

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO.: 2026-207663

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 2 September 2026 E van der Schyff

In the matter between:

VILI KRASIMIROV GEORGIEV

APPLICANT

and

**THE MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

FIRST RESPONDENT

**THE DIRECTOR-GENERAL OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

SECOND RESPONDENT

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **THIRD RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTIONS,
EASTERN CAPE**

FOURTH RESPONDENT

THE MINISTER OF HOME AFFAIRS

FIFTH RESPONDENT

**THE DIRECTOR-GENERAL: DEPARTMENT OF
HOME AFFAIRS**

SIXTH RESPONDENT

**THE REFUGEE APPEALS AUTHORITY OF
SOUTH AFRICA**

SEVENTH RESPONDENT

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

JUDGMENT: PART A

VAN DER SCHYFF J

Introduction

[1] This is an urgent application for interim relief. The applicant seeks the suspension of the first respondent's decision of 15 August 2026, taken under section 11(a) of the Extradition Act 67 of 1962, ordering his surrender to the Republic of Bulgaria, pending the determination of the review in Part B.

[2] After the application was argued, I reserved judgment. I indicated that the judgment would be handed down on or before 7 September 2026. I issued an interim order interdicting the applicant's extradition pending judgment.

[3] At this stage the Court is not called upon to determine finally whether the surrender decision is lawful, whether the Minister was under a duty in all cases to invite representations, whether the applicant ultimately qualifies for protection under the Refugees Act 130 of 1998, or whether the risks alleged by him are established. Findings are made only to the extent necessary to determine the interim relief.

Urgency

[4] The respondents contend that the urgency is self-created because the applicant knew, after the conclusion of the appeal process concerning his committal, that surrender was likely. I disagree.

[5] The operative urgency arose when the Minister made the surrender decision, and the applicant became aware of it. According to the founding papers, the applicant first became aware of the decision on 24 August 2026 and, under the bail arrangement then regulating his position, was required to surrender himself into custody within approximately 48 hours of written notice. Before the Minister's decision, there was no operative surrender order to suspend or review.

[6] The chronology immediately preceding the decision is material. On 30 July 2026 the applicant's attorneys wrote directly to the Minister and the Director-General under the

heading “URGENT REPRESENTATIONS FOR MR VILI KRASIMIROV GEORGIEV”. They recorded that they had instructions to file urgent representations “for the attention of The Minister to consider prior to deciding regarding the surrender of our client to the Bulgarian authorities” and that the representations were being finalised for submission. On 12 August 2026 the applicant’s present attorneys again informed the Department that comprehensive representations were being compiled for submission to the Minister. Neither communication was answered before the decision was taken.

[7] On 14 August 2026 the Magistrates’ Court released the applicant on bail in terms of section 10(5) of the Extradition Act, pending the Minister’s decision under section 11. The following day, 15 August 2026, the Minister signed the surrender order. The proximity of those events, against the background of the two letters stating that representations were being prepared for the Minister, is relevant to urgency and to the *prima facie* case, without determining the review.

[8] The first respondent further states that after signing the surrender order, the original signed order was delivered to Interpol to facilitate the applicant’s surrender. Thus, on the first respondent’s own version, a step directed at implementation had already been taken before these proceedings were instituted.

Miscellaneous

[9] The notice of motion and the amended notice of motion created unnecessary confusion regarding the time periods for opposition and for filing answering papers. That confusion was inexcusable. It does not, however, appear to have caused prejudice to any party. The respondents were able to file a substantive answering affidavit and to appear and argue the matter.

[10] *Minister of Home Affairs and Others v Tsebe and Others; Minister of Justice and Constitutional Development and Another v Tsebe and Others* 2012 (5) SA 467 (CC) provides a useful, although not determinative, illustration. In para 1 fn 1, the Constitutional Court recorded that there was “confusion in the Notice of Motion and the Founding Affidavit” as to whether the application was one for direct access or direct appeal, but proceeded to treat it as an application for direct appeal under rule 19. The case does not establish that

procedural requirements may be disregarded. It does illustrate that procedural confusion which causes no prejudice need not prevent a court from determining the real matter before it. In the present case the defects in the notice of motion and amended notice were inexcusable, but no prejudice has been demonstrated. The respondents delivered substantive opposition and were able fully to argue the application. No further consequence should therefore follow from the irregularity.

[11] The respondents submitted that Interpol ought to have been joined as a party. That submission does not survive scrutiny. The order does not bind Interpol. It directs the first respondent, who is before the court, to take steps within her own power. Nor could the applicant have joined Interpol when these proceedings were instituted. He was not aware that the signed surrender order had already been delivered to Interpol. This fact emerged only from the first respondent's answering affidavit.

Statutory and constitutional context

[12] Sections 10 and 11 of the Extradition Act allocate different functions to the magistrate and the Minister. Under section 10, the magistrate determines whether the person is liable to be surrendered and, if so, commits that person to await the Minister's decision. Section 11 thereafter confers the surrender decision upon the Minister, who may order surrender or refuse it on the grounds specified in that section.

[13] In *Director of Public Prosecutions: Cape of Good Hope v Robinson* 2005 (4) SA 1 (CC), the Constitutional Court held that a section 10 committal does not compel surrender. At para 51, it said that such a finding "places no obligation whatsoever whether directly or indirectly upon the Minister". At para 52 the Court held that whether the person would become the victim of an unfair trial "must be weighed in the equation" when consideration is given to whether there should be a surrender, and that "[i]t is premature to take this factor into account any earlier".

[14] *Khama v Director of Public Prosecutions, Gauteng Local Division, Johannesburg and Others* 2023 (2) SACR 588 (GJ) likewise emphasises the distinction between the limited function of the magistrate and the broader discretion of the Minister. At paras 72–73, the Court held that, in extradition to foreign States, the extradition decision lies solely

within the Minister's discretion, and that considerations such as an unfair trial or trumped-up charges are exclusively within the Minister's discretion. Of particular relevance, at para 83 the Court said that "it is open to an affected person to make her representations to the correct authority, namely the Minister" and concluded that "fairness is adequately catered for in the scheme of the Act".

[15] *Forum De Monitoria Do Orçamento v Chang and Others* [2022] 2 All SA 157 (GJ) is relevant for the further proposition that an executive extradition decision remains subject to legality and rationality review and that material considerations cannot simply be ignored. At para 64 the Court held that the procedure by which the Minister's decision was taken had failed to give "serious consideration" to relevant undisputed facts. At para 96, it held that important extradition decisions "cannot be decided on a whim" and "have to be carefully and rationally reasoned".

[16] The Refugees Act 130 of 1998 may also be relevant to the review, but no final conclusion is required at this stage. Section 2 expressly prohibits extradition where the statutory non-refoulement conditions are satisfied. Section 24B provides for an appeal to the Refugee Appeals Authority, while section 27A affords an asylum seeker the right to remain in the Republic pending finalisation of the asylum application. Section 28 permits removal of a refugee or asylum seeker only subject to section 2.

[17] *Mohamed and Another v President of the Republic of South Africa and Others (Society for the Abolition of the Death Penalty in South Africa and Another Intervening)* 2001 (3) SA 893 (CC) does not determine the present case. It does, however, establish for present purposes that constitutional obligations attach to the substance and consequences of removal from the Republic. At para 53, the Constitutional Court held that where removal by the State occurs in circumstances that "threaten the life or human dignity" of the person, the Bill of Rights is implicated. At paras 55–60 it recognised the principle that extradition or removal may not occur where substantial grounds establish a real risk of torture or cruel, inhuman or degrading treatment.

[18] Those authorities are sufficient, without deciding the review, to show that the Minister's section 11 function is an independent one and that material bearing upon the consequences and lawfulness of surrender may be relevant at that stage.

[19] I have also had regard to the first respondent's submission that the surrender decision is an exercise of executive power and that courts must be slow to restrain the Executive by interim order. That caution is important, particularly in extradition matters which engage international relations and comity. It does not, however, place executive action beyond judicial control.

[20] *Tsebe*, paras 49–50, rejected the contention that *Mohamed* could be distinguished because the Minister was acting under the Extradition Act or performing an act of State. The Court reaffirmed that the constitutional obligation depends on the facts of the particular case and the Constitution, not on the empowering legislation or extradition treaty. Where a serious legality challenge is raised, and implementation may render the review ineffective and academic, a narrowly tailored interim order preserving the position pending review does not determine or substitute the executive decision; it preserves the subject matter of the review.

Requirements for interim relief

Prima facie right

[21] The applicant must first establish a *prima facie* right, even if open to some doubt. He does so for interim purposes.

[22] The applicant's case is not merely that section 11 invariably obliges the Minister formally to invite representations in every extradition matter. The narrower complaint is that the Minister knew that representations were intended, that those representations concerned matters falling within the Minister's section 11 remit and matters said to arise under the Refugees Act and the Constitution, and that the surrender decision was nevertheless taken before those representations were received or considered.

[23] The answering affidavit contends that the applicant could have raised these matters during the section 10 enquiry and that the Minister was not obliged to afford him an opportunity to make representations. At least *prima facie*, that submission does not sufficiently recognise the distinction drawn in *Robinson and Khama*.

[24] Section 10 determines liability to surrender. Broader considerations of justice, fairness and the consequences of surrender fall to the Minister under section 11. *Robinson*, paras 50–52, makes clear that the magistrate’s finding does not effect extradition and that the Minister must consider the matters reserved to section 11 at the surrender stage. *Khama*, paras 72–73, confirms the same statutory demarcation. The fact that some evidence may already have been placed before the magistrate does not make it irrelevant to the Minister’s later task.

[25] The first respondent further relies on the proposition that no new or further evidence was identified during the extradition enquiry. That does not dispose of the present complaint. The applicant says that he testified on oath about a specific threat to his life if returned to Bulgaria and that evidence concerning the alleged circumstances of his conviction was placed before the extradition court. The first respondent, in turn, says that she made the surrender decision armed with the magistrate’s record. Section 10(4) requires that record to be forwarded to the Minister. If material in that record raised matters which, in law, were for the Minister to consider under section 11, that circumstance could itself have alerted the Minister to the need to consider those matters at the surrender stage. That consideration assumes added significance where, before the decision was taken, the applicant had expressly asked that the Minister wait for representations which were being prepared. I make no final finding on the existence or scope of any resulting duty. It is sufficient that the point is reasonably arguable for present purposes.

[26] The respondents’ counsel also contends that the applicant cannot now rely on *audi* because he did not make the representations within 15 days after the magistrate’s order. No provision of the Extradition Act has been identified which imposes a 15-day time limit for representations to the Minister under section 11. The 15-day period in section 13(1) regulates the lodging of an appeal against an order under section 10 or 12. At least *prima facie*, it does not operate as a statutory deadline for representations directed to the Minister’s distinct section 11 discretion.

[27] The first respondent goes further. She states: “Even if the applicant had tendered his representations before the surrender decision was taken and confirmed on 15th August 2026, any changes I could have made, would have in effect, encroached on the doctrine

particularly, that of the judiciary who, all dismissed the applicant's appeals." For purposes of the interim enquiry, the fallacy in that reasoning is important.

[28] The judicial decisions determined whether the applicant was liable to be surrendered under section 10; they did not determine whether he must be surrendered under section 11. *Robinson*, paras 50–52, expressly holds that the section 10 finding does not result in extradition and places no obligation on the Minister to order surrender. *Khama*, paras 72–73 and 83, likewise confirms that the final surrender decision and the considerations reserved to that stage belong to the Minister. Considering representations directed to those matters would therefore not amount to revisiting, overruling or encroaching upon the judicial decisions. It would amount to performing the distinct statutory function entrusted to the Minister.

[29] The proposition advanced in the answering affidavit thus appears, at least *prima facie*, to invert the statutory scheme. It treats the judicial committal as constraining the very discretion which section 11 requires the Minister independently to exercise. If the Minister approached her task on the footing that prior judicial decisions effectively foreclosed a different outcome, that raises a serious question as to whether she properly understood the nature and ambit of her own power. I make no final finding in this regard. Its significance here is that it materially strengthens the applicant's *prima facie* case for preservation pending Part B.

[30] The pending asylum process adds to, but does not finally determine, that *prima facie* case. The applicant alleges that an appeal to the Refugee Appeals Authority remains pending. If that is so, the interaction between sections 2, 24B, 27A and 28 of the Refugees Act and the Minister's section 11 power is a substantial issue for Part B.

[31] Similarly, the applicant alleges a threat to his life or physical safety if returned to Bulgaria. Whether that allegation meets the threshold contemplated in *Mohamed* paras 53 and 55-60, or in section 2 of the Refugees Act is a matter for final determination on a proper record. For present purposes, the allegation is sufficiently material to reinforce the need to preserve the applicant's position until the review is heard.

[32] I am accordingly satisfied that the applicant has established a *prima facie* right, though open to doubt, sufficient for interim relief.

Irreparable harm

[33] The second requirement is a well-grounded apprehension of irreparable harm if interim relief is refused and the applicant ultimately succeeds in Part B.

[34] If the surrender order is implemented, the applicant will be placed in the custody of another sovereign State and beyond the immediate control of this Court. The fact that the original surrender order has, on the first respondent's version, already been delivered to Interpol to facilitate surrender gives the apprehended harm an immediate and practical dimension. The respondents submit that diplomatic channels would remain available. That possibility is not equivalent to preserving an effective domestic remedy before surrender takes place.

[35] The alleged risks to the applicant's life or physical safety are not decided at this stage. Their relevance is that, if the applicant were surrendered before those allegations and the pending statutory issues are properly determined, any later success in the review may come too late to afford effective protection. The requirement of irreparable harm is satisfied.

Balance of convenience

[36] The balance of convenience favours preservation of the *status quo*. The applicant expressly states in the founding affidavit that the interim relief sought would restore the position obtaining on 14 August 2026, when he was released on bail pending the Minister's decision, and that he would remain subject to the stringent conditions of that bail order. He also relies on his history of compliance with bail.

[37] South Africa's international extradition obligations are important. But a temporary suspension pending an expeditious review does not extinguish the extradition request or prevent surrender if the review fails. By contrast, refusal of interim relief may substantially impair the practical value of the review itself.

No satisfactory alternative remedy

[38] There is no satisfactory alternative remedy. The impugned decision is the Minister's section 11 surrender decision. Judicial review is the remedy invoked against it. Without interim protection, implementation may precede the Court's determination of whether that decision was lawfully made.

[39] The requirements for interim relief are therefore established. Nothing in this conclusion determines the merits of Part B.

Costs

[40] In determining the appropriate costs order, I considered that the relief granted is interim only. It preserves the applicant's position pending the review. It is prudent in these circumstances for the costs to stand over to be determined together with the costs of the review.

ORDER

In the result, the following order is granted:

1. The applicant's non-compliance with the ordinary forms, service and time periods prescribed by the Uniform Rules is condoned, and the application is heard as one of urgency in terms of Rule 6(12).
2. Pending the final determination of Part B of this application, the decision of the first respondent dated 15 August 2026, taken in terms of section 11(a) of the Extradition Act 67 of 1962, ordering the applicant's surrender to the Republic of Bulgaria, is suspended.
3. Pending the final determination of Part B, the respondents are interdicted from implementing or giving effect to the surrender decision, including by surrendering or causing the applicant to be surrendered to the Republic of Bulgaria.
4. The first respondent is directed forthwith to bring this judgment and order to the attention of Interpol and to take all reasonable steps within her power to ensure that no surrender or other implementation of the decision occurs pending the final determination of Part B.

5. The costs of Part A shall be costs in Part B.



E VAN DER SCHYFF
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

For the applicant:

With:

Instructed by:

Adv. T Panda

Adv. Z Ntsulumbana

Mlonzi Attorneys Incorporated

For the first and second respondents:

With:

Instructed by:

Adv. KM Mokotedi SC

Adv P Sekati

State Attorney, Pretoria

Date of the hearing:

1 September 2026

Date of judgment:

2 September 2026