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CO/5415/2008

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

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 4 July 2008

B e f o r e:

LORD JUSTICE MOSES

MR JUSTICE BLAKE

- - - - - - - - - - - - - - -

Between:
OLAH

Claimant

v

REGIONAL COURT IN PLZEN, CZECH REPUBLIC

Defendant

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(Official Shorthand Writers to the Court)

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Mr Jones appeared on behalf of the Claimant
Miss Barnes appeared on behalf of the Defendant

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J U D G M E N T1. LORD JUSTICE MOSES: This is, in form, an appeal under the Extradition Act 2003 against a decision of District Judge Evans on 3 June 2008 whereby he ordered the extradition of Josef Olah to the Czech Republic to serve a term of imprisonment of 2 years for offences of sexual assault, as set out in a European arrest warrant issued on 10 April 2008 and certified by the Serious Organised Crime Agency on 15 May 2008.

2. This appellant was arrested on the warrant on 21 May 2008. The first hearing, pursuant to Section 7, took place on 22 May and, since he did not consent to his

extradition, he was remanded in custody and a hearing took place on 3 June 2008, an earlier hearing having been adjourned so that an interpreter could be found. At the extradition hearing before District Judge Evans counsel appearing for the appellant suggested that there might be available an argument under Section 25 of the 2003 Act whereby a judge is required to order a person's discharge or adjourn an extradition hearing if the physical or mental condition of someone subjected to a Part 1 warrant is such that it would be unjust or oppressive to extradite him (see Section 25 (1) to (3) of the 2003 Act).

3. Counsel instructed by the appellant had seen him the day before, and counsel told the judge that both the solicitors and he had had great difficulties in taking instructions since the appellant was excessively vague about dates, appeared to become easily confused, was uncertain of the stages of the trial in the Czech Republic which he had attended and could not tell them his mother's address or contact details.

4. In those circumstances counsel requested from the judge an adjournment so that a psychiatric report could be prepared with the view to determining whether it would be open to the appellant to found an argument based on Section 25. This request is noted in notes made by the clerk to the court. We also note that the position of those appearing on behalf of the requesting state was, as one would expect, responsible. They made it clear that they appreciated the concerns of the appellant. It is recorded that the submission was that they would not wish to stand in the appellant's way.

5. The judge however took the view that in the light of the fact that the appellant had been in this country for four years and appeared to have had no dealings with psychiatric institutions in this country, there was no evidence to found an application on 3 June 2008 under Section 25 and any attempt to see a psychiatrist would be what he described as a fishing expedition. He then proceeded to consider the other grounds upon which expedition was resisted which I need not detail because they are now abandoned.

6. In my view it was wrong of the judge to refuse the adjournment. The time frame which I have already identified shows that the appellant had had no reasonable opportunity to marshall psychiatric evidence before the hearing on 3 June. There was no basis for saying that the application therefore was obviously bogus by reason of the fact that the opportunity that had presented itself to legal advisers to obtain psychiatric evidence had not been obtained. Of course questions of adjournment are peculiarly for the tribunal before which the application is made. This court must be extremely reluctant and careful before it intervenes where a decision as to an adjournment has been made. No authority is needed for so plain and well established a proposition. But, in my view, the judge was plainly wrong in refusing the opportunity. There was, in my view, no basis for such a refusal.

7. The question then arises as to what this court should do. We have been greatly helped by frank, careful and sympathetic submissions advanced by Miss Barnes. She pointed out that the jurisdiction of this court under the 2003 Act is limited by the provisions of

Section 26 and Section 27. This court has no jurisdiction merely to send the case back to the district judge because the question of an adjournment would not necessarily lead to the conclusion as to extradition to be decided differently. It is purely interlocutory and it may or may not lead to a successful argument pursuant to Section 25 (see Section 27 (3) and (4)).

8. In those circumstances there is no remedy for the appellant's complaint under the 2003 Act. But, as Miss Barnes helpfully points out and accepts, that is not the end of the matter. Section 34 of the 2003 Act does not oust the court's jurisdiction by way of judicial review. There are no judicial review proceedings before this court. But I would nevertheless regard the appeal documents in this case as an application for judicial review. I would, for the reasons I have already given in relation to the refusal of an adjournment, grant permission to the appellant to bring proceedings for judicial review and indeed grant judicial review of the decision of the district judge of 3 June to refuse an adjournment.

9. I would quash that decision and order that the matter be determined afresh giving a fair opportunity to the appellant to produce such medical evidence as he is able. As to the time which he should be given, that seems to me to be a matter for the authority seeking extradition and for the district judge, so I would not set a time limit. In those circumstances the order that I would make would be to quash his decision and to remit it. There is no reason why it should not be to the same district judge.

10. MR JONES: No, precisely. It could be to another district judge but there is no reason why it should not be.

11. LORD JUSTICE MOSES: That is a matter for the court.

12. MR JONES: Yes.

13. LORD JUSTICE MOSES: There is no reason to think he would not deal with it fairly if you obtain the necessary.

14. So far as the other grounds of appeal, as I have already indicated in my decision, they have not been pursued so that the only live issue that remains before the district judge is any question that might arise pursuant to Section 25. I have little doubt that Mr Jones and those also instructed on behalf of the appellant will be astute to let the district judge know and the requesting authority should they be unable to obtain any evidence which could reasonably found an application under Section 25 which does not merely relate to the mental condition of the person whose extradition is sought but rather whether it be unjust or oppressive to extradite him.

15. MR JUSTICE BLAKE: I agree.

16. LORD JUSTICE MOSES: So far as paperwork is concerned, I am not going to require - unless Miss Barnes says that I should - you to re-draft a whole new claim form and so on. But what I do require is that there be some agreed order for the associate so

that the dismissal of the appeal but the - - reference be made to bringing a claim by way of judicial review and permission being granted and the application being allowed. That is a question of some fairly careful drafting on an agreed order and then the associate can have it typed out. There are no fee consequences, are there?

17. MR JONES: I did wonder about that, whether there was some fee which we would have escaped. If there were, I am sure we could undertake to pay any necessary fee.

18. LORD JUSTICE MOSES: If there is any problem the office can come to you and then come to me. If there is any problem because of the way we have done it, we will sort it out on the papers later.

19. MR JONES: I am obliged. There is one matter. In the statutory appeal my application at the conclusion would be for a detailed assessment of costs. I am not sure it that is appropriate in this case; if it is I make that request.

20. LORD JUSTICE MOSES: Yes. You can have it.

21. MISS BARNES: I should have raised this earlier. In your judgment you referred to the initial hearing under Section 10. It should be under Section 7.

22. LORD JUSTICE MOSES: I will alter that and it will be reflected in the order.