



Neutral Citation Number: [2022] EWHC 268 (Admin)

Case No: CO/886/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday 9th February 2022

Before:

MR JUSTICE FORDHAM

Between:

KENAN SALIHOVIC

Appellant

and

DISTRICT COURT IN LJUBLJANA (SLOVINA)

Respondent

Natasha Draycott (instructed by Saunders Solicitors) for the **Appellant**

The **Respondent** did not appear and was not represented

Hearing date: 9.2.22

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

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

MR JUSTICE FORDHAM:

1.

This is a renewed application for permission to appeal in an extradition case. As Ms Draycott for the Appellant rightly recognises, there is ultimately now really only one point in the case. The point is that it is said – in a pair of email letters from a Slovenian attorney – that a court hearing has been fixed in Slovenia for 10 March 2022, a month away from today, at which hearing the Slovenian court will be considering a course which would automatically involve the discharge of the domestic warrant in this case, and therefore the discharge of the accusation Extradition Arrest Warrant (ExAW), on which the Appellant’s extradition is being sought. The concern that has been raised by Ms Draycott is as to the justice of the Appellant facing the prospect of being extradited to face a criminal trial when he is said to be on the eve of a judicial process which would establish that the ExAW would be no longer in force and being pursued.

2.

As is often the case in renewed extradition permission hearings the Respondent does not appear today, having filed a Respondent’s Notice. So late in the day is the most recent Slovenian attorney’s email letter (8 February 2022) that the Court does not have the Respondent’s reaction to it. What the Court does know, based on a response to the previous attorney’s email (dated 5 February 2022), and an application to adjourn today’s hearing, is this. The CPS had contacted the requesting state authorities. Their position was that “the warrant remains valid”, and that “on that basis” and in the absence of any “additional evidence” they were inviting the Court to proceed with the hearing today, on the position as it stands. I can, with some confidence, take it that the Respondent would resist all of the three courses of action that have been put before me by Ms Draycott, to which I will come.

3.

The context, in outline, involves alleged index offending by the Appellant aged 22 in May 2019. The appellant broke into a garage, with bolt cutters, and stole a motorbike and scooter with a combined value of €2,000. They were returned the next day but not by some act of benevolence on his part; rather, because the authorities had caught up with him and “confiscated” them. His extradition was ordered by DJ Tempia (“the Judge”) on 4 March 2021 after an oral hearing on 19 February 2021. Although not found to be a “fugitive”, and although having no convictions in the UK since coming here in 2019, the seriousness of the matter and the public interest considerations in favour of extradition decisively outweighed those balancing against extradition. Permission to appeal was refused on the papers by Dove J on 20 October 2021.

4.

Ms Draycott’s ‘option one’ is the invitation that I adjourn this hearing. Her ‘option two’ is that I grant permission to appeal on the basis that it is reasonably arguable that it would be Article 8- disproportionate to extradite the Appellant when he is so close to a hearing which, it is said, stands to be decisive in his favour. ‘Option three’, raised for the first time orally at today’s hearing, is to take a course which I was told this Court in at least one previous case has taken. Ms Draycott read me the order of Holman J which, I accept from her, involved “dismissing an application for permission to appeal with effect from” a date 16 days down the line, so as to allow for an imminent opportunity to have the criminal matters effectively set aside and the EAW discharged. She tells me, and I accept from her, that in that case that is exactly what then happened.

5.

I indicated yesterday that I was not prepared to adjourn this hearing 'on the papers', but that I would consider any application for an adjournment were it pursued at the hearing today, as it has been. I am not prepared to take any step that would allow any significant further deferral and certainly no open-ended deferral. The timeline, and the nature of the evidence and materials that have been provided to this Court, cause me concern. In Perfected Grounds of Appeal on 24 March 2021 the Court was being told that the Slovenian attorney had assessed there was "a good chance" of getting the matter resolved in Slovenia, "within eight weeks". The Respondent's submissions filed on 1 April 2021 confirmed that, from their perspective, there was no intention to withdraw the EAW and they noted that no timeframe (for any resolution steps) had been identified. On 20 October 2021, Dove J observed that there had been no update and no developments. On 2 November 2021, the Slovenian attorney wrote an email letter in which he referred to a sum having been paid in Slovenia on 24 September 2021, which I understand to have been compensation for the damage to the garage door. In that letter, the attorney referred to a hearing in Slovenia the next month, which was said to be going to take place on 10 December 2021. It did not take place. When the attorney next wrote on 5 February 2022 reference was mysteriously made to a hearing on 14 December 2021. That is a discrepancy that has not been explained, though I accept from Ms Draycott (in fairness to her) that she has asked about it. The attorney now said the hearing was now 10 March 2022 and expressed confidence in the resolution which went beyond the "good chance" described in March 2021. There are two sides to every story and the email letters from the Slovenian attorney do make reference to "interviews" having taken place, and problems with Covid, including a judge who tested positive so that the matter had to be adjourned. But the absence of any supporting documentation, about any of all this, at any time, is surprising.

6.

Not only am I not prepared to adjourn, but nor am I prepared to grant permission to appeal. The consequence of permission to appeal would be that there would have to be the listing of a subsequent substantive hearing at some subsequent stage. Nor am I prepared to countenance the possibility that another judge, on another occasion, will be told that there is some imminent opportunity and an expression of confidence that it is soon going to resolve matters. This case, very clearly, stands in its 'last chance saloon'. The only question which has caused me to pause is whether, in all the circumstances, it could be just and appropriate for the Appellant to be returned to Slovenia without at least awaiting the 'magic date' of 10 March 2022 and allowing the Slovenian attorney the opportunity to pull 'out of the bag' on that day the outcome which is described in the attorney's email correspondence.

7.

It is Ms Draycott's 'option three', raised with me today, which in the event I have decided that it is appropriate to adopt. I do so, not out of any great confidence about what may be about to happen in Slovenia on 10 March 2022. But nor can I discount what I am told in what are said to be communications, written to this Court, by an attorney practising within another legal system. I have well in mind that I am taking a course which, I can take it, the Respondent would resist. On the other hand, such is the due process which is applicable in extradition cases that there was a 7-month lapse of time between the order of extradition in the magistrates' court (March 2021) and this Court's refusal of permission (October 2021). There has, moreover, again as a result of the due process applicable in extradition proceedings, been a further 3½ months since that date and my consideration of this case today. Ms Draycott has persuaded me that it is necessary and appropriate, in the interests of justice, albeit having regard to the overriding objective, for me to order that -notwithstanding that I

am dismissing the application for permission to appeal - I should do so "with effect from Tuesday 15 March 2022", and I will order that "the Appellant must not be extradited before 15 March 2022". I am not prepared to make any further or more open-ended order. Should it be the position that, on 10 March 2022, the Slovenian attorney is able to confirm, in a verifiable manner, that the underlying Slovenian warrant has been resolved, such that the ExAW would no longer be being relied on by the Respondent, that can properly be taken up with the CPS and either confirmed or not confirmed by the Respondent. If it is confirmed, the consequence of my order will be that the Appellant will be discharged, by act of the Respondent as the requesting authority. In any other circumstance the Appellant can expect, promptly after 15 March 2022, to be removed.

8.

It will be obvious from the reasons that I have given, but I make explicit here, that I have considered all the circumstances of the case and the various features that were considered by the Judge. I make clear that there is, in my judgment - leaving aside the 'imminent hearing' point which I have addressed - no other matter which could sustain a viable Article 8 appeal.

9.2.22