedov
Deputy Registrar	President