CO/7052/2007

Neutral Citation Number: [2008] EWHC 2600 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE DIVISIONAL COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 30 July 2008

B e f o r e:

LORD JUSTICE MOSES
MR JUSTICE GOLDRING

Between:
FRANCO STEFAN
(Being prosecuted as NURI SEFERI)

Appellant

v

THE REPUBLIC OF ALBANIA

Respondent

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(Official Shorthand Writers to the Court)

Mr Ben Cooper (instructed by Mordi & Co) appeared on behalf of the **Claimant**
Mr James Hines (instructed by Crown Prosecution Service) appeared on behalf of the **Defendant**

J U D G M E N T
(Approved by the Court)

1. LORD JUSTICE MOSES: The appellant in this case is Nuri Seferi. His extradition is being requested by the Republic of Albania. In January 1993 he was convicted of murder. It was by all accounts a brutal murder. The appellant and the noted members of his family in Albania pulled the victim from his motor car, beat him and stabbed him to death in the street in front of the victim's own father. When the police visited his family home, so violent was the behaviour of the defendant and his family that the police were forced to abandon their efforts. He was detained in custody in 1991 before his conviction, and sentenced to a total of 18 years' imprisonment. He escaped from prison in March 1997. Since that date, he has been living in the United Kingdom under a false name, calling himself Franco Stefan. He has been guilty of offences in the United Kingdom shortly after his arrival here.

2. The account of his murder for which he has been convicted is relevant to issues before us because it reveals he does have a family in Albania who joined with him, apparently, in committing the two offences.

3. In 1999 he was granted indefinite leave to enter as a refugee. On 25 January Westminster Magistrates' Court issued a provisional warrant for his arrest. He was arrested on 31 January in Southend-on-Sea. When he was arrested he denied that he was Nuri Seferi and confirmed his address and identified himself as a much younger man, having been born on 26 September 1969 called Franco Stefan from Yugoslavia. Indeed it was later said that his family came from Kosovo.

4. So the first assertions by which he sought to resist his extradition was that he was not the man whose extradition was sought but was someone else. The district judge declined to believe him and he appealed. In a decision of Dyson LJ, sitting in the Divisional Court with Jack J on 18 December 2007 [2007] EWHC 267 Admin, Dyson LJ rejected the appellant's account of being Franco Stefan, and relied upon cogent evidence of fingerprints obtained of the man wanted for extradition from Byrnison, Albania.

5. Notwithstanding the conclusion that this appellant is Nuri Seferi, this appellant had persisted in contending that he is Franco Stefan and asserts that he is that man to this day.

6. The next ground upon which he resisted his extradition was one which Dyson LJ had considered it appropriate to be determined separately. But I should observe at the outset that the full flavour of what he now contends had not previously been apparent until the preparation of this appeal. The circumstances by which this matter comes before the court again was set out by Hooper LJ then sitting with Maddison J in a decision of the 16 April 2008 [2008] EWHC 1044 Admin. In that case he recorded that the district judge had sent the appellant's case to the Secretary of State but, by virtue of section 103(1) of the Extradition Act 2003, this appellant was entitled to appeal that decision.

7. Two distinct arguments arose which fell for decision for this court which sat yesterday. The first was based upon the nature of the appellant's medical condition; the second,

allied to the first but distinct, is based upon conditions in which it is said this appellant will be held in prison in Albania. Both those conditions separately and in combination give rise to the issues before us; namely, whether it would be oppressive to return this appellant to Albania for the purposes of section 91 of the Extradition Act, and/or whether to do so would breach his rights enshrined in Article 3 of the European Convention on Human Rights. Neither of those contentions were accepted by the district judge.

8. I turn, then, to this appellant's medical condition. This court heard, for the purposes of resolving factual disputes, from Dr Gill, who was the expert called in relation to the appellant's physical condition. He is a senior consultant cardiologist. We also heard from two distinguished and well qualified psychiatrists: Dr Christopher Muller-Pollard on behalf of the appellant; and Dr Oyewole, a consultant psychiatrist called on behalf of the Republic of Albania.

9. There was dispute between the doctors as to this appellant's mental condition but there was little, if any, as to his physical condition as addressed by Dr Gill. The appellant had complained of osteoarthritis and asthma, but had not recently been recorded as receiving any treatment for those conditions. But he suffers from Type II diabetes, hypertension, which raises his blood pressure, and raised cholesterol.

10. It is contended that the drugs needed to control those conditions will not be available were he to be returned to the prison regime within Albania, and furthermore, that there is a need to control those conditions. Absent control, life-threatening damage will be caused, particularly to his heart.

11. The difficulty this appellant faces is entirely of his own making. He has lied and continues to lie about his name, his age and background. He has never admitted that he comes from Albania and that he is 50 years old. He spent six years in an Albanian prison before escaping in 1997. In the light of his persistent and continuing lies to the doctors and to the court, I take the view that this court should not accept anything he says about his medical condition, either physical or mental, unless there is objective evidence from another source to support it.

12. The appellant's physical symptoms to which I have referred have been observed and verified but they do take on a different quality once it is appreciated that this appellant is 50 and not, as Dr Gill believed, 38. The conditions Dr Gill describes are much more serious in a young man of 38. Dr Gill, in his main report dated 12 December 2007, accepted that the appellant was who he said he was and was 38 years old. Although he was primarily concerned with his physical condition, he also dealt with his mental condition in part, and records an account which he accepted, of his origins in Yugoslavia to which I shall return later.

13. In a supplementary report, Dr Muller-Pollard dealt with the position now that he had learnt that the court had disbelieved the appellant's account as to his name, age and background. I should note that the doctor spoke of the account as being dependent upon the credibility of his stated identity which he then described as "under question". This does not do justice to the impact of the findings of law of Dyson LJ. It is not a

question of there being a dispute as to his age and origin: a correct analysis of both his physical and mental symptoms requires recognition of the fact that this appellant has lied.

14. I turn, then, to those conditions as objectively established. The appellant claimed to have suffered from diabetes for eight years. In fact it was first diagnosed in 2006. The appellant joined a particular medical practice in 2002 and the notes show no reference to diabetes in that year. The high blood pressure is controlled by drugs, which are not unusual, and the raised cholesterol is controlled and treated in the normal way with Simvastatin.

15. The greater impact of the false account given by the appellant lies in the mental condition of which he now complains. He has plainly suffered from depression in the past before he was arrested. But there is a dispute as to whether, as he contends and as Dr Muller-Pollard confirms, he is suffering from a depressive disorder with manifest psychotic symptoms. Again, I am not prepared to accept any relation of mental illness without objective evidence. This is particularly difficult in the appellant's case where, as all the doctors agree, a proper analysis and assessment of the extent of any, if any, mental illness is so dependent upon a truthful account from a patient as to the extent of his mental condition.

16. There is objective evidence that this appellant suffered from depression before he was arrested on 31 January 2007. Dr Muller-Pollard says that he is suffering from a recurrent depressive disorder and is being treated by both anti-depressants and anti-psychotic medication following what he describes as a psychotic relapse of his illness. He says that the appellant continues to be depressed, despite a powerful combination of psychiatric medication. The relapse, he says, is precipitated by his arrest, subsequent detention in prison and with the threat of extradition to serve a sentence in Albania, a country with which this appellant says he has no connection.

17. It is clear from medical reports that the appellant is recorded as suffering from depression, as I have said, before his arrest. In a record containing the name of his GP made by a general practitioner in prison, there is a record of depression, and that he has been known to Southend Psychiatric Unit for several years. Dr Oyewole records that that is confirmed in notes relating to the period from 2005. In 2004 he was diagnosed as having reactive depression and unable to attend his studies. In February 2005 he was referred for counselling and was reported to have left a job and was looking for another. He was suffering from depression and anxiety and given a medical certificate for two weeks. In the middle of 2005, during the occasion of ten face-to-face visits with the doctor, he was diagnosed as suffering from depression without any further elucidation and was prescribed the anti-depressant citalopram with a report of a referral to a psychiatrist at a hospital. He had 16 further face-to-face visits in 2006 without any specific mention of psychiatric symptoms. There was a letter to psychiatrists of 11 July which was never collected by this appellant.

18. The important feature of the depression is that it stemmed, according to this appellant, in part from his background. This appellant said he had suffered from depression for more than 20 years. I am not, for the reasons I have given, prepared to accept that, and

I am not prepared to accept that he suffered from depression for any longer than the doctor's GP records record from 2005. What is important is that he ascribes this depression to the fact that he had seen his father killed in front of him by the police and that he had apparently been treated in four hospitals in Yugoslavia with depression. For the reasons I have given, this account given to a number of those taking his history, but importantly to Dr Gill recorded in his report of 12 December 2007 at paragraph 4, is quite untrue. There is no basis for accepting that as the cause of his depression.

19. Furthermore, it is plain that this appellant, as I find, was deliberately exaggerating his symptoms of depression. In a report obtained from Dr Oyewole dated 8 May 2005, the doctor gives an account of tests to which he subjected this appellant as to memorising the day of the week, a simple word, namely "dog", and the most basic arithmetic, namely adding two plus two, during the course of which this appellant, as it appears from the report, deliberately got the answers wrong. The doctors naturally described that as exaggeration. But, sitting in this court with the benefit of the decision of Dyson LJ, I would describe that as deliberate lies in order to maintain that his condition was more serious than it was. It does not stop there.

20. As I have said, added to the condition of depression, Dr Muller-Pollard said that he was suffering from a depressive disorder and psychotic symptoms. The psychotic symptoms were first mentioned in August 2007. They were not mentioned during the course of earlier hearings or during the period when reports were obtained for the purposes of the hearing before the district judge or earlier. All that the appellant then relied upon was depression. The psychotic symptoms were first mentioned when this appeal was in train. At that stage the appellant complained to Dr Acosta-Armas of hearing voices, and that was confirmed in notes taken by the doctor. He has persisted in saying that he has heard voices shouting in his head telling him to kill somebody.

21. There is no objective evidence of any psychotic symptoms other than one feature of the drug-taking to which I shall refer later. Added to that is the powerful motive this appellant has to pretend. As a result of these complaints the appellant has been prescribed substantial doses of olanzepine for his psychotic symptoms and it does appear according to him that those symptoms had improved. Mr Cooper relies upon that fact as being an objective fact to support the psychosis of which Dr Muller-Pollard speaks. But I accept the evidence of Dr Oyewole that the substantial doses of that drug that he has received and been prescribed would in any event alleviate his anxiety and help him with his sleep. In those circumstances, I do not regard the appellant's account of improvement and the continued prescription of that drug as any evidence that he is indeed suffering from psychotic symptoms.

22. I accept Dr Oyewole's evidence that this appellant is suffering from mild depressive anxiety symptoms. I take the view that he has exaggerated any further symptoms on which this appeal is relied and I reject the view that he is suffering from a depressive disorder with psychotic symptoms demonstrating any severe depressive episode. Thus his claim under section 91 and through the channel of section 87, under Article 3 of the Convention, must be considered in the light of my finding as to that condition.

23. The evidence from the Albanian authorities contained in a letter of May 2008 is that in case he is ascertained to have problems of,

> "chronic mental or physical health, in application of the Order of the Minister of Justice bearing No 3185 dated 28.04.08 'On categorisation of institutions of execution of criminal judgments', he shall be accommodated to serve his sentence at the Institution of the Execution of Criminal Judgments, Kruje, categorised as a 'special institute.'"

24. The fact that he will be assessed and transferred to that institute if he does indeed suffer from a chronic mental or physical health is hotly disputed. There is no guarantee, it is submitted, that he will be so assessed, still less that he will transfer to Kruje. In support of that dispute, Mr Cooper justifiably refers to the decision of the European Court of Human Rights in Dybeku v Albania No 41153 of 2006, a judgment of the court of 18 December 2007. In that case the court found a breach of Article 3 in respect of an applicant who had been suffering from chronic paranoid schizophrenia for which he had received inpatient treatment at a number of psychiatric hospitals in Albania. It is apparent that he had received no proper treatment, but on the contrary had been detained in ordinary prisons where prison conditions were wholly unsuitable to his condition and where the conditions within prison of overcrowding, poor hygiene, sanitation, inadequate diet and health care merely exacerbated his condition. The court commented on the conditions as being so poor as to reach the threshold of severity for Article 3 to apply (see paragraph 50).

25. The reason I refer to that decision at this stage is that in the letter to which I have just referred, the Republic of Albania's Ministry of Justice said that the national, Dybeku, is currently *subject to the procedure of transfer* to Kruje. In other words even by May 2008, and despite the swingeing criticism of conditions in Albanian prisons, that poor schizophrenic had still not been transferred. No wonder that the appellant, through his counsel, views any assurances given by the authorities with considerable scepticism. Other reports as to conditions in prison in Albania cast doubt on the ability of the authorities properly to assess the appellant's medical condition; and, even more, the inability to ensure that he will be detained in an institution which can cope with his moderate depression and anxiety.

26. I note in particular in the latest report before us of the European Committee the mention of torture and inhuman or degrading treatment or punishment (CPT), dated 6 September 2007, the CPT recalls that information obtained subsequent to a visit in 2005 had proved to be inaccurate and false. It described that situation, wholly justifiably, as unacceptable, and said that it would keep the action taken by Albanian authorities under observation, with the possibility of initiating procedure under Article 10(2) of the Convention. Thus, there is a basis for viewing with suspicion any promises made as to conditions within Albanian prisons.

27. There is a long history revealed in the earlier reports helpfully laid before us from the CPT as to conditions in Albanian prisons. In particular, in relation to Kruje, it was noted, until 2005 when the old director was dismissed and a new director arrived, that even in that special institute, designed to care for those chronically ill, there was

deliberate physical ill-treatment by custodial staff. There were other dispiriting descriptions of poor conditions in other prisons. In the same report the CPT noted the absence of sufficient medical staff and important shortcomings in the treatment of the prisoners. It also describes the serious default in the standards that should be expected in any prison occasioned by the imposition of solitary confinement, overcrowding and the absence of sufficient hygiene and air within the cells in which prisoners are confined. In a more up-to-date report to which I have already referred, 6 September 2007, concerning visits of the CPT in March 2006, there are appalling conditions as to the treatment of ill patients, including a description of a mentally ill detainee found lying in a catatonic state on the floor of an overcrowded cell, below a leaking sewage pipe.

28. The appellant also relies upon more up-to-date reports from other sources, particularly Amnesty International's annual report of 2007 which describes the detention condition as having been improved due to an EU supportive programme of prison reforms, but also generally very poor conditions with overcrowding, poor hygiene and sanitation, inadequate diet and health care.

29. In a report to the US Department of States Albanian Country Reports on human rights practices, the prison and detention centre conditions are recorded in March 2008. It again records that prison conditions do not meet international standards, although independent monitoring had been allowed. Some improvements were found in April, but overall it described conditions as poor and not meeting accepted standards. There was substantial overcrowding, and guards and officials were being dismissed for corruption and misconduct.

30. Quite apart from those general adverse reports, the report from Amnesty International confirmed the problem of mentally ill prisoners not being transferred to specialised institutions in accordance with court decisions.

31. The appellant also obtained a report from Genci Terpo, an attorney at law, legal adviser and coordinator of Albania Human Rights Group. He, not surprisingly, given the appellant's account of his own condition, concentrates on the problems of those who require medical treatment within the prison system. There is an inadequate health care system within the Albanian prison system which apparently has been brought to the attention of the Albanian ombudsman. He describes the system in which there is a lack of regular checkup, examinations performed only on request, with very little or no preventative care. The medical treatment he describes as very low and not specialised. He speaks of the problems caused by what he had understood to be the appellant's condition, particularly that he suffers from schizophrenia. It is accepted now by both sides that he does not, and he says that such prisoners would be hospitalised in a hospital prison in Tirana rather than in a psychiatric prison. Importantly, he also describes a prisoner's dependence on his own family for any food which met his dietary needs. He says that bribes would be of no assistance to this appellant since he has no family in Albania. For the reasons I have given, he was misled by the appellant's falsehood as to the absence of family in Albania.

32. The appellant hoped to obtain the evidence from his own expert as to conditions in Albanian prisons but has not been able to do so. That I do not hold against him and do not derive from that any beneficial account of life in an Albanian prison.

33. In excellent submissions which properly and carefully analysed the relevant jurisprudence, Mr Cooper draws particular attention to the problem of extradition where a prisoner is to be extradited to a country which persists in defying acceptable international standards as to conditions in prison. He draws attention to Krall on the application of Burma v and Enfield Borough Council [2003] HRLR 4 in which it was pointed out that a prisoner is in a uniquely vulnerable position, at the mercy of the prison authorities. That means that the protection afforded by Article 2 must be rigorously enforced even where there is no intention to humiliate or debase a prisoner (see paragraph 29).

34. In Saadi v Italy No 37201, 2006, 28 February 2008, the Grand Chamber drew attention to the difficulty that any appellant in the position of this appellant has in establishing what conditions are like when faced with assurances from authorities such as the Albanian Ministry of Justice. The court pointed out in paragraph 129 that where evidence is adduced of treatment contrary to Article 3, it is for the government to dispel any doubts about it. In the instant case he says there is ample evidence of treatment that would amount either to oppression, or a breach of Article 3.

35. This amounts, in my view, to a formidable body of evidence of poor conditions within the Albanian prison system. Yet against that there is a specific assurance contained in the letter of May 2008 that he would be assessed and if he is chronically ill he will have the treatment he needs at Kruje. That is supported by evidence from the Albanian Helsinki Committee in a report placed before us dated 14 July 2008. This was in response to questions from those instructed by the appellant, and included observation of that institution on 30 June 2008 and a meeting with medical personnel at that institution and the Head of Health at the General Directory of Prisons. This careful report speaks of the availability of medicines which the appellant needs or substitute medicines for that which he is already receiving. I accept the evidence given by Dr Oyewole, which was hardly disputed, that the substitute medicines of which the report speaks will not damage this appellant's health.

36. That report says that if medicines are not available they would be forwarded to the relevant institution according to requests, and that the Head of Health authorises the director of the institution to use funds for minor purchases to obtain requested medicaids. That report contains no adverse comments on medical conditions in the prison or as to whether he will not be assessed, contrary to the assurance given.

37. In the light of that evidence, I accept that he will be assessed if he is returned to Albania and if he requires, because of his condition, treatment, he will receive that at Kruje. On the basis of that finding, if he does not display chronic depression, then he will be detained in another prison without suffering from depression and anxiety since that would be on a hypothesis that those conditions were not sufficiently severe to warrant the treatment.

38. Though those conditions are poor, they do not, in my view, amount, absent the added feature of the need for treatment which he would not receive, either to oppression if he was returned to those conditions, or a breach of Article 3. It has to be remembered that on the true account of his background he does have family in Albania; he survived in prison between 1991 and 1997. He will be detained where his family can have access to him, and according to the report obtained on behalf of the appellant from Genci Terpo that family will be able to provide him with the food according to his dietary needs.

39. In those circumstances, as I have said, I reject the contention that it would be oppressive to return him; or, alternatively, a breach of his rights enshrined in Article 3.

40. Of course there will be hardship should he be required to return to Albania to serve his prison sentence there. He has been in this country and has fought tooth and nail to avoid his extradition. That can only have exacerbated his depression and his anxiety. He has a partner and a child here now. But, as this court commented in Nicholas v the Deputy Prosecutor General of Lithuania [2006] EWHC 1032, the standard of oppression is more demanding than mere hardship, and the evidence viewed as a whole is, in my judgment, insufficient to establish that to return him to an Albanian prison in the light of the assurances given would amount to oppression.

41. Having reached that conclusion, it is really not possible for this appellant to establish that his rights under Article 3 will be breached. As Maurice Kay LJ observed, one who fails under what is now section 91 will not be likely to succeed by reference to Article 3 since the test under section 91 was lower than the standards imposed in respect of Article 3 by the European Court of Human Rights (see Prancs v Court of Latvia [2006] All ER D of 28 October.

42. In my judgment, the fact that the appellant has failed to establish that conditions are as severe as to amount to oppression were he to be subjected to them is again partly his own fault. The evidence he sought from the advocate in Albania, and indeed as a result of the visit to the institution from the Albanian Helsinki Committee concentrated on prison conditions on the basis of the treatment which he asserted he needed. Absent such need, he has not established that he will be detained in circumstances which make it oppressive to return him or would amount to a breach under Article 3.

43. For those reasons I would dismiss his appeal.

44. MR JUSTICE GOLDRING: I agree.

45. MR COOPER: My Lord, I understand that there would be no order as to costs, given that the appellant is legally-aided. And as regards any issue of certification, none arises that I see at present.

46. LORD JUSTICE MOSES: What do you mean certification -- legal services?

47. MR COOPER: I would accept leave for detailed assessment of costs in the normal way.

48. LORD JUSTICE MOSES: Can I just ask you, is that right about costs?

49. MR HINES: Yes, I do not apply.

50. LORD JUSTICE MOSES: Yes.

51. MR COOPER: My Lord, there are two very minor matters which I would draw to the court's attention. I believe at one stage your Lordship referred to Dr Mullard instead of Muller-Pollard.

52. LORD JUSTICE MOSES: I will make sure that is corrected.

53. MR COOPER: And I believe I was referred to as other than Mr Cooper.

54. LORD JUSTICE MOSES: Did I refer to you as Mr Cooper?

55. MR COOPER: I believe so.

56. LORD JUSTICE MOSES: I am so sorry. What I wanted to say to you, Mr Cooper, was that you have done an enormous amount of work on this case and I really meant it when I said what I did about the quality of your description of the law and how it applied to this case.

57. I would only mention, if I may, that of course the preparation of the documents in the bundles, and I know the enormous difficulty you must have been labouring under in the absence of proper assistance, but the preparation of bundles and getting the documents to the right place at the right time is part of the advocacy and they were in a somewhat tiresome mess in this case. So you will do better than you did in this case if you get everything in order. So do check that with the office, and you don't leave it to the last minute, although sometimes cannot be helped, because judges read some of it and then they get something else and so that is what happens, but apart from that thank you very much.

58. MR COOPER: I'm most grateful for that, thank you.