Neutral Citation Number: [2020] EWHC 2877 (Admin)

Case No: CO/1287/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/10/20

Before :

MR JUSTICE FORDHAM

- -

Between :

FARDIN EBRAHIMI RIGABADI	**Appellant**
- and -	
PUBLIC PROSECUTOR OFFICE OF THE COURT OF APPEAL OF PIRAEUS GREECE	**Respondent**

- -
- -

Ben Cooper QC (instructed by Stuart Miller Solicitors) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 20th October 2020

Judgment as delivered in open court at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

Introduction

1. This is a renewed application for permission to appeal in an extradition case. The mode of hearing was by BT conference call. Mr Cooper accepted, and I agree with him, that this mode of hearing involved no prejudice to his client. The case and its start time were published in the cause list with an email address usable by anyone who wanted to observe the hearing. I am satisfied that open justice was thereby secured. All that was needed was to send an email and make a phone call. Indeed, in the current circumstances relating to the pandemic, open justice was in my judgment promoted. The mode of hearing was appropriate and proportionate. We eliminated any risk to any person from travelling to, or be present in, a Court.

2. This is an anxious case and Mr Cooper QC has invited me to apply the most anxious scrutiny in considering the materials that are before me. I agree with him that that is the necessary and appropriate approach. The Appellant is wanted for extradition to Greece. That is in conjunction with an accusation EAW which alleges his leading involvement in a large scale drug trafficking organisation. He denies the charges but the most important point, as Mr Cooper QC rightly reminds me, is that the ECHR rights under Articles 2, 3 and 6 are all entirely independent of anything relating to the underlying seriousness of the matters in respect of which extradition is sought. The District Judge ordered extradition on 27 March 2020 after an oral hearing at which he heard from what by my reckoning was five experts, all of whom have given evidence with cross-examination. The three points that are maintained arise under the three articles of the ECHR which I have already mentioned. Permission to appeal was refused on the papers by Johnson J on 18 September 2020.

Articles 2 and 3

3. Mr Cooper realistically recognised that the Article 2 and Article 3 points really fall to be taken together in this case. They relate to risks of ill-treatment arising in custody in Greece, including threats to life (Article 2) and inhuman and degrading treatment or punishment (Article 3). The District Judge concluded that extradition was compatible with both of these Convention rights. It is not said that the District Judge applied the wrong approach as a matter of law. Rather, it is said that the District Judge came to the wrong conclusion on the evidence and in any event that, in the light of further evidence, this Court would conclude that the outcome in finding compatibility was wrong. The further evidence comprises, in particular, of a new 2020 CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) Report (9 April 2020) and a Report from a further expert Mr Tugushi. Mr Cooper QC emphasises, rightly, that I must keep well in mind that for the purposes of today he need only show a reasonably arguable case.

4. So far as the Article 2 and 3 points are concerned, it seems to me that two key questions arise in particular.

    i) The first is as to whether a sound conclusion could be reached that the Appellant would only be detained in the Korinthos (Corinth) Prison. An assurance was relied on by the Respondent and by the District Judge who concluded that he would be. Mr Cooper QC says it is reasonably arguable that

there are substantial grounds for considering that there is a real risk that the Appellant would, at least at some stage, come to be detained elsewhere which would expose him to Article 2 or Article 3 risks.

ii) The second key point is, it seems to me, this. It is said that there are substantial grounds for considering that the Appellant faces a real risk of Article 2 or Article 3 harm even if he is only ever detained at Korinthos Prison.

5. As to each of these points:

i) So far as the first key point is concerned Mr Cooper QC's headline point is that the existing assurance is insufficiently specific to be protective. The assurance says that the Appellant "will be detained in the Prison of Korinthos". Mr Cooper QC's point is that it does not say he "will only be detained in the Prison at Korinthos". The fresh evidence refers to the use of Athens Transfer Centre while an individual is standing trial in Athens. That is said to give rise to the Article 2 and Article 3 risks relied on. Before the District Judge emphasis was put in particular on Koryllados Prison in Athens as being the principal cause for concern. So, on the first key point what is said is the assurance is insufficiently specific.

ii) On the second key point, as I see it, the essence of Mr Cooper QC's position is that there is no further protective assurance which specifically addresses sufficiency of protection within the prison system, even if the Appellant is at Korinthos Prison.

Will the Appellant only be detained at Korinthos?

6. I deal with Mr Cooper QC's first key point. The geography is emphasised, in that Korinthos Prison is a "one-hour drive" away from Athens, where the trial Court venue is. Reliance is also placed on the new CPT Report 2020 which describes the Athens Transfer Centre for prisoners as "the main transfer hub in Attica for prisoners undergoing a prison transfer or awaiting a court appearance or a medical appointment".

7. In my judgment, whether viewed in terms of the evidence before the District Judge or viewed in terms of the that evidence and the evidence now before me, it is not reasonably arguable that the conclusion was wrong in relying on the assurance as to the location at which the Appellant "will be detained".

8. I accept what is said in the Respondent's submissions, where the Respondent says this (emphasis added):

> "It is now suggested that the [Appellant] may be held in the Athens Transfer Centre. However, this is contrary to the assurance provided by the Respondent which was accepted by the District Judge. The [Appellant] will be detained at Korinthos."

9. The assurance was one of several communications emanating from the Respondent. On its face it states:

> "he will be detained in the Prison of Korinthos."

It is right to say that the assurance does not say "will only" or "will exclusively". But the context was that there were no concerns about other locations, and in particular Korydallos Prison. Those concerns were the basis for the communication which elicited the assurance. If the assurance were describing the position where the Appellant "will be detained at Korydallos", but meaning "only for some of the time", it could not have answered the concern that had been raised. The Respondent had been told, in terms, that Korydallos Prison was regarded as Article 3 incompatible. The assurance did not state that the Appellant "will not be held at Korydallos Prison". Instead, it was a positive assurance about where he will be detained.

10. The District Judge heard evidence about location (geography) and also about the reliability of the assurance. Professor Tsitselikis gave evidence about the assurance and what he said was lack of clarity. His evidence also specifically made a point about geography and closeness to the trial venue. Professor Tsitselikis said it was not clear whether the assurance was addressing the position "pre-trial or after conviction". Professor Tsitselikis did – as I have explained – specifically make a geographical point, that Korinthos Prison was not close to the trial venue. This was in a context where he said that Korydallos Prison was geographically close to the trial venue.

11. The District Judge, having evaluated all the evidence, reached the clear conclusion that the assurance was reliable and specific. He concluded that what was being said was an assurance that the Appellant will be detained at Korinthos Prison, and not somewhere else. In my judgment, it is not reasonably arguable that this Court would reach the contrary conclusion, even viewed with the greatest anxiety and as a question of real risk.

12. Mr Tugushi in his evidence says "it goes without saying" that the Appellant "will have to pass through Athens Transfer Centre on a number of occasions and stay there for certain days". Mr Cooper QC also submits that the new CPT Report supports the conclusion that the Appellant will be detained at the Athens Transfer Centre. The basis for all that appears to be paragraph 115 of the new CPT Report. In my judgment, there are two obvious problems with reliance on that material to support that conclusion.

    i) The first problem is that paragraph 115 describes the Athens Transfer Centre as the "main" transfer hub for prisoners awaiting a court appearance in the vicinity.

    ii) The second problem is that neither paragraph 115 of the CPT Report nor the report of Mr Tugushi address why it would be said that the Athens Transfer Centre would be used to detain a prisoner in respect of whom a specific assurance has been given that he "will be detained in the Prison of Korinthos", an hour's drive away from the Court venue.

13. I was asked anxiously to consider these matters and I have. If I thought there were any realistic prospect of success, I would grant permission to appeal. I agree with Johnson J that there is not.

Sufficiency of protection, even if the Appellant is detained at Korinthos Prison

14. I turn to the second key point in relation to Articles 2 and 3 which is that, even based on incarceration at all times at Korinthos Prison there is nevertheless, on substantial grounds, a real risk of Article 2 or 3 ill-treatment. Mr Cooper QC, in the written submissions that he has adopted, and in his oral submissions, has emphasised evidence about inter-prisoner violence, lawlessness and impunity within the Greek prison system and systemic issues. He also relies on the specific threat arising to the Appellant in the light of the circumstances of this particular prosecution. He criticises the District Judge for relying on the safety of the Appellant living openly here in the United Kingdom. He emphasises that there have been reported in the press 9 deaths connected with this drug investigation and prosecution. He says that the response from the Greek authorities rejecting that these deaths were assassinations provides no comfort but rather is a cause for concern as it reflects a failure to take risks seriously and a lack of State investigation. He emphasises the strong pattern and the absence of any assurance which specifically addresses how safety and sufficiency of protection is to be delivered within the prison system even at Korinthos Prison.

15. These are all themes that were explored in detail in the evidence before the District Judge and were the subject of evidence and cross-examination on the part of the various experts. Professor Tsitselikis, for example, specifically gave evidence about inter-prisoner violence within the system and about the '9 deaths'. Other witnesses also gave evidence and the relevant materials were all before the court.

16. The District Judge was satisfied that there were no substantial grounds of a real risk of Article 2 or 3 ill-treatment, on the premise that the Appellant would be detained at Korinthos Prison. The Judge described, by reference to the Further Information from the Respondent, Korinthos Prison. It is a facility whose "maximum capacity … is forty-six (46) prisoners (30 under-age and 16 adults)" which, at the time of the Further Information "currently … holds eighteen (18) prisoners (7 under-age and 11 adult prisoners". The Judge considered the nature of the incidents relied on the source materials. He specifically considered the question of deaths in custody. For example, the Judge explained that the witness Mr Pyromallis had "accepted in cross-examination that there were only two deaths in custody of those directly connected with the Noor 1 case". As the District Judge explained, there was Further Information from the Respondent (judicial authority) which "confirms that the two deaths in custody of defendants involved in the Noor 1 trial were from 'pathological causes'". The Judge went on to explain that the Respondent in the Further Information "confirms that no other persons connected with the Noor 1 case have died in Greece and no attempts on their life have been taken". The Judge said: "This is information provided by the Public Prosecutor on behalf of the [Judicial Authority] and I accept that evidence over and above opinions drawn from media reports".

17. In my judgment, there is no realistic prospect that this Court on a substantive appeal would conclude, on the material including the new material, that that conclusion was wrong. The District Judge, for reasons which he explained towards the end of his determination, found that "no cogent evidence has been produced of any threats to the [Appellant] if held at Korinthos Prison other than by way of speculation based on media reports". Having anxiously considered with Mr Cooper QC's assistance all the materials the District Judge's conclusion is not in my judgment one which, reasonably arguably, can be said to be wrong.

Article 6

18. The Appellant relies on ECHR Article 6. In relation to this, Mr Cooper QC adopted his written submissions. The essence of the point made, as I see it, is that there is in this case a real risk of a flagrant denial of the right to a fair trial, in the light of threats to judges including parcel bombs and circumstances where no fewer than four judges have withdrawn from acting in relation to this prosecution.

19. That, again, is a topic which was addressed in detail before the District Judge and in the Judge's determination. It was, as with the other matters, also a topic which was specifically the subject of Further Information from the Respondent. The District Judge accepted, on the basis of material provided by the Respondent, that no judges have been threatened and that no judges had sought recusal on the basis of any threat. For the purposes of Article 6 there must on substantial grounds be a real risk of a flagrant denial of the right to a trial, in the nature of a 'nullification' or 'destruction of the essence' of that right. The District Judge found that there was no evidence which supported such a conclusion. Again, and in agreement with Johnson J, I do not consider that it is reasonably arguable that this Court, on all the material, would reach the opposite conclusion.

Conclusion

20. For all those reasons that this renewed application for permission to appeal is refused.

Significance of clarity for the Appellant

21. Mr Cooper QC has raised with me the significance of this Court having accepted the position, put forward by the Respondent itself, as to the clear and unqualified nature of the assurance in this case. He submits that it is appropriate that the Appellant should be able to rely on that fact. I accept that submission. I will spell out again what I have said previously. I am satisfied that it is proper and appropriate that I should do so. Mr Cooper QC tells me as a practical matter that my approved judgment is itself a document which will be able to accompany the Appellant upon his extradition. In those circumstances I will repeat the position so far as the Respondent's assurance is concerned. Although I am going to refuse permission to appeal, I am going to order that that refusal shall not take effect until next Monday, 26 October 2020 or further order. The purpose of that is to ensure that an approved version of this judgment (together with any other documents that the Appellant's representatives wish to ensure that he has and carries with him) can have been made available to the Appellant.

The Assurance in this case

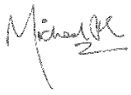
22. I state again what I have said previously in this judgment.

    i) As I recorded earlier in this judgment, the Respondent – the Public Prosecutor's Office of the Court of Appeal of Piraeus, Greece – has formally submitted to this Court that detention of the Appellant anywhere other than Korinthos Prison, at any stage, would be inconsistent with an a breach of the assurance provided in this case.

    ii) The formal assurance provided in this case is that the Appellant "will be detained in the Prison of Korinthos".

iii) The Respondent's response to this Court, to the suggestion that the Appellant could be detained anywhere else, at any stage, was as follows:

> "It is now suggested that the [Appellant] may be held in the Athens Transfer Centre. However, this is contrary to the assurance provided by the Respondent which was accepted by the District Judge. The [Appellant] will be detained at Korinthos."



Mr Justice Fordham

20.10.20