EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 24 March 2020

Published on 6 April 2020

FIRST SECTION

Application no. 14198/20
Muhammed Asif HAFEEZ
against the United Kingdom
lodged on 19 March 2020

STATEMENT OF FACTS

1. The applicant is a sixty year old man with "a number of health conditions", which include diabetes and asthma. He was arrested in London on 25 August 2017 pursuant to a request by the Government of the United States of America for his extradition.

2. The charges in respect of which his extradition is sought are as follows:

1. Conspiracy to import heroin into the United States of America
2. Conspiracy to import methamphetamine and hashish into the United States of America;
3. Aiding and abetting the manufacture/distribution of heroin knowing and intending that it would be imported into the United States of America.

3. The extradition hearing was conducted by Westminster Magistrates Court in mid-2018. The applicant argued, *inter alia*, that his extradition would breach his rights under Article 3 of the Convention because there was a real risk that pre-conviction and post-conviction detention conditions would be inhuman and degrading; and there was a real risk that he would be sentenced to life imprisonment without the possibility of parole.

4. At the hearing a United States' Attorney ("ZK") gave evidence that the applicant was likely to be held in the 10 South Unit of the Metropolitan Correctional Center in Manhattan (MCC), where he could be kept in solitary confinement for twenty-three hours a day; remain under constant video surveillance; and have "no view of the outside world". ZK also alleged that

there was understaffing and overcrowding throughout the United States' prison estate. If convicted, ZK indicated that the applicant was likely to be transferred to a facility operated by the Federal Bureau of Prisons, where he could be held in post-conviction solitary confinement, at least initially. In ZK's view, there was also a real risk that the applicant could be housed in a Supermax facility, although he believed a "Special Management Unit" (being the next level down from a Supermax facility) to be more likely.

5. A United States' Attorney ("DC") who claimed to be an expert in sentencing law and procedure also gave evidence. In her view, there were substantial grounds for believing that if the applicant was convicted of the charges on which extradition was sought, he would face a real risk of being sentenced to life imprisonment. This was based on her analysis both of the current Statutory and Guideline range, and judicial practice in drug cases where the defendant was found to have played an "aggravated role". DC further noted that the United States' federal system did not provide for parole. She agreed that there was a system of judicial review provided for within the United States' legislation but she was unable to trace any applicable case-law for guidance and she was unaware of any such applications having been made. United States' law allowed for Presidential Clemency but such an order was discretionary and in the absence of clearly available or established criteria for granting clemency an inmate could not realistically challenge a refusal.

6. The District Judge first considered whether the applicant would be detained in inhuman or degrading prison conditions. Having considered the evidence, he was satisfied that (a) while the applicant was detained in the United Kingdom his health issues had not required treatment in the prison hospital or in an outside facility; and (b) the United States' prison authorities had been alerted to his health difficulties and had confirmed that both of the facilities he could be detained in would be able to cater adequately to his needs. The judge further noted that ZK, who was the applicant's expert witness on prison conditions, had no direct experience of the facilities in question. The judge was therefore satisfied that the applicant's Article 3 rights would be complied with upon extradition.

7. The judge then considered the possibility that the applicant might be sentenced to life imprisonment without parole. The applicant had relied on *Trabelsi v. Belgium*, no. 140/10, ECHR 2014 (extracts); however, the judge rejected his Article 3 challenge on this ground as he found that if he was sentenced to life imprisonment he would be able to make an application for compassionate release if there were "extraordinary and compelling circumstances" warranting a reduction in his sentence. In doing so, he indicated that

> "Having considered the detailed submissions made, I am satisfied that when a life sentence is imposed, the provisions of Article 3 will be satisfied in a domestic context if:

(i) It is *de jure* and *de facto* reducible (see *Kafkaris v. Cyprus*, no. 21906/04)

(ii) The relevant national law 'affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner' (per *Vinter* aforesaid) and

(iii) There is a prospect of release and a possibility of review which exist from the imposition of the sentence (see *Murray* above)."

8. On 11 January 2019 the District Judge, being satisfied that all of the procedural requirements were met, and that none of the statutory bars to extradition applied, sent the case to the Secretary of State for a decision to be taken on whether to order extradition.

9. On 5 March 2019 the Secretary of State for the Home Department ordered the applicant's extradition.

10. The applicant's appeal was heard by the High Court in December 2019 and judgment was handed down on 31 January 2020. The applicant sought to submit fresh evidence regarding possible detention conditions, including evidence given by an independent prison consultant with direct experience of the facilities in question. However, the High Court declined to admit this evidence on the basis that it had been available at the date of the hearing before the District Judge.

11. With regard to the *Trabelsi* argument, the court declined to consider whether the evidence established that there was a real risk the applicant, if convicted, would receive a sentence of life imprisonment. It did note that this outcome was "by no means certain", and pointed out that the United States' Government had provided evidence from the US Sentencing Commission which indicated that life sentences were rare in the federal system.

12. The court accepted that if the applicant did receive a life sentence, there would be no provision for parole. He would therefore only have two routes to obtain a reduction or commutation of his sentence: an application for compassionate release; or a petition for Executive Clemency. For the former, the applicant would have to show that "extraordinary and compelling reasons" existed which would warrant a reduction of his sentence. The Sentencing Commission had identified four scenarios which would fulfil the definition of "extraordinary and compelling": terminal illness; the prisoner was over 65 and experiencing a serious deterioration in his health due to the ageing process; and a change in family circumstances leading to the prisoner becoming the only available caregiver for a child or spouse. The final scenario was left undefined save that it was expressly stated that rehabilitation was not by itself an "extraordinary and compelling reason". Rehabilitation could, however, be a relevant factor even though it could not by itself serve to reduce the sentence.

13. Executive Clemency, on the other hand, was described as an "extraordinary remedy" and evidence indicated that judicial review of a clemency decision was "very rare" and "certainly not routine".

14. The court the addressed the Strasbourg jurisprudence on the issue of life sentences without parole. It noted that in *R(Harkins) v. Secretary of State for the Home Department (No. 2)* [2015] 1 WLR 2975 the Divisional Court had declined to follow *Trabelsi* (cited above) since it considered that in that case the Court had ignored the basic principle set out in *Kafkaris v. Cyprus* [GC], no. 21906/04, § 99, ECHR 2008 and *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 120, ECHR 2013 (extracts); namely, that a State's choice of a specific criminal justice system, including sentence review and release arrangements, was in principle outside the scope of the Court's supervision, provided that the chosen system did not contravene the principles set out in the Convention. Secondly, in *R(Harkins)* the Divisional Court had indicated that even if detailed consideration of the review scheme in the United States had been appropriate, on this issue the judgment in *Trabelsi* had been "wholly unreasoned". The High Court agreed with this analysis. It therefore found that *Trabelsi* was not of assistance since:

> "insofar as it purports to reach a concluded view on the compatibility of life imprisonment without parole in the United States, it does so without any proper reasoning. Insofar as it departs from the established ECHR jurisprudence on the application of Article 3 in relation to removal to a non-contracting State, we prefer the rationale as set out in *Harkins [and Edwards] v. UK*".

15. It further rejected the applicant's submission that any review scheme had to permit release purely by reason of the prisoner's rehabilitative efforts.

16. In light of this assessment, the court held that there would be no risk of a violation of Article 3 of the Convention on account of the possibility that the applicant would be sentenced to life imprisonment since any prisoner so sentenced would have two routes to seek a reduction of that sentence: compassionate release and Executive Clemency.

17. The court then turned to consider the risk the applicant would face on account of the likely pre- and post-conviction prison conditions. It noted that the applicant's medical issues were not unusual for a man his age and in any event they appeared to be controllable. While there was evidence that he had been prescribed anti-depressants, there was no indication that he suffered from any mental health issues. Moreover, the clinical director at MCC had expressly indicated that his medical needs would be met.

18. The court further observed that there was no reason to believe that the applicant would be treated as requiring enhanced security measures or that he would be transferred to a Supermax prison. However, even if that were the case the Court had held this would not, without more, give rise to a violation of Article 3 of the Convention (see *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07 and 4 others, 10 April 2012).

19. Finally, the applicant had sought to argue that he would be at risk of being considered an informant, as he had previously had contact with DEA

agents. However, the United States' Government did not consider him an informant and the court therefore held that he could not "take advantage of a status which he does not have".

20. The applicant's appeal was therefore dismissed.

QUESTIONS TO THE PARTIES

1. If the applicant were to be extradited to the United States of America, would there be a real risk that he would be subjected to inhuman and degrading punishment through the imposition of an "irreducible" life sentence? In particular, would his extradition, in circumstances where he risks the imposition of a life sentence without parole, be consistent with the requirements of Article 3 of the Convention (see in particular *Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, 17 January 2012, *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09, 130/10 and 3896/10, ECHR 2013 (extracts) and *Trabelsi v. Belgium*, no. 140/10, ECHR 2014 (extracts))?

2. Having particular regard to the ongoing Covid-19 pandemic, if the applicant were to be extradited would there be a real risk of a breach of Article 3 of the Convention on account of the conditions of detention he would face on arrival?