Neutral Citation Number: [2023] EWHC 267 (Admin)

Case No: CO/496/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/02/2023

Before:

MR JUSTICE CHAMBERLAIN

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Between:

ANDREW STEWART HENDERSON CAMPBELL	**Appellant**
- and -	
COURT OF THRACE (GREECE)	**Respondent**

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- -

David Williams (instructed by **Sonn MacMillan Walker**) for the **Appellant**
Jonathan Swain (instructed by the **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 23 November 2022

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Approved Judgment

This judgment was handed down remotely at 10.30am on 10 February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

Introduction

1 The appellant is sought by the Court of Thrace, Greece, pursuant to a European arrest warrant issued on 28 April 2020 and certified on 6 April 2021. The warrant seeks the appellant's surrender to serve a sentence of 6 years' imprisonment for money laundering, imposed after a trial in absentia. The facts were that on 4 September 2011 the appellant, with others, crossed the border into Greece in a Porsche car worth EUR 35,000 which contained false registration and insurance documents.

2 The appellant was arrested under the warrant on 26 April 2022. Because this was after the end of the transition period in the Withdrawal Agreement, the warrant falls to be treated as an arrest warrant under the Trade and Cooperation Agreement (Article Law.Surr.632). Greece being a Category 1 territory, Part 1 of the Extradition Act 2003 applies.

3 The appellant resisted extradition on the basis that extradition would be incompatible with his rights under Articles 3 and 8 ECHR. For reasons contained in a written judgment dated 7 February 2022, District Judge Goldspring ("the judge") rejected these arguments and ordered the appellant's extradition. Permission to appeal was granted by Hill J in relation to Article 3 and refused in relation to Article 8. The Article 8 ground was renewed and ordered to be determined at a rolled-up hearing together with the substantive appeal on Article 3.

The judgment below

4 As to Article 3, the challenge was based on prison conditions in Greece. The judge set out the law as stated by the Divisional Court in *Elashmawy v Italy* [2015] EWHC 28 (Admin), [49] and [50]. He noted the presumption that Council of Europe states are able and willing to fulfil their obligations under the ECHR absent clear, cogent and compelling evidence to the contrary: *Krolik v Poland* [2012] EWHC 2357 (Admin), [2013] 1 WLR 490, [4]. He summarised the decision of the Grand Chamber of the Strasbourg Court in *Muršić v Croatia* (2017) 65 EHRR 1, which introduces a strong presumption that Article 3 will be violated if less than 3 sq. m. of personal space is provided, unless three conditions are cumulatively met: (1) the reductions below the minimum level are short, occasional and minor; (2) they are accompanied by sufficient freedom of movement outside the cell; and (3) the prisoner is confined in what is, when viewed generally, an appropriate detention facility and there is no other aggravating aspect of the conditions of his detention.

5 The judge noted that courts considering Article 3 challenges on the basis of prison conditions in the requesting state must rely on information which is "objective, reliable, specific and properly updated", which could come from *(inter alia)* judgements of international courts (including the Strasbourg Court), domestic courts and decisions and reports of Council of Europe or United Nations bodies: Cases C-404/15 and C-659/15 PPU *Aranyosi* EU:C:2016:198, [2016] QB 921, [89].

6 As to Greece, the judge noted the decision of the Divisional Court in *Marku v Greece* [2016] EWHC 1801 that, notwithstanding assurances given in good faith by the Greek authorities, conditions in two prisons – Korydallas and Nafplio – would breach Article 3

standards on the evidence contained in the 2015 report of the European Committee for the Prevention of Torture ("CPT"). The evidence was that the authorities had lost control of these prisons and gang violence was prevalent. The judge noted that *Marku* had been cited by the High Court in Northern Ireland in *O'Connor v Greece* [2017] NIQB 88, where the appellant was to be detained in Korydallas Prison and assurances had been given. The Court held that the assurance were insufficiently specific and allowed the appeal against extradition on Article 3 grounds.

7 The judge then said that any assurances must be assessed in accordance with the guidance given by the Strasbourg Court in *Othman v UK* (2012) 55 EHRR 1, at [188]. He recorded that the appellant was to be detained in Komotini Detention Facility and summarised the written and oral evidence about that prison (and Greek prisons generally) by Dr Koulouris, the appellant's expert witness and the evidence submitted by the Greek authorities. As to the latter, there was detailed information personal space available to inmates in Komotini Detention Facility.

8 The judge recorded that he had considered the most recent CPT report, which he said made "generic complaints" but did not refer to Komotini, and the decision of Fordham J in *Rigabadi v Greece* [2020] EWHC 2877 (Admin), refusing permission to appeal against a decision that detention in Korinthos Prison would not give rise to a real risk of treatment contrary to Articles 2 or 3 ECHR.

9 The judge found that Dr Koulouris' criticism of the assurance as to personal space was not convincing. The judge treated "with some scepticism" the part of Dr Koulouris' evidence based on "unofficial interviews" with the director of Komotini Prison. He was satisfied that the assurance met the standards set out in Othman and that there was no real risk of treatment contrary to Article 3 ECHR.

Other case law about prison conditions in Greece and on the proper approach to compliance with Article 3 generally

10 In *Owda v Greece* [2017] EWHC 1174 (Admin), the Divisional Court (Burnett LJ and Mitting J) considered another appeal relating to prison conditions in Greece. They found that there was no evidential foundation, whether in the CPT reports or elsewhere, for believing that the risks of inter-prisoner violence found to exist in Korydallas and Nafplio Prisons also pertained to other prisons. Since the appellant was to be housed at Diavata (formerly known as Thessaloniki), there was no basis for any Article 3 objection to his extradition.

11 On the same day as the judge handed down his decision in this case, 7 February 2022, the Divisional Court (Williams Davis LJ and Julian Knowles J) gave judgment in *Sula v Greece* [2022] EWHC 230 (Admin). The appellant was to be detained at Diavata or Nigrita. The Court considered the CPT's 2020 report and an assurance given by the Greek authorities. The main issue was to as personal space: the Court did not consider that any of the other matters relied upon (including inter-prisoner violence) gave rise to any arguable Article 3 issue: [43]. The Court then held that the assurance was "clear, specific and precise" and was sufficient to dispel any concern that lack of personal space might lead to a violation of Article 3 ECHR: [47]-[48].

12 As to the proper approach to Article 3 in prison conditions cases generally, I set out the general principles in my recent decision in *Rae v USA* [2022] EWHC 3095 (Admin), at [64(a)-(d)] and [86]. These were endorsed as "helpful encapsulations of the legal

principles" by the Divisional Court (Bean LJ and Jay J) in *Stanciu v Armenia* [2022] EWHC 3368 (Admin), [92]. Where extradition is sought by an ECHR contracting state (and *a fortiori* when the state is also a member of the EU), there is an additional strong (albeit rebuttable) presumption that the state will fulfil its obligations under the ECHR: see e.g. *Elashmawy*, [50].

The CPT report of 2 September 2022

13 A further CPT report was published on 2 September 2022, based on visits to a number of prisons, not including Komotini. Its conclusion was that "far too many prisoners continued to be held in conditions that are an affront to their dignity" and that "little if any progress" had been made in improving conditions in Greek prisons since the CPT's first report 11 years ago.

The expert report of Prof. Tsitselikis of 7 November 2022

14 The appellant relies on the report of Prof. Tsitselikis, who opines that assurances given by the Greek authorities are not observed. Prof. Tsetselikis' information comes from an interview with Owda himself, in respect of whom the Greek authorities had given an assurance that he would be housed in a cell with at least 3 sq. m of personal space. Owda gave detailed information about the cells in which he had been held, their dimensions and the number of prisoners held there. Although not willing to sign a statement containing this information (due to concerns that it might be held against him in ongoing criminal proceedings), Owda is said to have given the information set out by Prof. Tsetselikis at a meeting attended by Owda's lawyer.

Ground 1: Article 3 ECHR

Submissions for the appellant

15 For the appellant, David Williams submits that the information provided by the Greek authorities is contradictory. The assurance that each prisoner will be given at least 3 sq m. of personal space is contradicted by the further information dated 20 May 2021, which reveals severely overcrowded conditions in which prisoners have less than 2 sq. m. of personal space. In these circumstances, the Divisional Court in *Sula* was wrong to accept the assurance as sufficient to dispel the real risk of treatment contrary to Article 3. Alternatively, Sula can be distinguished because the assurance in that case was given in response to specific enquiries made pursuant to the *Aranyosi* procedure.

16 Mr Williams argues that Prof. Tsetselikis' report provides a proper basis on which to depart from *Sula*. Although there is no signed statement from Owda, Prof. Tsetselikis is a reliable witness and the information from Owda is precise. It undermines the Divisional Court's reliance on the assurances given in *Sula*.

17 The CPT report of September 2022, which contains evidence of persistent overcrowding and understaffing in Greek prisons, supplies a further basis for departing from Sula, which was premised on the Greek authorities' positive response to the previous CPT report.

Submissions for the respondent

18 For the respondent, Jonathan Swain submits that the assurance in this case is unequivocal that the appellant will be provided with personal space of at least 3 sq. m. This makes it irrelevant what conditions are for other prisoners. Extradition has been ordered to other countries on the basis of similar assurances: see e.g. *GS v Hungary* [2016] EWHC 64 (Admin), [2016] 4 WLR 33 and *Zagrean v Romania* [2018] EWHC 1885. In the latter case, the Divisional Court (Sharp LJ and Cranston J) noted at [58] that, if an assurance was reliable, the UK courts "cannot be concerned with how this goal will be achieved".

19 The information from Owda in the statement of Prof. Tsetselikis is hearsay. It has not been verified by Prof. Tsetselikis (for example by reference to domestic complaints, freedom of information requests or other means of independent verification of the account given). Prof. Tsetselikis says that Owda "feels under psychological pressure" not to sign any statement. If so, it is unclear on what basis Prof. Tsetselikis considers himself able to provide the evidence in it to the Court. In any event, Owda's statement is broad and inexact. Prof. Tsetselikis provides no evidence for his assertion that "assurances are not observed".

20 Nothing in the CPT report of September 2022 undermines the conclusions of the Divisional Court in *Sula*. The conclusion was that lack of staffing and inter-prisoner violence did not give rise to any arguable Article 3 issue. The September 2022 CPT report did not say that conditions has worsened since those described in the previous report considered in *Sula*, just that overcrowding and staffing issues had not improved. Inter-prisoner violence had reduced since the last inspection in 2019. In any event, the Greek Government's response to the September 2022 report showed a commitment to improve conditions, including by transferring prisoners to rural prisons (easing overcrowding), by building new prisons and by significant staff recruitment.

Discussion

21 Article 3 arguments will often depend on the conclusions that can be drawn from publicly available reports, including those of bodies established by the Council of Europe, such as the CPT. Prison conditions in particular countries fall to be considered by the appellate courts from time to time. Their decisions as to the factual circumstances pertaining in the country in question will depend on the evidence in a particular case. It will always be possible to say in a subsequent case that matters have moved on. But, where an appellate court (and particularly the Divisional Court) has made recent, general findings about prison conditions in a particular country, consistency of treatment demands that other appellate courts should be cautious about departing from those findings absent cogent evidence of a material adverse change in conditions or important new evidence unavailable to the court on the previous occasion.

22 The Divisional Court considered Greek prison conditions in *Sula* in February 2022. It concentrated on the issue of personal space because it was "not persuaded that any of the other matters relied upon by the Appellant, such as lack of staffing, or inter-prisoner violence, whilst they were of concern to the CPT, give rise to any arguable Article 3 issue": [43]. The Divisional Court in *Owda* had reached the same conclusion in 2017, noting that the conditions held to breach Article 3 standards in *Marku* related to two particular prisons (Korydallas and Nafplio): see at [17]-[22].

23 It was part of Mr Williams' submissions that, even looking purely at the material before the Divisional Court in *Sula*, I should reach a different view as to whether a real risk of treatment contrary to Article 3 was shown. I have reviewed the material (and in particular the 2020 CPT report) with care. There are certainly passages which disclose real concerns, particularly as to staffing levels and inter-prisoner violence, but the Divisional Court acknowledged this. I would respectfully agree with the conclusion reached that, outside the two prisons identified in *Marku*, these concerns do not rise to the level necessary to displace the strong presumption that a state which is both an ECHR contracting state and a member of the EU will fulfil its obligations under the ECHR.

24 I have also considered the September 2022 CPT report, but do not find anything in it that would justify a departure from the conclusions of the Divisional Court in *Sula*. As Mr Swain submitted, the overall tenor of the report is that conditions have not improved in the way it was hoped they would, although levels of inter-prisoner violence have reduced. Most importantly, however, the domestic authorities make it clear that it is necessary to concentrate on the prison where the appellant will be held. There is nothing in the September 2022 report to indicate any particular concerns about the Komotini Detention Facility, above and beyond the concerns identified about the prison system in Greece generally.

25 It follows that, in my judgment, the key issue in this case is personal space. On that issue, Mr Swain has <u>not</u> sought to suggest that there is no real risk for prisoners in general of being held in conditions where they have less than 3 sq. m. of personal space. His submission is that the general assurance (similar to the one given to the Court in *Owda*) is sufficient to negative the risk in this case. If there were credible and cogent evidence that the assurance given in Owda's case had not been honoured, that would be capable of undermining its evidential value for two reasons. First, it would be relevant to the receiving state's record in abiding by similar assurances in other cases (see *Othman,* [188(7)]). Second, if (as alleged here) the breach only came to light after Owda's release, it might also illustrate the lack of an adequate monitoring mechanism (see *Othman,* [188(8)]).

26 The witness statement of Prof. Tsitselikis therefore requires careful analysis. There is no suggestion that its contents were available to the appellant significantly before it was filed. It therefore satisfies the first of the criteria in *Fenyvesi v Hungary* [2009] EWHC 231, [2009] 4 All ER 324. That makes it important to consider whether, had it been available, it would have made a decisive difference. Paragraphs 5 and 6 of the statement recount the information received from Owda in the following terms:

> "5. Mr Owda was extradited to Greece on the 21st June 2017 and held at the prison of Diavata, as the Greek authorities had foreseen. He was placed in wing B, cell No 16 of the prison of Diavata with another 9 inmates. The surface of the cell is 24 sq.m., therefore he had at his disposal 2.4 sq.m. In December 2017 he was moved to wing A, cell No 10. Again the cell was 24 sq.m. and the number of inmates in total 10. He remained in such conditions until the 20th February 2018 when, after a hunger strike that took place at the prison of Diavata as a reaction to the dire living conditions, he was transferred to the prison of Domokos. The transfer was a collective measure of punishment for all participants involved in the hunger strike. Mr Owda was transferred although he was just acting as an interpreter for the Arab-speaking

> participants. The capacity of the prison of Diavata is 358, and its occupancy in 2017 - 2018: min 544, max 560.
>
> 6. At the prison of Domokos (capacity: 600, occupancy in 2018-2021: min 520, max 735) Mr Owda was placed at wing C, cell No 20. After a year he was moved to wing D, until he was released on the 14th February 2021. Both cells measured 11,5 sq.m., designed to accommodate three inmates. Mr Owda lived in these cells with another 2 or 3 inmates. Only for short periods of time he was held with only one more inmate. Therefore, he had at his disposal in most of the time 2.8-3.8 sq.m. according to the occupancy of the cell."

27 I do not think that the lack of a signed statement from Mr Owda himself detracts from the evidential value of this information. The reason given by Prof. Tsitselikis is credible: Owda's belief (whether well-founded or not) that the giving of such a statement might be held against him in ongoing criminal proceedings. Nor do I consider that the circumstances in which the information was imparted casts significant doubt on its credibility: Prof. Tsitselikis apparently interviewed Owda with his lawyer present. The fact that Owda's own lawyer was present makes it unlikely that there was any doubt about the purpose for which the information was being given. Although the information is hearsay, that does not prevent its admission: as the Divisional Court has noted, while strict rules of evidence apply to some issues in extradition proceedings, greater latitude is permitted on human rights issues: *Parkes v Germany* [2021] EWHC 1655 (Admin), [43]. In this case, there is no reason to doubt that Prof. Tsitselikis is accurately relaying what Owda told him.

28 Owda's information, as contained in the report, was certainly not general or vague. On the contrary, it was quite specific as to the cells in which he was held, the date when he was held there and as to the dimensions of those cells. It is true that, in relation to the first two cells at Diavata, it is not said in terms that there were 10 prisoners present for the whole period between 21 June 2017 to 20 February 2018, but the clear implication is that this was the case for all or much of the time. (Even if there had been 9 prisoners in the cell, the 3 sq. m. minimum would have been breached, if the dimensions reported are correct.) As to the cells at Domokos, where Owda was held from 20 February 2018 to 14 February 2021, the text is clear that Owda was housed in a cell which – when 4 prisoners were housed there together – afforded less than 3 sq. m. of personal space to each. It is not clear for how long 4 prisoners were housed there, though it is said that there were fewer than 3 prisoners "only for short periods".

29 In my judgment, this information qualifies as significant and material. It comes from an apparently reliable primary source – Prof. Tsitselikis. More importantly, the information is detailed and reasonably precise (save as to exactly how many prisoners were present for what periods). It should be possible for the Greek authorities to verify or contradict the information given from their own records without difficulty – or provide further details which shows for how long (if at all) Owda was housed in accommodation which afforded him less than the 3 sq. m. promised in the assurance. That affects the analysis in two ways. First, it makes it less likely that Owda would be telling deliberate untruths: there would be no point, because he would know that the information could be easily disproved. Second, it means that – if, for whatever reason, the information is false – it should be relatively easy for the Greek authorities to demonstrate that.

30 As it stands, the (at present unanswered) material in Prof. Tsetselikis' report is *prima facie* evidence sufficient to raise the risk of Article 3 ill-treatment to a "real" one. This means that I must postpone the decision on surrender to give the Greek authorities an opportunity to answer the points made by Prof. Tsetselikis: see Case C-404/15 PPU *Aranyosi* EU:C:2016:198 [2016] QB 921, [104]. I will invite submissions from both sides on the precise terms of the request.

Ground 2: Article 8 ECHR

31 The judge correctly directed himself as to the proper approach to Article 8. He cited and accurately summarised the key authorities: *Norris v USA* [2010] UKSC 9, [2010] 2 AC 487, *HH v Italy* [2012] UKSC 25, [2013] 1 AC 338 and *Celinski v Poland* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551. He noted that delay weighs heavily in the balance if it is found to be culpable (*Glica v Poland* [2014] EWHC 359 (Admin), but that the court should be cautious before finding delay to be culpable (*Wolack v Poland* [2014] EWHC 2278 (Admin), [9]) and delay is of limited assistance to an appellant if it is not found to be culpable (ibid., at [10]).

32 The judge identified these factors in favour of extradition: the public interest in ensuring that extradition arrangements are honoured, particularly where, as here, a lengthy custodial sentence remains to be served; the importance of according a proper degree of respect to the sentencing decisions of the requesting state; the seriousness of the offending; and the appellant's fugitive status. The factors against extradition were: that a considerable part of the appellant's offending behaviour was attributable to alcohol addiction and he had done voluntary work to address his addiction and therefore his offending behaviour; his lifestyle was now quite different from how it was in 2011; he had increased contact with his son and engaged with the church community; and he enjoyed an improving relationship with his son.

33 Balancing these factors, the judge noted that the appellant accepted that he had left Greece in breach of an obligation imposed on him and was therefore a fugitive from justice. Although it was right that there should be a focus on his relationship with his son and the effect that his surrender might have on the son, he was not a carer and had infrequent contact. This was confirmed by the report under s. 7 of the Children Act 1989, which concluded that the appellant's extradition "would not have a significant impact" on his son. The report of Lynne Jackson, a psychologist, showed that the appellant was vulnerable but did not establish that he currently suffered from any mental illness or disorder. This was confirmed by the report of Dr Osman Hussain. The judge noted that no specific treatment was suggested, nor was it suggested that if any were required in the future it would be unavailable in the Greek prison system.

34 The judge held that extradition would not constitute a disproportionate interference with the appellant's Article 8 rights.

35 Mr Williams submitted that there was no sufficient analysis of the impact of delay on the appellant's private and family life. A delay of about 10 years ought to have weighed heavily on the mind of a court faced with a man of some vulnerability faced with a request for extradition on a conviction warrant to serve a manifestly disproportionate sentence.

36 For the respondent, Mr Swain submitted that the judge had properly balanced all the relevant factors and this court should be slow to intervene.

37 For my part, I consider that the judge's analysis on this issue was sound. Although there was considerable delay, that had to be viewed in the context that the appellant was a fugitive. Although extradition would undoubtedly have an effect on both his private and his family life, the judge properly analysed the extent of the effect on the son as the key factor. On the expert evidence, the impact on the son would not be significant. The impact on the appellant's private life more generally was properly recorded and taken into account. Against these factors, the judge was right to say that the length of the sentence reflected the Greek court's view of the seriousness of the offending. It was not for the judge to go behind the sentencing decision, which was properly a matter for the sentencing court. Given the view taken by the sentencing court, the public interest in extradition in this case was inevitably treated as very weighty.

38 In my judgment, it is not arguable that the judge's decision as to how to balance these factors was wrong in the sense identified by the Supreme Court in *Re B (A Child)* [2013] UKSC 33, [2013] 1 WLR 1911. Given the seriousness of the offence (as determined by the sentencing court), the appellant's fugitive status and the relatively limited nature of the relationship between the appellant and his son, this was not a marginal case. The factors in favour of extradition clearly outweighed those against it.

39 I have considered *de bene esse* the report of Rosaline van de Weyer, Consultant Occupational Therapist, which the appellant applies to adduce as fresh evidence. I do not need to consider the question whether this report should have been obtained earlier, because its contents could not in any event alter the Article 8 balance in this case. To the extent that it contains a diagnosis of dyspraxia, it does not establish that this condition (as opposed to others from which the appellant has in the past suffered) would have a serious impact on the appellant's ability to cope in a prison setting.

Conclusion

40 For these reasons:

(a) I shall adjourn the appeal on ground 1 (Article 3 ECHR) and invite the parties to agree or make submissions on the precise questions that should be posed to the Greek authorities in relation to the evidence about compliance with the assurances given in Owda's case; and

(b) I shall refuse permission to appeal on ground 2 (Article 8 ECHR).