

The Deputy Speaker: The hon. Second Member for Rivière des Anguilles and Souillac!

MR P.U. SLOVAKIAN NATIONAL – FORCIBLE REMOVAL

(No. B/166) **Mr R. Jhummun** (Second Member for Rivière des Anguilles & Souillac) asked the Attorney General whether, in regard to Mr P.U., a Slovakian national, he will state the circumstances that led to the removal of the Slovakian despite pending extradition proceedings before the Port Louis District Court (3rd Division) and an interim order from the Supreme Court, duly served on the relevant authorities, indicating the action taken and/or being envisaged to prevent any such occurrence.

Mr Glover: Mr Deputy Speaker, Sir, at the outset, I make no apology for what will be a long reply to that question by the Second Member for Rivière des Anguilles and Souillac.

Mr Deputy Speaker, Sir, allow me, please, first to say that this case is a prime example of how the rule of law could be subverted and weakened by a government for want of proper legal guidance, of how our court of justice were considered, not so long ago, as an inconvenience that could be bypassed by the powers that be.

Mr Deputy Speaker, Sir, I will first briefly clarify the circumstances under which this foreign national came to Mauritius, resided here and was later forcibly removed.

This Slovak national came to Mauritius in February 2019 from Kenya on a tourist visa. On 13 March 2019, less than a month later, he applied through the EDB, for an Occupation Permit. Months later, it appears that searches made on the Controversial List of the Passport and Immigration Office, the Interpol Database and World-Check returned no results for him. His application for an Occupation Permit was thus approved for a period of three years, so much for proper due diligence.

On 05 November 2020, the Attorney General's Office received a request from the Slovak Republic for the arrest and extradition of that foreign national. He was wanted for prosecution in his country for having, at the time, allegedly masterminded, from 2015 to 2018, a criminal group providing ingredients to produce dangerous drugs to the tune of 16 million euros.

In January 2021, the Attorney General's Office wrote to the appropriate authorities in Mauritius to confirm the presence of the foreign national in our country. And having received confirmation, we prepared draft applications for his arrest and extradition. However, these applications were kept in abeyance due to the second COVID-19 lockdown. Upon the re-opening of the Mauritian borders in October 2021, the Attorney General's Office enquired whether the Slovakian authorities were ready and willing to remove that foreign national from Mauritius, should an extradition order be made against him.

On 15 February 2022, the Attorney General's Office received confirmation from the Slovak authorities and the applications for the arrest and extradition of the Slovak national were, consequently, lodged on 22 February 2022 before the District Court of Port Louis. He was arrested on the same day and was bailed out on 09 March 2022.

In the same month, the Slovak national applied for a renewal of his permit as well for a Clearance Certificate in order to marry a Mauritian national. However, on 15 April 2022, the then Prime Minister deprived that foreign national of the status of resident in exercise of his discretion under section 6 of the Immigration Act after being satisfied that it was in the public interest to do so. Notice of this change in status, although decided on 15 April 2022, was only served on the foreign national at his last known address on 22 April 2022.

Mr Deputy Speaker, Sir, up to this point, clearly, we had due process. We had a person who had entered the country legally, became the object of extradition proceedings at the instance of his own country and who, whilst these proceedings were still underway, also became a prohibited immigrant.

From thereon, there were two ways that this foreign national could be removed from Mauritius legally, either the Court in the extradition proceedings reached the decision that it was to send him back to Slovakia for prosecution or as a prohibited immigrant, he could be subject to a deportation order under that Act but this was possible only after the procedure under the section 5 of the Deportation Act was followed, which involved allowing that foreign national the opportunity to show cause why such an order ought not to be granted.

Here, I have to point out that there is a deficiency in the deportation process, in that the deportation order to be made by a Minister, here the Prime Minister, under section 4, has to be in a prescribed form. And funnily enough, as at now, no such form has been prescribed. This is a lacuna that this Government intends to address very soon.

Mr Deputy Speaker, Sir, I have to inform the House that on 26 April 2022, an order in the form of an interim injunction issued by a Judge of the Supreme Court was served on the State of Mauritius, the Prime Minister's Office, the Passport Immigration Office, the Attorney General's Office and the Director of Civil Aviation, prohibiting and restraining them from either deporting or extraditing the foreign national.

In spite of this, I am informed that on the very same day that the injunction was granted, the foreign national was arrested anew, purportedly, on the basis of the Immigration Act, conveyed by the Police to the Sir Seewoosagur Ramgoolam International Airport for his forcible removal by Slovakian authorities, which had been dispatched by a special flight, with its own law enforcement officers ready to take custody of their foreign national on our soil.

The flight took off just before 4.00 p.m. at a time when the State, the PMO, the PIO had already been served with the court order.

The justifications for this course of action were given to this House by the then Prime Minister on 10 May 2022 in his replies to PQ B/525 and B/530 and in a Communiqué by the Prime Minister's Office dated 30 April 2022, and as well as on many public occasions by the former Attorney General. I will summarise them as follows –

- (1) They said the Immigration Act allegedly provides for a route distinct and independent from the Deportation Act or the Extradition Act, allowing for the arrest of the foreign national and his conveyance to the Slovakian agents to forcibly take him away.
- (2) They said since the procedure followed was neither that of a deportation or extradition, the court order was not flouted because those were the only routes which had been stated in the court order, deportation or extradition, and neither were used, they said.
- (3) They said in any event the Police was not subject to the court order.

You remember, it was PMO, PIO, Civil Aviation and Attorney General, and we all know who the Attorney General represents. In any event, they said that foreign national was a dangerous criminal that had to be removed but who had been granted an Occupation Permit within 60 days of arrival as a tourist in Mauritius.

Mr Deputy Speaker, Sir, their reasoning is alarming. Let me dispatch the first reason they put forward by stating that nowhere in the Immigration Act, as it stood in 2022, is there a power to deport someone who has been residing albeit illegally in Mauritius. There are provisions to declare one a prohibited immigrant and there are provisions to lawfully detain a person seeking admission to the country. Section 20, invoked by the previous government, does not create any new stand-alone power to arrest or detain an illegal resident. Those powers fall squarely under the Deportation Act.

Mr Deputy Speaker, Sir, this is legal interpretation and this is clearly not the place to debate it. I will readily concede that a legal question may have as many answers as there are lawyers to answer it. However, even a mistaken reading of the Immigration Act could not

justify the rest of the previous government's reasoning. I stand advised that there is an action for contempt regarding this case presently before the Supreme Court awaiting judgement. I shall therefore not say more.

This new concept of "removal", which involves placing the person in question in the hands of foreign agents on our soil is devoid, in my humble view, of any legal substrata. No explanation was ever given as to the legal basis for Slovakian agents to use legitimate force on our national soil in order to take away their national. No explanation was given, Mr Deputy Speaker, Sir, because there is none, because as the Prime Minister's Office itself stated in its Communiqué, this was not done under either the Extradition or the Deportation Act.

There is, in fact, a name for this, Mr Deputy Speaker, Sir. A name often used in human rights discussions around the world. This was a disguised extradition whereby a wanted fugitive is handed over to a foreign State by means other than the classical extradition, bypassing the usual safeguards of the law and the scrutiny of the courts.

Mr Deputy Speaker, Sir, the most extraordinary part of the previous government's justification is this insolent insistence on the fact that, I quote –

“At no material time was the Police the object to the Court Order.”

It cannot be disputed that the Commissioner of Police is but an agent of the State, and an order against the State necessarily implies that its agent must comply with that order. It would be inappropriate, of course, at this juncture, to opine on the consequences of what happened as this would fall squarely in the realm of the court proceedings awaiting judgment, as I alluded to earlier.

Mr Deputy Speaker, Sir, it does not matter if that foreign national was later sentenced in Slovakia to 22 years of imprisonment for the illicit production, possession and trafficking of drugs. Of course, such persons are not welcome in Mauritius. They should never have been granted an Occupation Permit in the first place! But the only way we will truly tackle the drug trafficking, illegal immigration or any other crime is by making sure, first and foremost, that everyone respects the law, including the State. That is the rule of law, or else, our grand speeches in this august Assembly would not mean a thing!

Here, we are left to wonder how this person was granted his Occupation Permit in such a short period of time by the authorities. We are equally baffled by the alacrity shown by the authorities to dispatch that person out of the country. Is there a correlation? I wonder! That being said, this is the rule of law which we want to restore, Mr Deputy Speaker, Sir.

I will, therefore, answer the second part of the question of the hon. Member. There is no other way in order to avoid such occurrence in the future than to learn from the mistakes and flaws of our predecessors. And for me and members of my office, to adhere strictly to the rule of law, irrespective of the cost that it entails. Thank you, Mr Deputy Speaker, Sir.