



Neutral Citation Number: [2024] EWHC 595 (Admin)

Case No: AC-2023-LON-001608 CO/1895/2023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/03/2024

Before :

THE HONOURABLE MR JUSTICE BOURNE

Between :

AWAT WAHAB HAMASALIH
- and -
ITALIAN JUDICIAL AUTHORITY

Applicant

Respondent

Ben Cooper KC and Alex Tinsley (instructed by **Birnberg Peirce Solicitors**) for the
Applicant
Mark Summers KC and Ben Lloyd (instructed by **Crown Prosecution Service**) for the
Respondent

Hearing dates: 7 March 2024

Approved Judgment

This judgment was handed down remotely at 10am on Friday 15 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE BOURNE

The Hon. Mr Justice Bourne :

1. In this case the Applicant has applied for permission to appeal against an extradition order made by DJ Zani on 18 May 2023.
2. The extradition is based on a conviction in Italy for directing a terrorist organisation, for which the Applicant received a sentence of 9 years' imprisonment.
3. The Applicant had previously been convicted in this country on 3 August 2017 of terrorist offences and received sentences totalling 6 years.
4. Together with a Mr Hamad and a Mr Rahim, he was served in November 2016 with a summons to attend trial before the Bolzano Assize Court. In September 2018, when he was serving his sentence in this country, he was served with a further summons for the trial in Italy. He gave a written waiver of his right to attend but was legally represented at the trial. He and Hamad and Rahim were convicted on 15 July 2019.
5. On the same date a European Arrest Warrant was issued for the 3 individuals. DJ Zani ordered the extradition of Hamad and Rahim on 6 February 2020. They were refused permission to appeal by Fordham J on 26 June 2020 and by Cranston J after a renewal hearing on 16 October 2020.
6. Meanwhile the Italian proceedings progressed to the Trento Appeal Court. The Applicant and Hamad and Rahim appeared by video link and were represented. None made any application to call new evidence or for the re-hearing of evidence. The Appeal Court upheld the decision of the Bolzano Court on 10 July 2020.
7. On 18 May 2022 the convictions were upheld by the Italian Court of Cassation and became final. A TaCA warrant was issued in respect of the Applicant on 30 November 2022 and he was arrested on 5 January 2023.
8. At the extradition hearing before DJ Zani, the issue raised by the Applicant was "double jeopardy" i.e. that the crimes for which he was sought by Italy were based on the same facts as those for which he had been convicted in the UK and therefore extradition was barred under section 12 of the Extradition Act 2003.
9. The DJ rejected the double jeopardy argument and ordered extradition.
10. The Applicant applied for permission to appeal. ITN Solicitors settled "holding" grounds on 24 May 2023, at that time maintaining the double jeopardy argument.
11. By 18 August 2023 he was being represented by ABV solicitors. On that date they applied for permission to amend his grounds of appeal to add a contention of abuse of process and to rely on an expert report of Professor Andrea Saccucci, describing the Italian court procedures that were said to be unfair, which had been used in the applications of Hamad and Rahim. The Applicant's current counsel, Mr Cooper KC, signed perfected grounds of appeal on that date which included the new ground of abuse of process. The particulars were that he had been denied a fair trial in Italy because he was not permitted by the UK authorities to travel to Italy for his trial or to attend by video link. In the appeal court, the interpretation from Italian was

inadequate. For example, the interpreter said that the Applicant had said “that they are accused and they are not able to fully defend themselves” but the Court did not address this concern. He attended the appeal by video link but at times the line was poor and he could not hear what was said. These were violations of ECHR Article 6. The objection also included the fact that the appeal court did not re-open the evidentiary phase of the trial.

12. Although some of these issues had been addressed by Cranston J when he refused permission to appeal on the renewed application of Rahim and Hamad, the Applicant argued that his case was stronger because he, being in custody in the UK, could not travel to Italy to attend the trial and this magnified the injustice of his lack of meaningful participation in the appeal hearing.
13. On 24 November 2023 Farbey J refused permission to appeal on the papers. As well as dismissing the double jeopardy ground, she said:

“Fresh evidence/abuse of process

3. On the papers before me, there is no satisfactory explanation as to why the evidence contained in Prof Saccucci’s report of 2 October 2020 was not available in time for the hearing before the District Judge on 5 January 2023. It is plain and obvious that fair trial rights or questions of abuse of process (if meritorious) could and should have been raised at the extradition hearing: there is nothing obscure about any of the points that the Appellant now seeks to raise under Ground 2 and no proper reason why they could not have been ventilated before DJ Zani.

4. There was ample opportunity for the Appellant (who was represented by counsel and solicitors) to produce all relevant evidence in relation to the issues that he would have wished to raise before the District Judge. The late production of the fresh evidence and the belated attempt to rely on abuse of process represent an illegitimate and unmeritorious attempt to use this court as a court of first instance. The abuse of process arguments are in any event unarguable as amply demonstrated in the Respondent’s Notice. The conditions for the admissibility of fresh evidence or the raising of a fresh issue under s.27(4) of the Extradition Act are not even arguably met.”

14. On 3 December 2023 the Applicant applied to renew the permission application. He maintained the double jeopardy argument though it has since been abandoned. He advanced a second ground headed “Fair Trial”, claiming that he did not attend his trial in Italy, that he received no summons for it, that he did not have a defence lawyer in Italy, that when he first attended Westminster Magistrates’ Court for the extradition proceedings and was represented by ITN Solicitors he “signed a Power of Attorney for a lawyer called Avvocato Plati” but he never had any contact with that individual. In June 2020 he was shown a document offering options of attending his appeal hearing in person or renouncing his right to attend and agreeing to be represented by Avv. Plati instead, but he refused to sign. He later signed a request to attend the appeal hearing by video link but received no further communication from the court or from Avv. Plati. At the appeal hearing the standard of interpretation was so poor that he could not understand what was happening, and he had no real opportunity to participate. He received no communication from Avv. Plati after the hearing and knew nothing about the further appeal to the Court of Cassation.

15. The renewal hearing was listed for 31 January 2024.
16. It seems that after settling the perfected grounds, ABV solicitors had no more funding and ceased to act for the Applicant. They came off the record after permission to appeal was refused by Farbey J. In January he instructed Birnberg Peirce. A statement from Alastair Lyon of that firm refers to Legal Aid being granted on 18 January 2024.
17. On 24 January 2024 Julian Knowles J allowed an application by the Applicant to adjourn the renewal hearing so that his new lawyers would have time to take instructions, but directed that the matter must be heard in the Hilary Term.
18. In due course (on 23 February according to the Applicant's team) the hearing was relisted for hearing on 7 March 2024 with a time estimate of 30 minutes.
19. Mr Lyon pursued inquiries with Italian lawyers to try to obtain evidence from the Italian court files. Relevant material, all in Italian, was provided to him on 23 February 2024. On 27 February 2024 Mr Lyon sent questions to two advocates in Italy – Avvocata Enrica Franzini who acted at the trial and Avv. Vittorio Plati who acted at the appeal hearings – attempting to discover how they had been instructed and what communication they had had with the Applicant. Mr Lyon also refers to a conversation with ITN solicitors who said that the view had been formed by their team that issues about defects in the Applicant's representation in Italy would not in itself form a bar to extradition or a ground of appeal, particularly in light of Cranston J's decision in the case of Rahim and Hamad. They had not investigated the Italian court file.
20. On 29 February 2024 the Applicant applied for an adjournment of the hearing on 7 March 2024. By an accompanying note he also sought leave to amend the grounds to include matters set out in an Annex, and directions with regard to proposed new evidence resulting from the perusal of the Italian court file, some of which had not yet been translated. In the Annex counsel argued that the Applicant had complained in the Italian proceedings that he could not defend himself effectively and that he now wished to advance that contention based on detailed evidence to show that there had been a flagrant denial of his Article 6 rights in the Italian proceedings and that his Article 5 rights would therefore be infringed by extradition. It was his previous lawyers who had decided not to advance such a case previously, and they did not have all the Italian documents. His new lawyers had pursued the point expeditiously. It was also submitted that 30 minutes would not be sufficient for the renewal hearing in this case.
21. The matter came before me in a crowded list. The hearing continued for around 90 minutes, causing delay for other cases in the list, and it was necessary for me to reserve judgment. I heard argument on what could or should be decided in the limited time available on this occasion.
22. Mr Summers KC for the Respondent asked me to deal with, and dismiss, the renewed application for permission to appeal. By now the Applicant's double jeopardy argument had been abandoned. The existing abuse of process argument was without merit for the reasons given by Farbey J. The application to amend, by adding the new

Article 5-6 ground, should be dismissed because the proposed new ground, it was submitted, was obviously without merit. Its contents had to a large extent been considered and rejected either by Farbey J or, in the case of Rahim and Hamad, by Cranston J. New evidence should not be permitted because it could with reasonable diligence have been obtained for use below. It was also submitted that these applications were made too late, after the permission application had been considered and rejected at the paper stage.

23. Mr Cooper KC for the Applicant updated me on the enquiries which had been made of Avv. Franzini and Avv. Plati. The former had not responded and the latter had sent a response which did not in fact answer the questions put to him. Mr Cooper contended, first, that the matter should be adjourned so that all of the evidence which would shed light on the merits of the proposed new ground of appeal could be translated. At present his ability to put the case forward depended on his junior's knowledge of Italian which had enabled them to assess the material. If that adjournment were not granted, permission should be granted for amendment of the notice of appeal and for reliance on new evidence, and directions given for translated evidence and the lodging of further submissions.
24. I asked both leading counsel what course they invited me to follow if I refused permission to amend. Mr Cooper submitted that, this hearing having been largely concerned with the question of the amendment, the residue of the renewed permission application hearing should be adjourned. Mr Summers maintained the invitation for me to decide all outstanding matters but acknowledged that, in the time available, the merits of the existing remaining ground of appeal had not been explored as would usually happen at a renewal hearing.
25. At the end of the hearing I also invited counsel to attempt to agree directions which would be appropriate if I were to allow the amendment, and they have done so.
26. I do not consider it necessary to adjourn the amendment application. Counsel have been able to give me sufficient information about the contents of the Italian documents to understand the basic nature of the application.
27. Having considered that information carefully, I am not in a position to dismiss the proposed amended ground of appeal out of hand on the basis that it is obviously without merit. Although very similar arguments were advanced by Rahim and Hamad and were dismissed by Cranston J, the facts of this Applicant's case are not identical to theirs. For example, they were present at the trial in Bolzano and he was not. Questions about any waivers of his rights are personal to him. It may be that more is now being discovered about his relationship, or lack of it, with the lawyers appointed to represent him in Italy. There is now evidence of Mr Lyon's approaches to them and their lack of response. And Cranston J's finding, on which he clearly placed weight, that Rahim and Hamad were laughing throughout the appeal hearing, was not a finding about this Applicant.
28. It may be that upon renewal, a judge will form the same opinions of the amended ground as Farbey J expressed about the existing abuse of process ground, but in my judgment it is not safe to assume that that will be so until there has been an

opportunity to put any new evidence before the Court and to explain what new information it contains and why it was not sought or advanced before.

29. At a renewal hearing Mr Cooper may or may not be able to show that the amended ground is arguable, or that new evidence should be admitted at this late stage but, as he rightly reminds me, the amended ground concerns fundamental rights. That provides one answer to the lateness of this application, coming as it does long after the extradition hearing and after the paper stage of the permission application. That first answer overlaps with a second, namely the fact that there has been a change of representatives and a change of opinion about the potential grounds of appeal. Meanwhile, as counsel agree, there is no absolute bar to the raising of a ground on appeal which was not raised at the extradition hearing: see section 27(4)(a) of the 2003 Act and *Hoholm v Norway* [2009] EWHC 1513. In the circumstances I consider it just for the ground based on Articles 5 and 6 to be properly articulated and for its arguability to be assessed in light of the evidence recently obtained, translated into English.
30. There will therefore be permission to amend, together with the agreed consequential directions. I have also seen a request to extend the Applicant's representation order to cover the cost of translation of documents, supported by counsel's advice and a quotation in the sum of £2,339 plus VAT, which I shall approve in light of the decision above. An order will therefore also provide:
 1. The representation order is extended to enable the Applicant to obtain translations of the relevant Italian court documents.
 2. The applicant will file and serve the translated Italian court documents within 28 days.
 3. The Applicant will file and serve any other evidence from Italian and/or English lawyers by the same date.
 4. The Applicant will file and serve written submissions within 14 days of service of the material referred to at 2-3 above.
 5. The Respondent will file and serve written submissions in reply 14 days thereafter.
31. As regards what will happen next, there was some discussion in court of whether the amended ground would be considered by a judge on paper, or whether it would be considered at the oral renewal hearing along with the original abuse of process ground. Having regard to Crim PR 50.17(1)(b)(ii) and 50.22(2), it seems to me that a requested person does not have a right to have his application for permission to appeal considered on paper. Rather it is permissible for a permission application to be considered on paper but if permission is refused, the person has the right to an oral renewal hearing. In a case like this, where a ground is added by amendment after the permission application has been considered and dismissed on paper, a further paper stage is not required and will cause further delay. Delay runs contrary to the requirement, emphasized in the Crim PR and the Criminal Practice Directions 2023, for extradition proceedings to be dealt with expeditiously.

32. Pursuant to the directions set out above, this matter should be ready for an oral renewal hearing by 10 May 2024. I will therefore direct that that hearing be listed in the period 13-24 May 2024 and, since the facts are more complicated than those of many extradition cases, with a time estimate of 2 hours.