



Case No: AC-2023-LON-003205

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

NEUTRAL CITATION NUMBER: [2024] EWHC 3372 (Admin)

The Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 27 November 2024

BEFORE:
SIR PETER LANE
(sitting as a Judge of the High Court)

BETWEEN:

KRUPA

Applicant

-and-

(1)WESTMINSTER MAGISTRATES' COURT
(2)GOVERNMENT OF POLAND

Respondents

-and-

LEGAL AID AGENCY

Interested Parties

MISS A GRUDZINSKA (Hollingsworth Edwards Solicitors) appeared on behalf of the Applicant.

THE FIRST RESPONDENT did not appear and was not represented.

MR N HEARN (instructed by CPS Extradition Unit) appeared on behalf of the Second Respondent.

MR M BIRDLING (instructed by Legal Aid Agency) appeared on behalf of the Second Interested Party,

JUDGMENT

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1. SIR PETER LANE: This is my judgment on the issue of criminal legal aid.
2. The applicant's extradition is sought by the Government of Poland in respect of an accusation warrant alleging that the applicant was the head of an organised crime group, who committed fiscal crimes. He is also accused of offences of misleading the tax authorities and associated money laundering.
3. The warrant is addressed to the Government of the Isle of Man, where the applicant was living with his family. It is common ground that this means the extradition proceedings lie under the Extradition Act 1989 rather than the Extradition Act 2003. The 1989 Act has not been repealed in respect of the Isle of Man.
4. A committal hearing under section 9 of the 1989 Act took place before District Judge Snow at Westminster Magistrates' Court on 13 October 2023. The applicant was committed for all but one of the offences in respect of which extradition to Poland is sought.
5. The role of the district judge under section 9 is much more limited than it is under the 2003 Act. The role of the High Court is, however, greater under the 1989 Act. Under section 11 of that Act, the applicant, who is committed under section 9, may make an application for *habeas corpus*. On such an application the High Court shall order the person's discharge if it appears to the court in relation to the offence or offences in question that it would be unjust or oppressive to return the person because of certain specified matters. One such matter is that mentioned in section 11(3)(b); namely, the passage of time since the alleged offence or since the time when the person became unlawfully at large.
6. In the present case, the applicant has brought *habeas corpus* under section 11, relying on the passage of time. An issue that has arisen, however, is whether the applicant is eligible for criminal legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2021 and the regulations made under that Act.
7. On 18 March 2023, Morris J made the following order:

"The case is to be listed before a High Court Judge for an oral hearing, time estimate two hours, at the first available date suitable to

the parties to consider (1) the application for legal aid; (2) case management directions. The Director of Legal Aid Casework to be notified of the application for legal aid and to be invited to attend the oral hearing listed pursuant to paragraph 1 to assist the court with the issues arising; (3) in the event that the Director intends to appear at the oral hearing, he should, if so advised, submit and serve written observations at least two days before such oral hearing".

8. Morris J's reasons for making the order were as follows:

"The issues are whether criminal legal aid is available for proceedings governed by the Extradition Act 1989, in this case concerning the Isle of Man, and, if not, whether civil legal aid might be available. The former issue is a point of principle and should be considered at and ruled upon following an oral hearing. The court would also benefit from assistance from the Legal Aid Agency and to that end the LLA should be invited to attend".

9. The Agency has indeed responded positively to that request. Mr Birdling of counsel has provided helpful written and oral submissions for which the court is extremely grateful.

10. In accordance with the order, I therefore must first rule on whether the applicant is eligible for criminal legal aid. The applicant, represented by Miss Grudzinska, submits that the relevant legislation falls to be construed in such a way as to equate proceedings under the Extradition Act 1989 with those under the Extradition Act 2003, where criminal legal aid is available. She puts that point in a variety of different ways in her written and oral submissions, for which I am also grateful.

11. Mr Birdling contends that the legislation cannot, in the event, be construed in the way in which the applicant submits. Criminal legal aid is, in his submission, unavailable. The applicant's ability to secure legal representation at public expense therefore rests on whether he is able to secure civil legal aid. The system of civil legal aid is subject to a test of means of the applicant and also a test of the merits of his case for resisting extradition.

12. The relevant provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 are as follows.

13. Section 14 contains an exhaustive definition of "criminal proceedings". The relevant passage is section 14(a), (b) and (c). This reads as follows:

"In this Part 'criminal proceedings' means—

(a) proceedings before a court for dealing with an individual accused of an offence,

(b) proceedings before a court for dealing with an individual convicted of an offence, including proceedings in respect of a sentence or order,

(c) proceedings for dealing with an individual under the Extradition Act 2003 ..."

14. Section 16 of the 2012 Act concerns representation for criminal proceedings. The relevant provisions are subsections (1), (3), (4) and part of (6):

"(1) Representation for the purposes of criminal proceedings is to be available under this Part to an individual if—

(a) the individual is a specified individual in relation to the proceedings, and

(b) the relevant authority has determined (provisionally or otherwise) that the individual qualifies for such representation in accordance with this Part (and has not withdrawn the determination).

...

(3) Where an individual qualifies under this Part for representation for the purposes of criminal proceedings ('the principal proceedings'), representation is also to be available to the individual for the purposes of—

(a) any related bail proceedings, and

(b) any preliminary or incidental proceedings.

(4) Regulations may—

(a) make provision specifying whether proceedings are or are not to be regarded as preliminary or incidental for the purposes of subsection (3), and

(b) make provision for exceptions from subsection (3)".

"(6) In this section—

'the relevant authority', in relation to a specified individual and criminal proceedings, means the person who is authorised by or under section 18, 19 or 20 to determine (provisionally or otherwise) whether the individual qualifies under this Part for representation for the purposes of the proceedings;

'specified individual' means—

(a) in relation to criminal proceedings mentioned in any of paragraphs (a) to (g) of section 14, an individual mentioned in that paragraph in relation to those proceedings ..."

15. Regulation 20 of the Criminal Legal Aid (General) Regulations (SI 2013/9) provides:

"20.—(1) The proceedings set out in paragraph (2) are not to be regarded as incidental to the criminal proceedings from which they arise.

(2) The proceedings are—

(a) proceedings for applications for judicial review or habeas corpus in relation to criminal proceedings ...".

16. Finally, reference must be made to the Criminal Legal Aid (Determination by a Court and Choice of Representative) Regulations 2013 (SI 2013/614). Regulation 7 concerns determinations by the High Court.

"7.—(1) On the application of an individual, the High Court may make a determination under section 16 of the Act as to whether an individual qualifies for representation for the purposes of criminal proceedings before the High Court in relation to an appeal by way of case stated from a decision of the magistrates' court or the Crown Court.

(2) On the application of an individual, or of its own motion, the High Court may make a determination under section 16 of the Act as to whether an individual qualifies for representation for the purposes of proceedings before the High Court, or proceedings before the Supreme Court on appeal from the High Court, described in—

(a) section 14(a) to (g) of the Act, other than proceedings under paragraph (1); or

(b) regulation 9(r) of the General Regulations".

17. Mr Birdling says the view taken by the Legal Aid Agency is that extradition proceedings under the 1989 Act are criminal proceedings for the purposes of section 14 of the 2012 Act. Accusation cases fall within section 14(a) and conviction cases within section 14(b). I initially had some difficulty with this, given the presence of section 14(c), which refers expressly to proceedings for dealing with an individual under the Extradition Act 2003. If proceedings under the 1989 Act fall inherently within section 14(a) and (b) then so, too, must proceedings under the 2023 Act; yet there is a specific reference to that Act in the section.
18. The applicant does not take issue with Mr Birdling's submission. In the circumstances, whilst noting what remains the oddity of section 14(c), I am prepared to accept that section 14(a) and (b) cover extradition proceedings under the 1989 Act.
19. The criminal nature of proceedings under the 1989 Act is plain from the cases, such as *The Queen v. Governor of Brixton Prison, ex parte Levin* [1997] QB65. That case held that proceedings under the 1989 Act were "criminal proceedings" for the purposes of the Police and Criminal Evidence Act 1984. Importantly, Miss Grudzinska relies on the judgment of Lord Bingham in the Court of Appeal in *Cuoghi v Governor Brixton Prison* [1997] WLR 1346. The court held there that section 11 *habeas corpus*

proceedings were criminal in nature for the purpose of section 18 of what is now the Senior Courts Act 1981. They were, thus, proceedings in a criminal cause or matter.

20. Lord Bingham said this, beginning just below letter G on page 1353:

"Mr Garlick QC for the Government of Switzerland has helpfully referred us to section 1(1) of the Extradition Act 1989 which applies the procedure in Part III of the Act to extradition between Convention countries. Part III, comprising sections 7 to 17, sets out a comprehensive code to govern extradition in such circumstances. Thus, one finds sections dealing with the request for extradition and authority to proceed, the arrest of the proposed defendant, the committal of the proposed defendant, the provision in section 11 for applications for relief, the return of the defendant, the making of special provisions to short-circuit the extradition procedure, the discharge of the proposed defendant, and the holding of the proposed defendant in custody. Mr Garlick submits, in my judgment correctly, that section 11(3) forms part of a comprehensive provision for what is accepted as being a criminal proceeding. It is artificial to fillet out section 11(3) from this coherent series of provisions and attribute to it a nature and character different from the process of which it forms part".

21. This passage was Lord Bingham's answer to the second of three questions which he had addressed. The second question was this:

"Does an application for *habeas corpus* made in extradition proceedings fall within the statutory expression 'criminal, cause or matter'?"

22. The third question posed by Lord Bingham was whether an order relating to obtaining evidence for purposes of a *habeas corpus* application in extradition proceedings fell within the statutory expression.

23. Whilst in answering that third question in the affirmative, Lord Bingham spoke of *habeas corpus* applications being incidental or ancillary to extradition proceedings, I do not consider that this materially affected his clear answer to the second question; namely, that section 11(3) of the 1989 Act is part of the comprehensive system of criminal extradition proceedings set out in that Act.

24. Indeed, in his oral submissions, I understood Mr Birdling to accept this proposition. All of the provisions, including section 11, fall within section 14(a) or (b). The problem for the applicant, however, according to Mr Birdling, lies in section 16(3). This, he says, has the effect of treating *habeas corpus* under section 11 as "incidental proceedings". That leaves such proceedings open to the exclusionary aspect of the regime established by section 16(4)(a). As we have seen, regulation 20(2)(a) of SI 2013/9 provides that "proceedings for applications for ... *habeas corpus* in relation to criminal proceedings" are not to be regarded as incidental to the criminal proceedings from which they arise.
25. The fallacy of this approach is that section 11 applications are themselves criminal proceedings. Their entitlement to be treated as such does not depend on them being "incidental" to some form of criminal proceedings. In this, they differ from other forms of *habeas corpus*. Thus, properly read, section 16(3) does not apply and so regulation 20 simply has no purchase on section 11 applications. The fact that they are *habeas corpus* applications is, for this purpose, immaterial.
26. The consequence of reading regulation 20 in the way that is suggested by the Legal Aid Agency would, in fact, be contrary to the Agency's acceptance of the 1989 Act as a comprehensive set of criminal proceedings. It is no answer to say that a person in the position of the applicant can apply for civil legal aid. There are significant differences between the two systems. The applicant faces difficulties in establishing eligibility for civil legal aid, which he would not face if he were within the scope of criminal legal aid.
27. The interpretation that I favour means that regulation 20 can be read in such a way as to avoid being seen as irrational. The fact that, as in the present case, a person has the ability to obtain criminal legal aid for the committal proceedings but not for the important challenges that may be brought under section 11 has no principled or, indeed, rational basis. This is particularly so when one realises that, under the 2003 Act, a challenge involving an issue such as the passage of time is to be brought before the magistrates' court, where criminal legal aid is available.
28. I therefore find that the applicant may apply for criminal legal aid. I do not consider, in the circumstances, that it would be appropriate, at this point at least, to proceed under regulation 7 of SI 2013/614. I am not in possession of an application from the

applicant. Ms Grudzinska says, in addition, that there may be an issue about backdating any certificate to cover work carried out so far. All this is, in my view, more appropriately to be handled by those responsible for criminal legal aid in the light of this judgment.

29. If it should transpire that there is, in fact, a need, then an application can in due course be made under regulation 7.
30. That concludes my judgment.

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