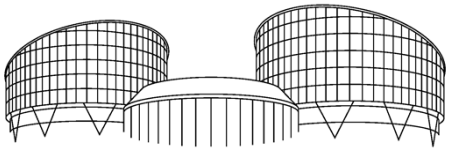

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF SPITERI v. MALTA

(Application no. 37055/22)

JUDGMENT

Art 5 § 1 • Lawful pre-trial detention of the applicant on the basis of a "Part III Arrest Warrant", issued by the Court of Magistrates under the relevant domestic law, following his extradition to Malta under a European Arrest Warrant (EAW) • Constitutional Court's findings that a "Part III Arrest Warrant" amounted to a valid national arrest warrant providing a legal basis for the applicant's detention not arbitrary or manifestly unreasonable • Pre-trial detention justified under Art 5 § 1 (c) Art 2 P4 • Freedom to leave country • Lawful and proportionate restriction imposed on the applicant not to leave Malta without permission for securing his availability for trial on serious crimes necessitating international cooperation • History of applicant being uncooperative, absconding and trying to evade justice Art 6 § 1 (civil) • Fair hearing • Reasons for refusing applicant's request for a preliminary ruling from the Court of Justice of the European Union sufficiently implicit from the Constitutional Court's judgment in the case-circumstances

Prepared by the Registry. Does not bind the Court.

STRASBOURG

13 May 2025

FINAL

13/08/2025

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Spiteri v. Malta,

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

Lado Chanturia*, President*,
Jolien Schukking,
Faris Vehabović,
Tim Eicke,
Anne Louise Bormann,
András Jakab*, judges*,
Abigail Lofaro*,* ad hoc *judge*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 37055/22) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Maltese national, Mr Patrick Spiteri ("the applicant"), on 28 July 2022;

the decision to give notice to the Maltese Government ("the Government") of the complaints under Article 5 § 1 of the Convention and Article 2 of Protocol No. 4 to the Convention, as well as Article 6 § 1 of the Convention (only in so far as it concerns the lack of reasoning in respect of the applicant's request for a preliminary reference to the Court of Justice of the European Union) and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 1 April 2025,

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

INTRODUCTION

1. The case concerns complaints under Article 5 § 1 and Article 2 of Protocol No. 4 to the Convention, as well as Article 6 § 1 of the Convention, in relation to the applicant's detention following his extradition, and subsequent restrictions on his freedom of movement.

THE FACTS

2. The applicant was born in 1964 and lives in Swieqi. He was represented by Dr I. Refalo, Dr M. Refalo and Dr S. Grech, lawyers practising in Valletta.

3. The Government were represented by their Agent, Dr C. Soler, State Advocate.

4. The facts of the case may be summarised as follows.

I. THE CRIMINAL PROCEEDINGS

5. On 29 August 2008 the applicant was summoned and charged before the Court of Magistrates as a Court of Criminal Inquiry with fraud, misappropriation of funds and forgery of public documents (proceedings no. 798/2008 in the names *Il-Pulizija vs. Patrick Spiteri*), allegedly committed during the years 1998 – 2000. On 1 December 2008 that court held that there were sufficient grounds for the applicant to be charged on indictment and consequently he was committed to trial. He was not arrested, and no pre-trial detention was ordered.

6. Evidence started to be collected before the Court of Magistrates (as a court of criminal judicature) *via* letters rogatory with different jurisdictions. On 16 July 2012 the prosecution declared that it had no further evidence to submit and the Court of Magistrates adjourned the case for the applicant to submit evidence on his part. According to the applicant, in 2013, his health deteriorated, and he fell seriously ill requiring treatment overseas. Following the applicant's absence at a number of hearings and the Attorney General's approval of 17 October 2014, on 20 October 2014 the Commissioner of Police asked the Court of Magistrates to issue a Part III Arrest Warrant and an alert for the purposes of the Schengen Information System (SIS) in accordance with Articles 62 and 62A, respectively, of Subsidiary Legislation 276.05 (see Relevant domestic law at paragraph 32 and 33 below).

7. On 20 October 2014 the Court of Magistrates (Magistrate D) agreed to issue a European Arrest Warrant (hereinafter 'EAW') against the applicant, and, according to the minutes of this hearing, "the court issued the decree related to the EAW". According to the Government, the EAW issued against the applicant (consisting of the form annexed to the 2002/584/JHA Council Framework Decision of 13 June 2002 – hereinafter 'the EAW Form') was preceded by a Part III Arrest Warrant issued in terms of Article 62 of Subsidiary Legislation 276.05 (see paragraph 32 below). The latter was issued by the Court of Magistrates (Magistrate D) on 20 October 2014 and authorised the Commissioner of Police "to arrest and keep in custody the applicant" in connection with the listed crimes and declared that "this arrest warrant is being issued for [the applicant] to be arrested and extradited to Malta for him to undergo prosecution in relation to the above-mentioned crimes". According to the applicant the Part III Arrest Warrant (hereinafter Part III warrant) did not precede the EAW but was one and the same instrument.

8. The documents of the proceedings show a Part III warrant (page 1124 of the acts of the proceedings) issued on 20 October 2014 and signed by Magistrate D, as well as a filled-in standard EAW Form (pg. 1129 of the acts of the proceedings), of the same date. In the EAW Form, section (b) requiring "the decision on which the warrant is based" indicates the "Arrest warrant by Court of Magistrates, dated 17 October 2014". Section (i) of the EAW Form

requiring "the judicial authority which issued the warrant" indicates the Court of Magistrates and "the signature of the issuing judicial authority and/or its representative" is indicated as being that of the Director of the Law Courts.

9. On 21 October 2014 a note of the Police Commissioner was presented to the Court of Magistrates, informing it that an EAW was issued against the applicant on "20 August 2014" which was subsequently put into the SIS.

10. Following extradition proceedings in the United Kingdom, the applicant was brought to Malta and appeared under arrest before the Court of Magistrates on 31 May 2017 for the continuation of the criminal proceedings. During that sitting the applicant declared that he was not seeking bail.

II. CHALLENGES TO DETENTION AND THE GRANTING OF BAIL

11. On 27 July 2017 the applicant challenged the lawfulness of his detention and asked to be released, noting that he had not been under arrest when proceedings were ongoing in Malta. He had then been extradited from the United Kingdom to Malta on the basis of an EAW, the legal effects of which were extinguished the moment he had been brought before a judge in Malta. He argued that there existed no provision of domestic law transforming the effects of that warrant to cover pre-trial detention pending proceedings. It followed that, in the absence of any judicial decision ordering his detention, he could not be considered as being under arrest and therefore need not make a request for bail. The request was being made while reserving his right to challenge the lawfulness of his arrest on any grounds.

12. On 28 July 2017, having upheld the objections of the prosecution (that had argued that the EAW remained valid until the court decided otherwise), the Court of Magistrates rejected the applicant's challenge noting that, in line with Article 62 (4) of Subsidiary Legislation 276.05, the arrest warrant issued against the applicant referred to "conducting a criminal prosecution". It followed that the effects of the EAW did not come to an end the moment that he was returned and appeared before the domestic court. Indeed, this had been recognised by the applicant given that, when he appeared before the Court of Magistrates on 31 May 2017, he had declared that he was not seeking bail.

13. On 7 September 2017 the applicant asked for a reconsideration of his request to be released, arguing that the warrant issued under Article 62 of Subsidiary Legislation 276.05 was intended solely to extradite the applicant for the purposes of prosecution, and could not be a legal basis for a subsequent detention, in the absence of any provision of law regulating the effects of that warrant, or determining what was the individual's situation once returned. He noted that neither the Extradition Act nor the Criminal Code dealt with this matter. The Part III warrant or the EAW being only an instrument permitting the transfer of a person, the applicant had to be considered as being in the same situation he had been in prior to the extradition (i.e., at liberty).

14. The applicant's request for reconsideration was rejected on 20 October 2017 for the same reasons mentioned at paragraph 12 above. In particular, the Court of Magistrates noted that it was true that Maltese law did not specifically indicate that an individual who had previously been heard under summons and not under arrest, should be detained on return, nevertheless "the moment when the EAW had been issued against the applicant, that warrant had been issued by this court with the aim of it being able to prosecute the applicant for the crimes mentioned in that warrant. As provided by Article 62 (4) of Legal Notice 320 of 2004 [Subsidiary Legislation 276.05] as subsequently amended, this declaration was stipulated in the warrants issued against the applicant. Such prosecution against the applicant is still ongoing. The accused was put under arrest for the purposes of conducting the prosecution and not solely to be extradited to Malta. It follows that the effects of the EAW did not come to an end when the applicant was brought before the court".

15. Following the refusal of various bail requests, on 18 December 2017 the applicant was granted bail in the present case (as well as in a series of other criminal cases pending against him), under various conditions which included that he could not travel away from the Maltese Islands, that he report to a police station on a daily basis, that he be found in his home between midnight and 8.30 a.m., and that he deposit in the court registry 3,000 euros (EUR) in bail security together with the amount of EUR 30,000 as a personal guarantee. According to the applicant, and not disputed by the Government, he was physically released on 22 December 2017, presumably after the relevant deposit was made.

16. While his bail conditions were partly modified in time (in particular his condition to be home at night was lifted on 30 November 2020), the travel ban remained in place and the applicant unsuccessfully filed requests to be granted authorisation to travel abroad for the purposes of work, as he claimed that he had been unable to find a job in Malta. In a decision of 16 July 2019, the Court of Magistrates considered that his inability to find a job in Malta was solely an allegation, and it was not satisfied that the applicant would indeed return to Malta if allowed to leave. However, following a further request substantiated by relevant evidence in relation to the job he had obtained, by means of a decision of 2 September 2019, the Court of Magistrates upheld the applicant's request to travel abroad under various conditions.

17. On 4 September 2019 the Attorney General filed an application demanding the Criminal Court to revoke that decision. The Criminal Court, on 30 September 2019, upheld the request of the Attorney General and revoked the applicant's permission to travel abroad due to his untrustworthy character and since he had already absconded from Malta and evaded justice, as a fugitive, for a long period of time. It noted that besides his non-appearance at trial in Malta when he had left for the United Kingdom,

the applicant had also managed to flee (*jiżgiċċa)* the United Kingdom authorities during his extradition, prolonging it by two months. The Criminal Court further solicited the prosecution to close its evidence so to enable the Court of Magistrates to pronounce the first-instance judgment in the criminal proceedings against the applicant. A further request by the applicant to present a witness to the Criminal Court for it to reconsider its decision was denied on 7 November 2019, such testimony having already been examined earlier. The Criminal Court's decision was thus confirmed on the basis that it considered the applicant as untrustworthy and presenting a flight risk.

18. No further requests by the applicant have been brought to this Court's attention and at the time of the submission of the observations (2023), the condition not to leave the Maltese Islands was still in place.

III. CONSTITUTIONAL REDRESS PROCEEDINGS

19. On 6 December 2019 the applicant filed constitutional redress proceedings before the First Hall Civil Court in its constitutional competence (hereinafter 'FHCC') (case no. 239/2019) whereby he claimed that the decrees issued by the Criminal Court rejecting his requests to travel abroad were in breach of his fundamental human rights as protected *inter alia* by Article 5 of the European Convention on Human Rights ('the Convention'). During the constitutional proceedings, the FHCC acceded to the request made by the applicant to allow him to add a claim of a breach of Article 5 of the Convention whereby the applicant alleged that the EAW issued against him had not been preceded by a national arrest warrant rendering his arrest and continued detention in Malta and the subsequent bail conditions illegal. The Attorney General and the Commissioner of Police replied by rejecting the claims made by the applicant as being unfounded as the measures applied to the applicant had been in accordance with the law.

20. The additional claims concerning the applicant's arrest and detention in Malta had been the result of witness testimony during the constitutional redress proceedings whereby the Assistant Police Commissioner testified that he was unable to explain why the [EAW] Form referred to a national arrest warrant of 17 October 2014 (see paragraph 8 above), and why the note of the Commissioner of Police referred to a warrant of 20 August 2014 (see paragraph 9 above). In his view the Magistrate had only issued one warrant and he did not think that a national arrest warrant had been issued prior to the EAW.

21. By means of a judgment of 13 October 2021, the FHCC found a violation of Article 5 of the Convention in relation to the applicant's detention in so far as no national arrest warrant had been issued prior to the issuance of the EAW contrary to the requirements of European Union (EU) law, as interpreted by the Court of Justice of the European Union (CJEU). Indeed, having examined in detail all the acts of the proceedings it resulted that the

only arrest warrant issued against the applicant was that of the Court of Magistrates of 20 October 2014, which was in fact an EAW issued in terms of Article 62 of Subsidiary Legislation 276.05 namely, the Extradition (Designated Foreign Countries) Order. The latter was the law by which the EAW procedure (Council Framework Decision of 13 June 2002, hereinafter 'Framework Decision') was implemented into Maltese law. Article 8 of the Framework Decision stipulated that an EAW had to contain "evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2". According to CJEU case-law, there were fundamental distinctions between a national arrest warrant and an EAW and that the term 'arrest warrant' for the purposes of Article 8 (1) (c) of the Framework Decision had to be understood as indicating a national arrest warrant distinct from the EAW, so as to guarantee the highest level of judicial protection (see paragraph 43-44 below). Furthermore, once a person is surrendered to the requesting Member State the extradition procedure ends and its effect cease as the EAW does not constitute a detention order in respect of the person sought by the requesting State (see paragraph 44 below). It followed that, in the present case, a national warrant was required both for the purpose of issuing the EAW and for the applicant to remain detained following his arrival in Malta. In the absence of such a warrant, his detention was unlawful, and the fact that the applicant had not raised the issue at the first hearing when he appeared before the court did not alter that finding.

22. In consequence the restrictions on his liberty of movement were also in violation of Article 2 of Protocol No. 4 to the Convention. It considered that it was not for it to lift any of the measures which had been put in place. It, however, ordered the Attorney General and the Commissioner of Police to regulate themselves in line with its judgment within twenty days and that the judgment be notified to the Court of Magistrates.

23. The applicant and the State Attorney both appealed, the latter principally arguing that the first court had made a wrong assessment of the facts and the former mainly in relation to the remedy meted out. In reply to the State Attorney's appeal, the applicant noted that the crux of the case was whether a national arrest warrant had been issued separate from the EAW and reiterated the relevant European Union law and case-law (see paragraphs 43-44 below) concerning the distinction between a national arrest warrant and an EAW. He reiterated that the Part III warrant could not constitute the national arrest warrant, and that the [EAW] Form was only the means of executing the Part III warrant. In conclusion he requested a preliminary reference to the CJEU should the disputed matter be in doubt.

24. On 30 March 2022 the Constitutional Court revoked the first-instance judgment and rejected all the applicant's claims. It considered that the decree found at page 1124 in the acts of the proceedings (entitled a warrant for the purposes of Article 62 of Subsidiary Legislation 276.05), issued on

20 October 2014, was indeed a national arrest warrant. The latter had a basis in domestic law and was addressed to the Police Commissioner of Malta for the purpose of arresting the applicant and maintaining him in custody with the aim of him appearing before a court to be prosecuted for the crimes with which he was charged. As to the argument in relation to his continued detention after his arrival, given that the EAW ceased to have effect once the person was returned, the Constitutional Court noted that when he appeared on 31 May 2017 the applicant had not requested bail and the Court of Magistrates had "felt" (*ħasset*) that there had been good reasons in law for the applicant to remain detained. It appeared that on that day he had conceded that there had been valid reasons to remain in detention, since being brought before a court, which had the jurisdiction to examine any challenge to the legality of his detention or decide on bail, he had failed to request either. His eventual requests for bail had then been rejected on the basis that he had given insufficient guarantees that he would appear at trial, as per Article 574 and 575 of the Criminal Code. Those refusals had not been unreasonable given the applicant's lack of cooperation over the years. It followed that there had been no violation of Article 5. In any event, Article 412 (A) of the Criminal Code also provided for the power of the Court of Magistrates to impose conditions on a person charged or accused who is not in custody. Thus, those conditions, which had been put in place out of necessity given the applicant's previous behaviour, could legitimately have been put in place even in the absence of arrest or detention. The restrictions imposed on the applicant having been put in place lawfully (*taħt qafas legali*) the finding of a violation of his right to freedom of movement also had to be revoked.

25. Following the introduction of the application before the Court on 28 July 2022, the applicant's request to have a retrial of these proceedings was rejected.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Criminal Code

26. Article 355V of the Criminal Code reads as follows:

> "Where there are lawful grounds for the arrest of a person, the Police may request a warrant of arrest from a Magistrate, unless in accordance with any provision of law the arrest in question may be made without a warrant."

27. Article 412A of the Criminal Code, concerning conditions imposed upon persons charged or accused not in custody, in so far as relevant reads as follows:

> "(1) When the person charged or accused brought before the Court of Magistrates, whether as a court of criminal judicature or as a court of criminal inquiry, is not in

custody the Attorney General or the Police may thereupon or at any stage of the proceedings thereafter request the court to impose conditions upon the person charged or accused in order to ensure the appearance of that person at the proceedings on the appointed time and place or to otherwise ensure that that person will not in any way unlawfully interfere in the correct administration of justice in those proceedings.

(2) The court may require the giving of sufficient security by the person charged or accused by the mere recognizance of the same person charged or accused in order to ensure that he abides by the conditions imposed upon him by the court and the provisions of articles 576 and 584, shall apply to the security given under this sub-article."

28. Article 525 (3) of the Criminal Code provides *inter alia* that Article 397 of the Criminal Code shall, *mutatis mutandis*, also be applied by the Court of Magistrates in cases falling within its jurisdiction as a court of criminal judicature. In so far as relevant Article 397 (5), concerning the powers of the Court of Magistrates as a court of criminal inquiry, reads as follows:

"The court may also order the arrest of the accused not already in custody".

29. Article 574 of the Criminal Code, concerning bail, reads as follows:

"(1) Any person charged or accused who is in custody for any crime or contravention may, on application or as provided in article 574A, be granted temporary release from custody, upon giving sufficient security to appear at the proceedings at the appointed time and place under such conditions as the court may consider proper to impose in the decree granting bail which decree shall in each case be served on the person charged or accused.

(2) It shall also be lawful for the President of Malta, in special cases, to grant temporary release to any accused person who is in custody for any crime or contravention, subject to such conditions as the President of Malta may think fit to impose. In default of observance by the accused of any of such conditions he shall be liable to be re-arrested forthwith."

30. Article 574A of the Criminal Code, concerning the first appearance before a court, in so far as relevant, reads as follows:

"(1) When the person charged or accused who is in custody is first brought before the Court of Magistrates, whether as a court of criminal judicature or as a court of criminal inquiry, the Court shall have the charges read out to the person charged or accused and, after examining the person charged as provided in article 392 as the proceedings may require, shall summarily hear the prosecuting or arraigning officer and any evidence produced by that officer on the reasons supporting the charges and on the reasons and circumstances, if any, militating against the release of the person charged or accused;

(2) After hearing the prosecuting or arraigning police officer and any evidence produced as provided in sub-article (1) the court shall inform the person charged or accused that he may be temporarily released from custody on bail by the court under conditions to be determined by it and shall ask him what he has to say with respect to his arrest and his continued detention and with respect to the reasons and the circumstances militating in favour of his release.

..."

31. Article 575(2) of the Criminal Code, in so far as relevant, reads as follows:

> "At any stage other than that referred to in article 574A, the demand for bail or any demand for the variation of the conditions of bail after bail has been granted, shall be made by an application, a copy whereof shall be communicated to the Attorney General on the same day, whenever it is made by –
>
> (a) persons accused of fraudulent bankruptcy;
>
> (b) persons accused of any crime under Sub-title III of Title III of Part II of Book First of this Code, if such crime is punishable with more than one year's imprisonment;
>
> (c) persons accused of any crime punishable with more than three years' imprisonment."

B. Subsidiary Legislation under The Extradition Act

32. Article 62 of Part III (Extradition to Malta from Scheduled countries) of the Subsidiary Legislation 276.05, the Extradition (Designated Foreign Countries) Order, (Legal Notice 320 of 2004), which implemented the 2002/584/JHA Council Framework Decision of 13 June 2002, reads as follows:

> "1) A magistrate may issue a Part III warrant in respect of a person if –
>
> (a) a police officer not below the rank of inspector applies to a Magistrate for a Part III warrant, and
>
> (b) the condition in sub-article (2) is satisfied.
>
> (2) The condition is that the Attorney General has given his consent to the issue of a Part III warrant in respect of the person and there are reasonable grounds for believing –
>
> (a) that the person has committed an extraditable offence, or
>
> (b) that the person is unlawfully at large after conviction of an extraditable offence by a court in Malta.
>
> (3) A Part III warrant is an arrest warrant which contains –
>
> (a) the statement referred to in sub-article (4) or the statement referred to in sub-article (5), and
>
> (b) the certificate referred to in sub-article (6).
>
> (4) The statement referred to in sub-article (3)(a) is one that the person in respect of whom the warrant is issued is wanted in Malta for the purposes of conducting a criminal prosecution for the commission of an offence specified in the warrant[1].
>
> (5) The statement is one that –
>
> (a) the person in respect of whom the warrant is issued is alleged to be unlawfully at large after conviction of an extraditable offence specified in the warrant by a court in Malta, and

[1] Text of this sub-article as amended by Legal Notice 421 of 2013.

(b) the warrant is issued with a view to his arrest and extradition to Malta for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(6) The certificate is one certifying –

(a) whether the conduct constituting the extraditable offence specified in the warrant falls within the European framework list;

(b) whether the offence is an extra-territorial offence;

(c) what is the maximum punishment that may be imposed on conviction of the offence or (if the person has been sentenced for the offence) what sentence has been imposed.

(7) The conduct which falls within the European framework list must be taken for the purposes of sub-article (6)(a) to include conduct which constitutes –

(a) an attempt, conspiracy or incitement to carry out conduct falling within the list, or

(b) aiding, abetting, counselling or procuring the carrying out of conduct falling within the list.

The European framework list is the list of conduct set out in Schedule 2.

(8) Any statement or certificate referred to by this article maybe set out in accordance with the form contained in the Annex to the Arrangement [or as contained in ANNEX LAW-5 to the Trade and Cooperation Agreement[2]], as the case may be[3].”

33. Article 62A of Subsidiary Legislation 276.05 reads as follows:

“Where a Part III warrant is issued in respect of a person whose whereabouts are unknown, the Magistrate shall, ex officio or at the request of the police, request the issue of an alert in the Schengen Information System.”

34. Article 65 of Subsidiary Legislation 276.05 concerns “Service of sentence in country executing Part III warrant”. Articles 66 and 67 of Subsidiary Legislation 276.05 apply “if a person is extradited to Malta from a scheduled country in pursuance of a Part III warrant” and Article 70A of Subsidiary Legislation 276.05 refers to the preventive detention in the scheduled country “as a result of the execution in the scheduled country of a Part III warrant”. “Scheduled countries” refers to the countries listed in the Schedule to Subsidiary Legislation 276.05, namely, the European Union Member States as stood in 2007.

35. In so far as relevant Article 3 (1) of Subsidiary Legislation 276.05 concerning the relationship between the Extradition Act and Subsidiary Legislation 276.05 reads as follows:

“Only the provisions of this Order, save where otherwise expressly indicated, shall apply to requests received or made by Malta on or after the relevant date for the return of a fugitive criminal to or from a scheduled country, or to persons returned to Malta from a scheduled country in pursuance of a request made under this Order, and the provisions of the relevant Act shall have effect in relation to the return under this Order

[2] Amendment inserted following Legal Notice No. 116 of 2021.
[3] This sub-article was added to the original text via Legal Notice 224 of 2006.

of persons to, or in relation to persons returned under this Order from, any scheduled country subject to such conditions, exceptions, adaptations or modifications as are specified in this Order."

C. The practice of warrants for the purposes of extradition (examples provided by the Government)

36. On a request by the Court to submit examples of national arrest warrants issued for the purposes of requesting an EAW, together with the subsequent EAW, the Government submitted four examples of a Part III warrant and a subsequent EAW Form. In the case of a certain S a Part III warrant was issued on 11 April 2006 by Magistrate H for the accused to be arrested and extradited to enable his criminal prosecution, followed by an EAW Form of the same date. According to the latter form, in the section requiring the 'Decision on which the arrest warrant is based' "Arrest warrant" is indicated without a date. In the section 'The judicial authority which issued the warrant' Magistrate H is indicated. At the end of the EAW Form, the section 'Signature of the issuing judicial authority and/or its representative' is indicated as being that of Magistrate H. From the documents, no information transpired as to whether S had ever been arrested or detained in Malta before such time.

37. In the case of a certain A, who had absconded pending proceedings, a Part III warrant was issued on 30 March 2015 by Magistrate D for the purposes of his criminal prosecution, followed by an EAW Form dated 6 April 2015. According to the latter form, in the section requiring the 'Decision on which the arrest warrant is based' "Part III Warrant issued by the Court of Magistrates (Malta) in terms of Article 62 of Legal Notice 320 of 2004 [Subsidiary Legislation 276.05]... (Dated 30 March 2015)," is indicated. In the section 'The judicial authority which issued the warrant' Magistrate D is indicated. At the end of the EAW Form, the section 'Signature of the issuing judicial authority and/or its representative' is indicated as being the Registrar of the Criminal Courts. No information transpired as to whether A had been arrested or detained in Malta before such time.

38. In the case of a certain N, who had absconded following the alleged perpetration of a crime, a Part III warrant was issued on 11 March 2016 by Magistrate S for the purposes of his criminal prosecution, followed by an EAW Form of the same date. According to the latter form, in the section requiring the 'Decision on which the arrest warrant is based' "Part III Warrant issued by Magistrate S on 11 March 2016 in terms of Article 62 of Subsidiary Legislation 276.05," is indicated. In the section 'The judicial authority which issued the warrant' Magistrate S is indicated. At the end of the EAW Form, the section 'Signature of the issuing judicial authority and/or its representative' is indicated as being the Assistant Director of the Law Courts. It would appear that N had never been arrested or detained in Malta before such time.

39. In the case of a certain M, who had absconded pending proceedings while released on bail, a Part III warrant was issued on 27 June 2021 by Magistrate Z for the purposes of his criminal prosecution, followed by an EAW Form dated 30 June 2021. According to the latter form, in the section requiring the 'Decision on which the arrest warrant is based' "Part III Warrant issued by the Court of Magistrates (Malta), Magistrate Z in terms of Article 62 of Legal Notice 320 of 2004 [Subsidiary Legislation 276.05]...," is indicated, in the section 'The judicial authority which issued the warrant' Magistrate Z is indicated. At the end of the EAW Form, the section 'Signature of the issuing judicial authority and/or its representative' is indicated as being the Assistant Registrar of the Criminal Courts.

II. EUROPEAN UNION LAW

A. The Council Framework Decision of 13 June 2002

40. The relevant articles of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States 2002/584/JHA, *OJ L 190, 18 July 2002, p. 1–20*, read as follows:

Article 1 - Definition of the European arrest warrant and obligation to execute it

"1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union."

Article 6 - Determination of the competent judicial authorities

"1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law."

Article 8 - Content and form of the European arrest warrant

"1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

(a) the identity and nationality of the requested person;

(b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

(d) the nature and legal classification of the offence, particularly in respect of Article 2;

(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;

(f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

(g) if possible, other consequences of the offence.

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities."

41. The form in the Annex is entitled "EUROPEAN ARREST WARRANT", and that title carries a footnote which reads "This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State". The front page of that form also states that "this warrant has been issued by a competent judicial authority".

42. According to The Handbook on how to issue and execute a European arrest warrant (2017/C 335/01)7:

"1.2. **Definition and main features of the EAW**

The EAW is a judicial decision enforceable in the Union that is issued by a Member State and executed in another Member State on the basis of the principle of mutual recognition.

...

The EAW replaced the traditional system of extradition with a simpler and quicker mechanism of surrender of requested persons for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. A warrant may be issued for the purposes of:

(a) a criminal prosecution in relation to acts punishable under domestic law by a custodial sentence or detention order for a maximum period of at least 12 months (during the investigation, examining and trial stages, until the conviction is final);

(b) the execution of a sentence or detention order of at least four months.

Points (a) and (b) are not cumulative.

To make requests simpler and easier to comply with, they are now issued in a uniform way by filling in an EAW form. It is, however, always necessary that a national enforceable judgment or a national arrest warrant or similar judicial decision has been issued prior to and separately from the EAW (see Section 2.1.3).

...

1.3. **The EAW form**

The EAW is a judicial decision issued in the form laid down in an annex to the Framework Decision on EAW. The form is available in all official languages of the Union. Only **this form may be used** and it must not be altered. The intention of the Council was to create a working tool easily filled in by the issuing judicial authorities and recognised by the executing judicial authorities.

Use of the form avoids lengthy and expensive translations and facilitates the accessibility of the information. Since the form in principle constitutes the sole basis for the arrest and subsequent surrender of the requested person, it should be filled in with particular care in order to avoid unnecessary requests for supplementary information.

The form can be filled in either directly online by using the European Judicial Network (EJN) Compendium e-tool available on the EJN website, or in a Word format form which can be downloaded from the Judicial Library section on the EJN website (https://www.ejn-crimjust.europa.eu)."

B. Relevant case-law

43. In its judgment of 1 June 2016 in *Bob-Dogi* (C-241/15, EU:C:2016-385), the European Court of Justice (CJEU), in so far as relevant to the present case, ruled as follows:

"1. Article 8(1)(c) of the 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, is to be interpreted as meaning that the term 'arrest warrant', as used in that provision, must be understood as referring to a national arrest warrant that is distinct from the European arrest warrant.

2. Article 8(1)(c) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, is to be interpreted as meaning that, where a European arrest warrant based on the existence of an 'arrest warrant' within the meaning of that provision does not contain any reference to the existence of a national arrest warrant, the executing judicial authority must refuse to give effect to it if, in the light of the information provided pursuant to Article 15(2) of Framework Decision 2002/584, as amended, and any other information available to it, that authority concludes that the European arrest warrant is not valid because it was in fact issued in the absence of any national warrant separate from the European arrest warrant."

44. In its judgment of 13 January 2021 in *MM* (C-414/20 PPU, EU:C:2021:4), the CJEU reiterated the requirement for an EAW to be preceded by a national arrest warrant (as established in the case law cited in the preceding paragraph). It also specified the meaning which must be given to the concepts of 'judicial decision' and 'national arrest warrant or any other enforceable judicial decision having the same effect' as follows:

"52. As regards, ..., what must be understood by the term 'judicial decision' it has been held that that term covers all the decisions of the Member State authorities that administer criminal justice, but not the police services (judgment of 10 November 2016, *Özçelik*, C-453/16 PPU, EU:C:2016:860, paragraph 33)".

53. As regards, ... a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of that provision, a national measure serving as the basis for a European arrest warrant must, even if it is not referred to as a "national arrest warrant" in the legislation of the issuing Member State, produce equivalent legal effects, namely the legal effects of an order to search for and arrest the person who is the subject of a criminal prosecution. That concept does not therefore cover all the measures which initiate the opening of criminal proceedings against a person, but only those intended to enable, by a coercive judicial measure, the arrest of that person with a view to his or her appearance before a court for the purpose of conducting the stages of the criminal proceedings.

...

58. ... Article 8(1)(c) of Framework Decision 2002/584 must be interpreted as meaning that a European arrest warrant must be regarded as invalid where it is not based on a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of that provision. That concept covers national measures adopted by a judicial authority to search for and arrest a person who is the subject of a criminal prosecution, with a view to bringing that person before a court for the purpose of conducting the stages of the criminal proceedings. It is for the referring court to determine whether a national measure putting a person under investigation, such as that on which the European arrest warrant at issue in the main proceedings is based, produces such legal effects.

...

62. It is also apparent from the Court's case-law that the European arrest warrant system entails a dual level of protection of procedural rights and fundamental rights which must be enjoyed by the requested person, since, in addition to the judicial protection provided at the first level, at which a national decision, such as a national arrest warrant, is adopted, there is the protection that must be afforded at the second level, at which a European arrest warrant is issued, which may occur, depending on the circumstances, shortly after the adoption of the national judicial decision (judgments of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyon and Tours)*, C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077, paragraph 59, and of 12 December 2019, *Openbaar Ministerie (Swedish Public Prosecutor's Office)*, C-625/19 PPU, EU:C:2019:1078, paragraph 38).

...

77. Accordingly, as the Advocate General also pointed out in points 148 and 149 of his Opinion, where the requested person has been arrested and then surrendered to the issuing Member State, the European arrest warrant has, in principle, exhausted its legal effects, with the exception of the effects of the surrender expressly provided for in Chapter 3 of Framework Decision 2002/584, and that, in the light of the limits inherent in the mechanism of the European arrest warrant, that mechanism is not an order for the detention of the requested person in the issuing Member State."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

45. The applicant complained that his detention had not been lawful contrary to that provided in Article 5 § 1 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:
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;"

A. Admissibility

46. Under this provision the applicant complains of his detention from 31 May 2017 to 22 December 2017 and of the subsequent period where he had been released on bail subject to conditions.

47. The Court observes that the Government have not raised any objection *ratione materiae*. However, it notes that competence *ratione materiae* is a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see *Pasquini v. San Marino*, no. 50956/16, § 86, 2 May 2019).

48. Article 5 concerns deprivation of liberty and as it does in many other areas, the Court insists in its case-law on an autonomous interpretation of the notion of deprivation of liberty. A systematic reading of the Convention shows that mere restrictions on the liberty of movement are not covered by Article 5 but fall under Article 2 § 1 of Protocol No. 4. However, the distinction between the restriction of movement and the deprivation of liberty is merely one of degree or intensity, and not one of nature or substance. In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5, the starting point must be the concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. According to the Court's case-law, house arrest is considered, in view of its degree and intensity, to amount to deprivation of liberty within the meaning of Article 5 of the Convention (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 103 and 104, 5 July 2016).

49. In so far as it concerns the applicant's detention from 31 May 2017 to 22 December 2017, the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

50. In so far as it concerns the period subsequent to his detention, namely, when he had been released on bail subject to conditions, the Court notes that the applicant in the present case was not put under house arrest and the fact of being unable to leave home during the night hours does not amount to house arrest and hence deprivation of liberty (see *De Tommaso v. Italy* [GC], no. 43395/09, § 86, 23 February 2017). Given the type of conditions he was subjected to when he was granted bail (see paragraph 15 above), the Court considers that they cannot amount to detention in view of their degree and intensity. It follows that that part of the complaint, in so far it was raised under Article 5, is inadmissible *ratione materiae* with that provision of the Convention and thus, must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

1. The parties' submissions

(a) The applicant

51. The applicant submitted that his arrest and detention in Malta following the execution of the EAW (i.e., between 31 May 2017 and 22 December 2017) was in breach of Article 5 because the arrest effected by means of the EAW had not been in accordance with law, and therefore it could not produce any effects. It followed that the applicant should not have been detained.

52. He submitted that an EAW had to be preceded by a national arrest warrant according to Article 8 (1)(c) of the Framework Decision (see paragraph 40 above) as confirmed by CJEU jurisprudence (see paragraphs 43 and 44 above), but in the present case no separate national warrant had been issued against him by the Maltese authorities. In the applicant's view, a Part III warrant was one and the same as the EAW, and not a replacement to a national warrant which should be issued under Article 355V of the Criminal Code (see paragraph 26 above). This was evident given that it was issued under the Extradition Act and because it's wording precisely stated that it was being issued so that the applicant "is arrested and extradited to Malta for him to be prosecuted". It was therefore not a classic order for the applicant to be arrested and detained in Malta. In the applicant's view, the fact that it was one and the same was also clear from the fact that the Framework Decision required the EAW to be a judicial decision, however the EAW Form was not such a decision given that it was compiled administratively and was not signed by a judge. In the applicant's view, the findings of the Constitutional Court had been manifestly unreasonable.

53. Moreover, had it really been separate the EAW Form should have referred to a national warrant of 20 October 2017 and not a separate "fictitious" warrant of 17 October 2017. Indeed, no explanation had been

given as to why the EAW Form referred to a national arrest warrant of 17 October 2017 which did not exist. Thus, in any event, one had to consider that the EAW had been issued on the basis of wrong and misleading information which led the United Kingdom to accept the extradition on the false belief that a national warrant (dated 17 October 2014) subsisted.

54. In addition, one had to consider that an EAW serves its purpose once a person is extradited. Thus, once he had been returned, the purposes of the EAW had been exhausted and the applicant's continued arrest and detention could only be based on a separate national warrant which had never been issued.

55. In relation to the limited selected examples submitted by the Government (see paragraphs 36-39 above), the applicant noted that the mere fact that the same error was perpetrated over time, did not make it lawful. Moreover, while not having access to warrants issued against other persons, the applicant referred to two cases which had been reported in the press (and he submitted a copy of the relevant newspaper articles), where EAWs were issued separately following a national arrest warrant. The applicant invited the Government to submit those examples.

(b) The Government

56. The Government submitted that the applicant had been detained under the first limb of Article 5 § 1 (c) in the context of criminal proceedings, for the purpose of bringing him before the competent legal authority on suspicion of him having committed an offence.

57. They submitted that his detention had been lawful, in line with Subsidiary Legislation 276.05 (see paragraph 32 above) implementing the Council Framework Decision of 13 June 2002. The applicant's arrest was authorised on 20 October 2014 by the Court of Magistrates (constituted of Magistrate D) following a request by the Commissioner of Police to have a Part III warrant issued against the applicant since he had absconded from Malta. The Part III warrant (pg. 1124 in the acts of the criminal proceedings) was issued in terms of Article 62 of Subsidiary Legislation 276.05 which represented the national arrest warrant for the purposes of this procedure, and empowered the Magistrate to issue such warrant in respect of a person who was wanted in Malta for the purposes of conducting a criminal prosecution for the commission of an offence specified in the warrant. According to the Government, the Part III warrant was a separate and distinct document from the EAW. In the present case the EAW was issued on the appropriate EAW Form (pg. 1129 of the acts of the proceedings), and the judicial authority authorising it was again Magistrate D [according to section (i) of the EAW Form] and therefore had to be considered as a judicial decision as required by Article 6 (1) of the Framework Decision (see paragraph 40 above).

58. They emphasised that on his return to Malta when appearing before the Court of Magistrates on 31 May 2017 the applicant had not asked for bail

(see paragraph 10 above) and that his multiple subsequent bail applications had been rejected because the domestic courts were satisfied that the dangers mentioned in the Criminal Code subsisted.

59. In reply to the applicant's invite to submit a full range of examples (see paragraph 55 above), the Government submitted that they had nothing else to add to their previous submissions.

2. The Court's assessment

(a) General principles

60. Any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, be "lawful" (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 125, 1 June 2021). 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 standards, including those which have their source in international law (see *Medvedyev and Others v. France* [GC], no. 3394/03, § 79, ECHR 2010) or European law (see *Paci v. Belgium*, no. 45597/09, § 64, 17 April 2018). In all cases it establishes the obligation to conform to the substantive and procedural rules of the laws concerned, but it also requires that any deprivation of liberty be compatible with the purpose of Article 5, namely, to protect the individual from arbitrariness (see, among many other authorities; *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II; *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-X; and *Medvedyev and Others*, cited above, § 79).

61. 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 and/or international 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 avoid all risk of arbitrariness and to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances of the case, the consequences which a given action may entail (see ibid., § 80; *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 92, 15 December 2016; *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013; and *Denis and Irvine*, cited above, § 128).

62. 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, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *West v. Hungary* (dec.). no. 5380/12, § 54, 25 June 2019).

63. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1, failure to comply with domestic law entails a breach of the Convention, and the Court can and should therefore review whether this law has been complied with (see *Mooren v. Germany* [GC], no. 11364/03, § 73, 9 July 2009). In particular, it is essential, in matters of deprivation of liberty, that the domestic law define clearly the conditions for detention and that the law be foreseeable in its application (see *Creangă v. Romania* [GC], no. 29226/03, § 101, 23 February 2012).

64. The Court has clarified that not every fault discovered in a detention order renders the underlying detention as such unlawful for the purposes of Article 5 § 1. A period of detention is, in principle, "lawful" if it is based on a court order. A subsequent finding of a superior domestic court that a lower court erred under domestic law in making the order will not necessarily retrospectively affect the validity of the intervening period of detention (see *Mooren*, cited above, § 74, with further references).

65. For the assessment of compliance with Article 5 § 1 of the Convention, a basic distinction has to be made between ex facie invalid detention orders – for example, given by a court in excess of jurisdiction or where the interested party did not have proper notice of the hearing – and detention orders which are prima facie valid and effective unless and until they have been overturned by a higher court. A detention order must be considered as ex facie invalid if the flaw in the order amounted to a "gross and obvious irregularity" in the exceptional sense indicated by the Court's case-law. Accordingly, unless they constitute a gross and obvious irregularity, defects in a detention order may be remedied by the domestic appeal courts in the course of judicial review proceedings (see *Mooren*, cited above, § 75, with further references).

(b) Application of the general principles to the present case

66. The Court notes that the complaint under this head concerns the period of detention from 31 May 2017 to 22 December 2017 (see paragraph 49 above) and that it is not disputed that Maltese law provides for pre-trial detention. In consequence, the applicant's detention falls under Article 5 § 1 (c), namely, for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence.

67. The matter in dispute is rather whether the applicant's detention during that period had been based on a valid arrest warrant. In this connection the Court notes that, despite their pleadings at the domestic level and the findings of the courts of criminal jurisdiction at the time (see paragraph 12 and 14 above), before the Court, the Government have not disputed that the EAW's effects were extinguished the moment the applicant had been brought before a judge in Malta (see also to this effect the findings of the CJEU at paragraph 44 *in fine* above) and therefore the EAW could not serve as the

basis for his detention subsequently. Given that the applicant's complaint concerns solely the period subsequent to his extradition to Malta, the issue of whether the EAW was a valid arrest warrant (based on the various arguments submitted by the applicant, see paragraphs 53 and 54 above) is inconsequential.

68. The Court observes that, from the minutes of the hearing of 31 May 2017 it does not appear that on that day the Magistrate made any order for the applicant's detention, or any considerations in its relation, given the absence of a request for bail. In consequence, the question remains whether a valid national arrest warrant existed, independently of the EAW, which could provide a legal basis for the applicant's detention. In other words, whether the Part III warrant issued in terms of Article 62 of Subsidiary Legislation 276.05 in respect of the applicant amounted to a national arrest warrant or to the EAW (which could not be the basis of his detention). The parties' have diverging views about this, as did the courts of constitutional jurisdiction on two levels (see paragraphs 21 and 24 above). The findings of the courts of criminal jurisdiction (see paragraph 12 and 14 above) entered into no such specific assessment, and thus provide no explicit guidance on the matter.

69. The applicant considered that the warrant issued under Article 62 of Subsidiary Legislation 276.05 was not an ordinary arrest warrant, but rather the EAW or, in any event, part and parcel of it as the form contained in the annex to the Framework Decision could not constitute an EAW on its own, given that it was not issued by a judicial authority.

70. The Court considers that the mere fact that the Part III warrant was not an ordinary arrest warrant issued under the Criminal Code has no bearing on its validity as a national arrest warrant. While it is clear that a person present in the Maltese territory would be sought by means of a traditional arrest warrant under the Criminal Code, there is nothing anomalous in the fact that the arrest of a person outside its territory would be sought by means of a national arrest warrant under the legislation dealing with extradition, requesting both a person's arrest and extradition. As noted by the Constitutional Court, the Part III warrant, had a basis in domestic law, was addressed to the Commissioner of Police, not another Member State, and it was issued for the purpose of, *inter alia*, arresting the applicant and "maintaining him in custody" with the aim of him appearing before a court to be prosecuted. It was on that basis that the Constitutional Court concluded that it amounted to a national arrest warrant (see paragraph 24 above).

71. In relation to the applicant's argument concerning the impossibility of the EAW Form alone to constitute the EAW, the Court observes that Article 8 of the Framework Decision states that the relevant information which is to be contained in the [European arrest] warrant is to be set out "in accordance with the form contained in the Annex" (see paragraph 40 above). The form in the Annex is entitled "EUROPEAN ARREST WARRANT", and that title carries a footnote which reads "This warrant must be written in, or translated into,

one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State". The front page of that form also states that "this warrant has been issued by a competent judicial authority" (see paragraph 41 above). The relevant handbook concurringly states that EAWs are now issued in a uniform way "by filling in an EAW" and that the EAW is a judicial decision issued in the form laid down in an annex to the Framework Decision (see paragraph 42 above).

72. Indeed, section (i) of the EAW Form in the present case indicates that the judicial authority issuing the warrant is the Court of Magistrates and it is signed by the Director of the Law Courts. Since the form provides for it to be signed by a representative of the issuing judicial authority and there is no reason to believe that the Director of the Law Courts could not sign in representation of the Court of Magistrates, there is no reason to consider that the form was not issued by the Court of Magistrates, and therefore a judicial authority. Moreover, that court itself had acknowledged having issued the EAW (see paragraph 14 above), there could therefore be no doubt about that matter. It follows that nothing has been brought to the Court's attention which would indicate that the EAW could not self-subsist in the form itself provided for such purpose by the Framework Decision (i.e., the EAW Form).

73. In view of the above the Court considers that the applicant has not brought anything to the Court's attention that could dispel the Constitutional Court's conclusions, which therefore cannot be considered as 'arbitrary or manifestly unreasonable' (compare, *mutatis mutandis*, *Paci*, § 74, and *West*, § 55, both cited above).

74. It follows that the applicant's detention from 31 May 2017 to 22 December 2017 must be considered as having a basis in domestic law and having been ordered in accordance with a procedure prescribed by law, it was therefore lawful. There is also no reason to consider that it was not justified for the purposes of Article 5 § 1 (c).

75. There has accordingly been no violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

76. The applicant complained that the restrictions on his freedom of movement had been unlawful and in violation of his rights under Article 2 of Protocol No. 4 to the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of

national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

A. Admissibility

77. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

78. The applicant submitted that bail was the temporary release of a detained person. Thus, since his bail conditions (one of which was not to leave the Maltese Islands) depended on the legality of his arrest and detention, the unlawfulness of the latter entailed the unlawfulness of the conditions impinging on his freedom of movement. He noted that the condition not to leave the Maltese Islands had resulted in him being unable to keep the only job he could find given that this entailed travelling abroad, while remaining based in Malta. He further pointed out that these restrictions had been lifted in other criminal proceedings pending against the applicant concerning similar circumstances.

79. The Government submitted that the bail conditions applied to the applicant had been in accordance with law, namely Article 574A of the Criminal Code (see paragraph 27 above). They had also been reasonable and justified given that he had been a fugitive of justice for a number of years. While the applicant had relied on his medical condition and treatment to justify his absence, he had failed to show due diligence to the court by keeping it updated in relation to his medical condition during the criminal proceedings.

2. The Court's assessment

(a) General principles

80. The right guaranteed by paragraphs 1 and 2 of Article 2 of Protocol No. 4 is intended to secure to any person a right to liberty of movement within a territory and to leave that territory, which implies a right to leave for a country of the person's choosing to which he or she may be admitted (see *Baumann v. France*, no. 33592/96, § 61, ECHR 2001-V, and *De Tommaso v. Italy* [GC], cited above, § 104).

81. This right does not confer on any individual an absolute right to leave a territory. It may be restricted and also conditional upon compliance with formal requirements such as being in possession of a valid travel document or visa. The corresponding obligations to respect this right are incumbent on the Contracting States (see *S.E. v. Serbia*, no. 61365/16, § 47, 11 July 2023).

82. It is not in itself questionable that the State may apply various preventive measures restricting the liberty of an accused in order to ensure the efficient conduct of a criminal prosecution; such measures may include deprivation of liberty. An obligation not to leave the area of one's residence is a minimal intrusive measure involving a restriction of one's liberty (see *Hajibeyli v. Azerbaijan,* no. 16528/05, § 60, 10 July 2008; see also *Popoviciu v. Romania*, no. 52942/09, § 88, 1 March 2016).

83. Any measure restricting the right to freedom of movement must meet the requirements of paragraph 3 of that Article (see, among others, *Gochev v. Bulgaria*, no. 34383/03, § 44, 26 November 2009, and *Nalbantski v. Bulgaria*, no. 30943/04, § 60, 10 February 2011) and thus, must be lawful, pursue one of the legitimate aims referred to in paragraph 3 of that Article, and strike a fair balance between the public interest and the individual's rights (see *Baumann*, cited above, § 61; *Riener v. Bulgaria*, no. 46343/99, § 109, 23 May 2006; and *Bulea v. Romania*, no. 27804/10, § 57, 3 December 2013). As regards the proportionality of the interference, the Court has particular regard to the duration of the measure in question (see *Nikiforenko v. Ukraine*, no. 14613/03, § 56, 18 February 2010, and *Diamante and Pelliccioni v. San Marino*, no. 32250/08, § 210, 27 September 2011). However, the issue must be assessed according to all the special features of the case (see *Miażdżyk v. Poland*, no. 23592/07, § 35, 24 January 2012). The restriction may be justified in a given case only if there are clear indications of a genuine public interest which outweighs the individual's right to freedom of movement (see *Hajibeyli*, cited above, § 63).

(b) Application of the general principles to the present case

84. The Court observes that, while the applicant was under an obligation not to leave home at night (see paragraph 15 above) for a period of time, which constitutes interference with liberty of movement (see *De Tommaso*, cited above, § 86), no submissions have been made in that respect, as his complaint has been directed entirely towards his inability to travel outside the Maltese Islands.

85. The Court notes that a restriction not to leave the Maltese Islands, without permission, restricted the applicant's right to liberty of movement in a manner amounting to an interference, it must be established, therefore, whether or not the interference was lawful and necessary in a democratic society for the achievement of a legitimate aim (see *Popoviciu*, cited above, § 85).

86. The Court notes that it has already rejected the applicant's argument that his detention was unlawful (see paragraph 74 above). Therefore, the applicant's parallel argument that the ensuing bail conditions were automatically unlawful must also be rejected. Moreover, it has not been disputed that according to domestic law the courts of criminal competence had the relevant jurisdiction, and a legal basis, allowing them to impose conditions upon the applicant in order to ensure his appearance at the trial. It follows that the impugned measure, applied to the applicant, was also lawful.

87. The Court is also satisfied that the measure pursued the legitimate aim of securing the applicant's availability for trial, and hence the maintenance of public order (ibid., § 86).

88. As to whether it was necessary in a democratic society, the Court reiterates firstly that an obligation not to leave the area of one's residence (or in this case the country) is a minimal intrusive measure involving a restriction of one's liberty (see paragraph 82 above).

89. It further observes that it has previously found in a series of cases that such an obligation imposed on the applicants was disproportionate in cases where the duration of the obligation not to leave the area of residence or the territory of the respondent State varied between more than five years (see *Prescher v. Bulgaria* no. 6767/04, § 47, 7 June 2011, and *Rosengren v. Romania*, no. 70786/01, § 38, 24 April 2008) and more than ten years (see *Riener*, cited above, §§ 106, and *Ivanov v. Ukraine*, no. 15007/02, § 96, 7 December 2006). However, exceptions to that approach were made particularly where the applicant had not sought to leave the area (see, for example, *Komarova v. Russia*, no. 19126/02, § 55, 2 November 2006 in relation to a period of over seven years, and *Doroshenko v. Ukraine*, no. 1328/04, § 53-56, 26 May 2011 in relation to a period of six years and four months, which moreover concerned the serious offence of large scale tax evasion). Conversely, in cases where this obligation was imposed for periods varying between four years and three months and four years and ten months, the Court, having also had regard to other specific circumstances of each case, did not find the restriction of the applicants' freedom of movement disproportionate (see *Fedorov and Fedorova v. Russia,* no. 31008/02, §§ 42-47, 13 October 2005, and *Antonenkov and Others v. Ukraine*, no. 14183/02, §§ 62-67, 22 November 2005). However, bearing in mind all the circumstances of the case, the Court has also found a duration of three years and five months to be disproportionate (see *Hajibeyli*, cited above, § 67 where the case was unreasonably lengthy, and the applicant's requests had not been examined).

90. The Court further reiterates that the necessity for maintaining the restriction will inevitably diminish with the passage of time (compare *Prescher*, and *Rosengren*, both cited above, §§ 49-50 and 39 respectively) especially where no further evidence of the applicant's intention to abscond is uncovered during the course of the proceedings. The duration of the

proceedings, and also their pace, are of relevance (see, for example, *Miażdżyk*, and *Prescher*, both cited above, §§ 38 and 50 respectively) together with the gravity of the offence (see *Ivanov*, and *Doroshenko,* both cited above, §§ 96 and 54 respectively) and whether or not the applicant requested to leave the area and was refused (see, amongst others, *Antonenkov and Others* and *Doroshenko*, both cited above, §§ 64 and 55 respectively).

91. In the present case the measure which was ordered on 18 December 2017 and has apparently not yet been lifted, has been in place for over seven years, and the applicant's individual requests to travel were denied in 2019, due to his history, and in the words of the Criminal Court – who reversed the only decision of the Court of Magistrates in the present case lifting this measure at the time – due to his untrustworthy character and since he had already absconded from Malta and evaded justice, as a fugitive, for a long period of time (see paragraph 17 above).

92. The Court notes that the authorities had reason to be apprehensive about the possibility of the applicant's fleeing. The applicant had already fled overseas (irrespective of what reason had led him to do so) and failed to appear for trial, which necessitated his extradition from the United Kingdom which he also tried to evade (see paragraph 17 above) and which undoubtedly delayed the criminal proceedings. This was certainly sufficient to justify the ban at the beginning (compare *Prescher*, cited above, § 49) and the refusals of his requests at least until his last request in 2019. The applicant has not informed the Court of any further requests or their outcome, it must presumably be considered that he filed no further requests.

93. The Court is not indifferent to the fact that the proceedings started nearly twenty years ago, in relation to offences which occurred a decade prior (see paragraph 5 above). However, it does not appear that the delay was due to the authorities, quite the opposite, the applicant having been uncooperative, having absconded and tried to evade justice. Moreover, the case concerned serious crimes and necessitated international judicial cooperation (see paragraph 6 above) and therefore can be considered as being relatively complex. Lastly, the Court cannot but note that the major argument brought forward by the applicant five years ago in the request lodged in 2019, and again before this Court, is that he could not find any job in Malta, an argument this Court (like the domestic courts) has little sympathy with, public data showing that Malta has consistently had a low declared unemployment rate (of around 3%)[4].

94. Bearing in mind all the above and particularly the fact that no information has been brought to the Court's attention about any further attempts to seek permission to leave, and if so whether they were or not granted while the measure remained in place, in the last five years (since

[4] https://nso.gov.mt/ (last accessed 2025)
https://www.independent.com.mt/articles/2019-04-02/local-news/Malta-s-unemployment-rate-stands-at-3-5-fourth-lowest-in-Euro-Area-6736206046 (last accessed 2025)

2019), the Court considers that a fair balance between the demands of the general interest and the applicant's rights was achieved.

95. There has accordingly been no violation of Article 2 of Protocol No. 4 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 THE CONVENTION

96. Lastly, the applicant complained under Article 6 § 1 of the Convention that the Constitutional Court failed to examine and give reasons in connection with his request to refer the matter to the Court of Justice of the European Union. The provision reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an ... tribunal established by law ..."

A. The scope of the complaint

97. The Court notes that the parties made submissions concerning the retrial proceedings. However, it is clear from the application form that the applicant's complaint only related to the request for a preliminary reference made on appeal to the Constitutional Court in the constitutional redress proceedings, to which no reply was given in its judgment of 30 March 2022. By means of correspondence of 12 December 2022 the applicant informed the Court of the outcome of the retrial proceedings. However, that correspondence did not supplement the original complaint or contain new complaints. It is therefore only the original complaint which was communicated to the Government and accordingly which falls within the scope of the present judgment.

98. The Court further notes that the documents contained in the case-file show that the applicant's request for a preliminary reference to the Constitutional Court concerned solely whether an EAW had to be preceded by the issuance of a national arrest warrant. Nothing shows that there was an explicit request about whether the EAW Form could constitute of itself the EAW. Any argumentation in that sense, therefore, also falls outside of the scope of the complaint to be examined.

B. Admissibility

99. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. The parties' submissions

100. The applicant submitted that he had clearly made a request for a preliminary reference entitled "request for a reference" which related to his submissions concerning the application of EU law and the formal requirements of an EAW. No other procedural requirements applied to such requests, so much so that it had not been rejected as being procedurally invalid. Thus, as a court of last instance the Constitutional Court could not ignore that request, nor fail to give reasons for its rejection.

101. The Government submitted that the request had only been a suggestion and not a formal request, according to Maltese procedural rules, specifying in detail 'why' a reference on a precise point of EU law 'is deemed to be necessary' to enable the court to give judgment on the dispute before it, and detailing the legal arguments in support of such a request.

102. In any event, the Government considered that the applicant's 'request' for a preliminary reference was purely conditional upon the Constitutional Court "having any doubts" about the case-law cited by the applicant. However, the Constitutional Court had no doubts about such case-law and accepted that an EAW was to be preceded by a national arrest warrant, applying it in practice and finding that in the present case that requirement had been fulfilled (i.e., on a factual basis). Thus, the Constitutional Court was absolutely under no obligation to refer such a question; it was not even obliged to consider the applicant's conditional request that a preliminary reference be made – and even less to state reasons for not making a reference – given that the Constitutional Court did not have any doubts whatsoever about the implications of the case-law cited by applicant. Moreover, according to the Court's case-law it was possible for the reasoning of the rejection to be implied from the rest of the judgment, a situation pertaining to the present case.

2. The Court's assessment

(a) General principles

103. The Convention does not guarantee, as such, any right to have a case referred by a domestic court to the CJEU for a preliminary ruling (see *Baydar v. the Netherlands*, no. 55385/14, § 39, 24 April 2018, and *Ullens de Schooten and Rezabek v. Belgium*, nos. 3989/07 and 38353/07, § 57, 20 September 2011). However, Article 6 § 1 requires the domestic courts to give reasons for any decision refusing to refer a request for a preliminary ruling, especially where the applicable law allows for such a refusal only on an exceptional basis. The Court has inferred from this that when it hears a complaint alleging a violation of Article 6 § 1 on this basis, its task consists in ensuring that the impugned refusal has been duly accompanied by such reasoning. That being

said, whilst this verification has to be made thoroughly, it is not for the Court to examine any errors that might have been committed by the domestic courts in interpreting or applying the relevant law (see *Ullens de Schooten and Rezabek*, cited above, §§ 60-61, and *Dhahbi v. Italy*, no. 17120/09, § 31, 8 April 2014).

104. In the specific context of the third paragraph of Article 267 of the Treaty on the Function of the European Union (TFEU), this means that national courts against whose decisions there is no remedy under national law, which refuse to refer to the Court of Justice a preliminary question on the interpretation of Community law that has been raised before them, are obliged to give reasons for their refusal in the light of the exceptions provided for in the case-law of the Court of Justice (see *Ullens de Schooten and Rezabek*, cited above § 62; *Sanofi Pasteur v. France*, no. 25137/16, § 70, 13 February 2020; and *Georgiou v. Greece*, no. 57378/18, § 23, 14 March 2023).

105. However, where a superior domestic court has rejected a request with summary reasoning because it raised no fundamentally important legal issues or had no prospects of success, it can sometimes be acceptable under Article 6 of the Convention, for that court to refrain from dealing explicitly with the request for a referral submitted in that context (see, in particular, *Baydar*, cited above, §§ 42, 46 and 48). The same applies where the appeal on points of law was declared inadmissible for failing to comply with the conditions of admissibility (see *Astikos Kai Paratheristikos Oikodomikos Synetairismos Axiomatikon and Karagiorgos v. Greece* (dec.), nos. 29382/16 and 489/17, § 47, 9 May 2017). In such cases, the replies to the questions envisaged, whatever they might be, would have no impact on the outcome of the case (ibid.).

106. The Court also accepts that, *in concreto*, the reasons for the rejection of the request for a preliminary ruling can be deduced from the reasoning of the remainder of the decision given by the court in question (see *Krikorian v. France* (dec.), no. 6459/07, §§ 97-99, 26 November 2013; *Harisch v. Germany*, no. 50053/16, §§ 37-42, 11 April 2019; and, for illustrative purposes, *Ogieriakhi v. Ireland* (dec.) [Committee], no. 57551/17, § 62, 30 April 2019) or from reasons considered implicit in the decision rejecting the request (see *Wind Telecomunicazioni S.p.a. v. Italy* (dec.), no. 5159/14, §§ 36-37, 8 September 2015; *Repcevirág Szövetkezet v. Hungary*, no. 70750/14, §§ 57-58, 30 April 2019; and *Silvestri and Others v. Italy* (dec.) no. 76571/14 and 13 others, §§ 30-32, 28 June 2022).

(b) Application of the general principles to the present case

107. The Court observes that no domestic provisions supporting any alleged procedural failures in the request made by the applicant have been brought to the Court's attention by the Government. Having examined the documents in the case file, no evident failures have been identified in the

applicant's request, nor has this been alleged at the domestic level or found by the Constitutional Court, and thus it cannot be considered as falling under the circumstances stated in paragraph 105 above.

108. Moreover, the Court has also examined the Constitutional Court's judgment and nowhere is there a mention of the applicant's request for a reference and even less an explicit reason for its rejection. Nevertheless, as argued by the Government there is no doubt from the judgment's content that the Constitutional Court had accepted the CJEU's conclusions that an EAW was to be preceded by a national arrest warrant i.e., the argument relied on by the applicant, and an interpretation which was never even contested by the State during those proceedings. It was on the basis of that interpretation already given by the CJEU (see paragraphs 43 and 44 above) and uncontested by the Constitutional Court that the latter examined the case in question. Therefore, the judgment itself is implicit in its reasoning as to why a preliminary reference on that matter was unnecessary. In this context the fact that the applicant's request was conditional becomes relevant as his own interpretation had not been doubted (contrast with the circumstances in *Georgiou*, cited above § 19 and 25, where the applicant offered a possibly different interpretation, and the Court found a violation in the absence of any reasoning).

109. Admittedly, it would have been more appropriate for the Constitutional Court to give a reasoned reply to the applicant's conditional request. Nevertheless, the Court considers that in these circumstances the reasons for refusing such a reference were sufficiently explicit from the judgment (see, *mutatis mutandis*, *Wind Telecomunicazioni S.p.a.*, §§ 36-37, and *Silvestri and Others*, §§ 30-32, both cited above).

110. There has accordingly been no violation of Article 6 § 1.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints concerning Article 5 § 1 in relation to the period 31 May 2017 to 22 December 2017, Article 2 of Protocol No. 4 to the Convention, and Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, by five votes to two, that there has been no violation of Article 5 § 1 of the Convention;

3. *Holds*, by six votes to one, that there has been no violation of Article 2 of Protocol No. 4 to the Convention;

4. *Holds*, unanimously, that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 13 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Lado Chanturia
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Partly dissenting opinion of Judge Vehabović;
(b) Partly dissenting opinion of Judge Lofaro.

PARTLY DISSENTING OPINION OF JUDGE VEHABOVIĆ

I regret that I am unable to endorse the view of the majority that there has been no violation of Article 5.

We must consider a European Arrest Warrant (EAW) to have served its purpose once the requested person has been extradited. Thus, once he had been returned, the purposes of the EAW were exhausted and the applicant's arrest and continued detention could have been based only on a separate national warrant, which was never issued.

In the present case, there was no such legal basis for continued detention. My understanding is that the EAW cannot serve as a mere substitute for a national warrant, which was lacking in this case.

PARTLY DISSENTING OPINION OF JUDGE LOFARO

1. The applicant, in this case, complained that he was deprived of his liberty in breach of Article 5 § 1 of the Convention. Specifically, he argued that his detention was not ordered "in accordance with a procedure prescribed by law".

2. On 29 August 2008 the applicant had been summoned and charged before the Court of Magistrates as a Court of Criminal Inquiry with fraud, misappropriation of funds and forgery of public documents. **He was not brought before that court under a warrant of arrest.** On 16 July 2012 the prosecution declared that it had no further evidence. At that stage, the applicant complained that his health had deteriorated and required treatment abroad. He went abroad and did not return. When the applicant missed a number of court hearings, the Commissioner of Police, after having obtained the Attorney General's consent, requested the Court of Magistrates to issue a Part III Arrest warrant. The Court accepted the Commissioner of Police's request on 20 October 2014.

3. According to the applicant, the court's decision was in breach of Article 5 of the Convention as the court should not have acceded to the Commissioner of Police's request in the absence of a prior national arrest warrant. According to the applicant the Part III Arrest warrant and the European Arrest Warrant Form were one and the same instrument and that by no stretch of the imagination could they be considered to incorporate a national arrest warrant. The Government of Malta argued that the European Arrest Warrant issued against the applicant, which warrant consisted of the Form annexed to the 2002/584/JHA (Council Framework Decision of the 13 June 2002), was preceded by a Part III Arrest warrant and that the latter instrument satisfied the requirement of a prior national arrest warrant.

4. The applicant argued that his arrest and detention in Malta following the execution of the European Arrest Warrant, between 31 May 2017 and 22 December 2017, was in breach of Article 5 since the arrest effected by the European Arrest Warrant had not been issued in accordance with the law.

5. The First Hall Civil Court in its constitutional competence in the constitutional redress proceedings, lodged by the applicant, decided that the applicant's rights were breached when he was held under arrest in Malta by means of the European Arrest Warrant. The court reached that conclusion as there was no prior existing national arrest warrant and this went against the jurisprudence of the European Court of Justice on this point. The First Hall Civil Court in its constitutional competence held that this point was 'acte clair' in EU law and so it applied it to the case finding the applicant's arrest to be illegal. However, the Court did not grant the applicant an effective remedy.

6. The applicant and the Government of Malta both appealed and the Constitutional Court on 30 March 2022 decided that the European Arrest

Warrant proceedings had been correctly executed, that a national arrest warrant was in place and therefore that the applicant's arrest was lawful. This is also the opinion of this Court which found that there was no breach of Article 5 § 1 of the Convention.

7. I respectfully disagree with this Court's decision as the Council Framework Decision of the 13 June 2002 on the European Arrest Warrant clearly requires that a European Arrest Warrant be a judicial decision and not the form by itself, which is compiled administratively and not by a Judge or Magistrate and is, therefore, not a judicial decision.

8. Furthermore, the European Arrest Warrant, according to the jurisprudence of the European Court of Justice, must be separate and distinct from the national arrest warrant. The national courts gave different interpretations to the facts of this case. When asked by this Court to submit examples of national arrest warrants issued for the purposes of requesting a European Arrest Warrant, together with the subsequent European Arrest Warrant, the Respondent Government managed only to submit four examples reflecting the practice which was adopted in the applicant's case. This must be viewed in the light of the fact that it has been twenty years since the adoption of the European Arrest Warrant and during this period the matter arose far more than four times. Confusion reigns supreme.

9. In my opinion the Part III Arrest warrant and the European Arrest Warrant Form are one and the same instrument and cannot serve the dual purpose of being a national arrest warrant as well as a European Arrest Warrant. Article 5 of the Convention protects an individual from arbitrary detention. In my view this also means that any detention must be preceded by a scrupulous observance of the procedure contemplated by the law. In the absence of a national arrest warrant it is my view that this Court should have intervened and used its powers of review. The consequence of ignoring procedural requirements leads to the arbitrary deprivation of liberty. Pontius Pilate washed his hands when faced with an issue concerning life and death. Admittedly, the deprivation of liberty is less serious. However, it is equally fundamental and does not deserve a washing of hands.

10. I humbly submit that the applicant's detention from 31 May 2017 to 22 December 2017 was not ordered in accordance with a procedure prescribed by law and was consequently unlawful.

11. I also disagree with this Court's decision finding no violation of Article 2 of Protocol No. 4 to the Convention. I submit that the applicant's bail conditions, one of which was not to leave the Maltese Islands, depended on the legality of his detention. Since I submit that his arrest and detention were unlawful, the conditions impinging on his freedom of movement were also unlawful.

12. The right guaranteed by paragraphs 1 and 2 of Protocol No. 4 is intended to secure to any individual a right of liberty of movement within any territory as well as a right to leave that territory. It follows that any measure

restricting this right must be lawful, pursue a legitimate aim and must strike a fair balance between the public interest and the individual's rights.

13. The applicant was not to leave home at night for a period of time and this clearly interfered with his liberty of movement and this interference was not lawful and necessary in a domestic society since the applicant's detention was not lawful. He was also prohibited from leaving the Maltese Islands, this latter restriction being in force to this day.

14. In the absence of a valid arrest warrant legitimising his detention following his return to Malta, the subsequent decisions taken restricting the applicant's freedom to travel cannot be said to be lawful. Hence, I submit that there was also a violation of Article 2 of Protocol No. 4 to the Convention.