Neutral Citation Number: [2024] EWHC 1459 (Admin)

Case No: AC-2023-LON-002760

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

Thursday 13th June 2024

Before :

FORDHAM J

- -

Between:

EDUARD OTTO GOLDSTEIN	**Appellant**
- and -	
THE COURT OF CALTANISSETTA ITALY	**Respondent**

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- -

Matei Clej (instructed by AMI International Solicitors) for the **Appellant**
Tom Davies (instructed by CPS) for the **Respondent**

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Hearing date: 13.6.24

Judgment as delivered in open court at the hearing

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Approved Judgment

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FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

FORDHAM J:

1. The Appellant (who is aged 25) was ordered to be extradited to Italy by District Judge Sternberg ("the Judge") on 13 September 2023, after an oral hearing on 25 July 2023. This is on an accusation Extradition Arrest Warrant issued on 23 February 2023 relating to 14 alleged offences of supplying cocaine, and an alleged robbery-conspiracy with a firearm, all said to have been committed by the Appellant in 2021 (aged 22). Permission to appeal was adjourned into open court to consider issues relating to Article 3 (and possibly Article 8) regarding risks arising in Italian prisons and in particular in Sicily. Article 8 has today formally been abandoned. These were risks which had been raised on behalf of the Appellant for his July 2023 hearing in the Westminster Magistrates' Court ("WMC"). That WMC had refused an adjournment, on 21 July 2023. It was being sought so that materials could be translated. On 9 September 2023, the Appellant's representatives submitted 131 pages of translated articles, which the Judge refused to admit but considered 'de bene esse', that is to see where they led and addressed in the judgment. A report of an Italian lawyer Benito Capellupo dated 5 February 2024 has been put forward on this appeal and five translated documents were filed on 28 May 2024.

2. I will pause there for a short digression. Clear directions had been given in this case, back on 8 February 2024, for the Appellant's skeleton argument to be filed 7 working days prior to this hearing, with the Respondent's skeleton argument 3 working days prior to the hearing. There was no good reason why those deadlines could not be met for the hearing which had been scheduled for today. There was also no good reason why any application to vary those directions, for which provision was made in that order, should not have been made promptly. In the event, I was presented two days ago with an application and a draft 'consent order', for the Appellant's skeleton argument to be one clear working day before the hearing and the Respondent's skeleton no clear working days before the hearing. I declined to approve that consent order. Mr Davies valiantly rescued the position by putting in his skeleton and the agreed authorities, to at least allow me pre-reading time. I would not expect to see this set of circumstances repeated in future. When the Appellant's skeleton argument came, what it said on the Article 8 issue was that oral submissions would be made. In my judgment, if an issue is being pursued and there is direction for a skeleton argument, it is not appropriate simply to say that it will be addressed orally. In the event, as I have explained, Article 8 has been orally abandoned. That too could and should have been made clear earlier. I have taken the time to make these points for one reason and one reason only. That is to provide some practical assistance for future cases. I make clear, in particular, that I do not hold any of this against the Appellant in the present case. Having put down those markers for the future I turn back to deal with the substance of the case on its legal merits.

3. The key points that are emphasised in the Appellant's skeleton argument so far as prison conditions are concerned, relate in particular to "overcrowding" as described by an Italian NGO called the Antigone Observatory ("Antigone"). Press articles that were specifically drawn to my attention, from January 2023 and May 2023, describe Antigone as having surveyed 99 institutions finding 39% of them where minimum parameters of 3m² of living space per head were not respected, or 97 prisons surveyed where that was true in 35% of the institutions, depending on which article is being read. These are all references to information from Antigone visits in 2022.

4. Material from Antigone was before the Divisional Court in Visha v Italy [2019] EWHC 400 (Admin), where Antigone is described (§13). In that case, the WMC had considered a July 2018 Antigone report entitled "Detention in Italy" and where Antigone's director of research had given oral evidence by a live link (see Visha §13, 16, 21). Reliance was also sought to be placed, on an Article 3 argument in the High Court appeal, on a subsequent November 2018 Antigone report (see Visha §41). The relevant law regarding Article 3, prison conditions and overcrowding, and the nature of evidence which can trigger a need for information or assurances, was all set out in the Divisional Court's judgment (Visha at §§25-34), including citations of authorities included in the bundle of cases for the hearing before me in the present case. The Divisional Court explained why the materials including the descriptions of "overcrowding" and descriptions of figures concerning cells which allow "less than 3m²" had rightly been found by WMC judge, in that case, not to trigger any Article 3 need for any further information or any assurance; and the Court explained why the material including the putative fresh evidence (the November 2018 report) itself did not require any specific assurance (Visha §§51 and 53).

5. In the present case, the Judge emphasised the position in 2015 in Elashmawy v Italy [2015] EWHC 28 (Admin): that prison conditions assurances were not required in Italian extradition cases; and that this would stand definitively as the position, unless and until cogent further evidence impelled a review of the position or demonstrated that general conclusions reached could not apply to the particular circumstances of an individual case; specifically warning that it was very doubtful that a single expert report could impel such a review (Elashmawy §104). In my judgment, and beyond argument, the material in this case comes nowhere near the sort of cogency as "objective, reliable specific and properly updated" material, whose effect – in Article 3 extradition terms – can impel such a review or demonstrate a specific concern relating to the present case.

6. As Mr Clej ultimately, and rightly, accepted, the only real aspects of opinion evidence of in the Capellupo report are: (a) a helpful description of Antigone, including a description of its website (www.antigone.it) where materials can be found (at least some of which are in English); and (b) a predictive description of the likely relevant custodial institution in this case being the penitentiary institute of Caltanissetta. The rest of the Capellupo report helpfully draws together contents from public domain materials, specifically from Antigone. So, on the material, it is likely that the Appellant would be held at Caltanissetta prison. But the Antigone materials relating to Caltanissetta prison record, in terms, that in "all" the cells visited by Antigone, cell floor space of 3m² per person was ensured. That position is also recorded in the Capellupo report.

7. There are other references suggesting less than 3m², from Antigone's visits to Italian prisons in 2022. But these need to be approached with great caution. The Divisional Court explained that reliance on Antigone's statements in relation to figures on cell space per detainee was misleading – viewed in Article 3 extradition terms – at least without further explanation (see Visha §§21-22). The Court explained the absence of any details as to how many detainees were affected and for how long (Visha §39) and that whereas the Strasbourg Article 3 minimum of 3m² proceeds on the basis that furniture is included of cell space measurements, Antigone's method did not include furniture is included of cell space measurements (Visha §§28, 39). So far as the Antigone references and statistics on "overcrowding" are concerned, the Divisional

Court explained the "crucial point" that the Antigone reporting was referable to a national Italian standard of 6m² per detainee (Visha §39), rather than the Article 3 minimum of 3m². I only have to glance at the materials put forward in the present case to see that calculations of occupancy compared with "capacity" involve a calculation by Antigone of prison "capacity" using a criterion of 9m² per detainee, which is expressly recorded by Antigone as "more favourable" than even the 6m² established by the European Committee for the Prevention of Torture.

8. In my judgment, there is nothing in the new material which can found a reasonably arguable Article 3 appeal. That includes by reference to suicide rates and protection from harm the hands of non-state agents. As to the non-state agents, as Mr Davies points out in his skeleton argument, the Capellupo report in fact includes references to public domain documents which describe available arrangements to move detainees in order to protect from those sorts of risks. There is nothing which can arguably trigger the need for further information or an assurance. I will refuse permission to appeal and, since it is incapable of being decisive, I will formally refuse permission to adduce the putative fresh evidence.