



Neutral Citation Number: [2023] EWHC 213 (Admin)

Case No: CO/2340/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/02/2023

Before :

MR JUSTICE JULIAN KNOWLES

Between :

HAMDI CHERIF
- and -
GOVERNMENT OF NORWAY

Applicant

Respondent

Ben Joyes (instructed by Sonn MacMillan Walker) for the Claimant
The CPS on behalf of the Respondent filed written submissions
but did not appear at the hearing

Hearing dates: **1 February 2023**

Approved Judgment

This judgment was handed down remotely at 10.30am on 9 February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Julian Knowles:

1. Following a hearing on 1 February 2023 I refused the Applicant's renewed application for permission to appeal against the order made by a district judge at Westminster Magistrates Court on 10 May 2022 sending his case to the Secretary of State (and an allied application for an adjournment for further medical investigations). I said I would put my reasons into writing, and this I now do.
2. Heather Williams J refused permission on the papers on 29 November 2022.
3. I am grateful to Mr Joyes for his oral and written submissions on behalf of the Applicant. The Respondent filed written submissions in response to the renewed application (settled by Ms Bostock of counsel) but it did not appear at the hearing.
4. The Applicant's extradition has been requested by the Government of Norway. Extradition to Norway is governed by Part 2 of the Extradition Act 2003 (EA 2003). This is a conviction case. The extradition request concerns a sentence of 1 year, 4 months' imprisonment (less two days) in respect of four offences including an offence of domestic violence and an offence of assault.
5. A provisional version of the request was issued on 22 July 2021 and certified for provisional arrest on 27 August 2021 following which the Applicant was arrested on 14 October 2021. He appeared before Westminster Magistrates' Court the following day and was released on bail and the case was adjourned to await receipt of the full request from Norway.
6. Before the district judge the Applicant relied on s 87 (Article 8 of the European Convention on Human Rights) and s 91 of the EA 2003 (which bars extradition if it would be unjust or oppressive to extradite the person because of their physical or mental condition). Despite only being in his 40s, and so comparatively young, in 2021 the Applicant was unfortunately found to be suffering from signs of heart failure and required emergency heart surgery. Fortunately, his condition has improved since then, but he remains under the care of cardiologists. Before the district judge he relied on his heart condition and also mental health problems in support of his Article 8 and s 91 arguments.
7. As the judge recorded at [23] of his judgment, Mr Joyes (who also appeared below) applied for an adjournment of the extradition hearing for a medical report and further tests to be carried out. The judge refused to adjourn the hearing, holding that it would not be in the interests of justice to do so because: (a) the Applicant had had seven months between October 2021 when he was arrested and May 2022 to obtain a report; (b) there was no reason to conclude that a report would be available imminently; (c) to adjourn would breach the overriding objective in extradition proceedings as set out at Crim PR 50.2; (d) there was no basis to conclude that the tests are not routine.
8. The district judge found that the Applicant is a fugitive and that the offences were serious. He rejected the Article 8 and s 91 arguments and sent the case to

the Secretary of State, as I have said. The Secretary of State ordered extradition on 15 July 2022.

9. The Applicant does not challenge any element of the district judge's reasoning, but sought to appeal on the basis of what was said to be new evidence relating to his health.
10. In support of his application for permission to appeal he relied on a letter and an email from his cardiologist, Dr Guban, dated 18 May 2022.
11. In refusing permission Heather Williams J held that Dr Guban's evidence did not meet the well-known *Fenyvesi* [2009] EWHC 231 (Admin) test for the receipt of fresh evidence in extradition cases. She said at [4] of her order:

“4. In the circumstances the test for the admission of fresh evidence is not met. With reasonable diligence, the evidence could have been obtained earlier, as is reflected in the District Judge's refusal of the adjournment. No sufficient explanation has been provided. Furthermore, the evidence is not decisive; at best it suggests that a further check-up might reveal additional medical procedures that would be advised before the Appellant flies to Norway.”

12. Before me on this renewed application the Applicant relied upon further material, namely, a letter from Dr Green, a junior fellow in cardiology at the Gloucestershire Royal Hospital dated 25 November 2022 (she saw the Applicant in clinic a few days before); and material served on the day of the hearing concerning further heart-related tests the Applicant recently had, or is due to have, in the next few months.
13. I considered this material *de bene esse* but concluded that it did not come close to satisfying the *Fenyvesi* test. It is not decisive, which is one of the criteria. At its highest, it shows that further checks would be advisable before the Applicant flies again. Dr Green said:

“On examination, his heart sounds were completely normal, he was in a regular rhythm and his ECG showed normal sinus rhythm. He did have fine crackles in the bases of both lungs.

...

Mr Cherif also mentions that he needs to, at some point, fly back to Norway for legal reasons and although there is no immediate need for him to go back to Norway, he will need to go in the next few years and there has been pressure put on him to go and fly back there. Given that his last echocardiogram showed an ejection fraction of only 20%, until we can confirm that his ejection fraction and his overall heart function has improved decently then I have recommended him not to fly for the foreseeable future.

Obviously, once we have the results of this echocardiogram and the other test, we can re-evaluate this more effectively.

14. Hence, whilst Dr Green is concerned about the Applicant flying at the moment, there is nothing in the material which even began to suggest it would be oppressive *per se* to return the Applicant to Norway because of his physical or mental health (the other limb, injustice, in s 91 does not arise because the Applicant's extradition is sought to serve a sentence: see *Government of South Africa v Dewani* [2012] EWHC 842 (Admin)). There is nothing to displace the presumption that Norway will be able to provide him with adequate health care during his incarceration if he is extradited. For the same reason, there is nothing in the new material which could aid him in an Article 8 argument on appeal.
15. So far as an adjournment for further tests is concerned, I make two points. Firstly, as both the district judge and Heather Williams J noted, the Applicant had ample time between October 2021 and May 2022 to obtain definitive medical evidence. He did not do so. I do not know why not, but he did not. Also, and very pertinently, as Ms Bostock pointed out on behalf of the Respondent, those responsible for actually arranging and executing the Applicant's extradition to Norway will not allow him to fly if there is any doubt about his ability to do so. Ms Bostock said at [10] of her 'Response to Renewal Hearing Submissions' dated 30 January 2023:

“The Court is also reminded that alternatives to flight can also be considered. The National Extradition Unit (responsible for removing the Applicant) has a duty to ensure individuals in their custody are fit to fly, if the Applicant is not (upon relevant examination) then alternative arrangements would be made for sea/land travel.”
16. As I pointed out to Mr Joyes, that submission is reinforced by the fact that the National Extradition Unit, as a public authority, is bound by the Human Rights Act 1998 and therefore could not lawfully fly the Applicant if it would put his life or health in serious jeopardy. Thus, the tests which Mr Joyes said an adjournment should be granted in order to facilitate will, it appears, form part of the process by which the Applicant is extradited to Norway in any event, and it was for that main reason that I concluded an adjournment would serve no purpose and the application therefore be refused.
17. Mr Joyes advanced all the points that could be made on behalf of the Applicant, but whilst I accept that the Applicant has a health condition which would be of concern to anyone, it does not provide any basis for an appeal or an adjournment.
18. As I indicated to Mr Joyes, the order I will draw up, in addition to refusing his applications, will provide (subject to the Applicant providing his consent if necessary) that his medical notes and records should be provided to the National Extradition Unit, the CPS and the Government of Norway so that they are fully sighted upon his condition and can make appropriate arrangements, including for further medical testing if necessary.