JUDICIARY OF
ENGLAND AND WALES

Judge Howard Riddle, Senior District Judge (Chief Magistrate)

In the Westminster Magistrates' Court

The Court of Appeal, Palermo, Italy
-v-
Domenico Rancadore

Findings of fact and reasons

Application

This is an application by the judicial authority in Italy (represented by Miss Hannah Hinton) for the extradition of Mr Domenico Rancadore (represented by Mr Alun Jones QC). Italy is a category 1 territory for the purposes of the 2003 Extradition Act and this hearing is considered under Part 1 of the Act. The application is opposed.

Preliminary issues including identity were not in dispute, and have been determined at an earlier hearing.

The warrant I am dealing with was issued by Dr Roberto Scarpinato Magistrate/Prosecutor General attached to the Court of Appeal, Palermo, on 9th August 2013. It was served on Mr Rancadore the same day. An earlier warrant, issued by the deputy prosecutor general in January 2012 and on which the defendant had originally been arrested and brought to court, was discharged.

The hearing was originally set for October 2013, but was broken as the requesting authority sought further information from Italy. I heard evidence on 20th and 21st February 2014, and further argument the following week. I prepared this judgment for delivery on 17th March. After completing my judgment I learned of the decision of the Administrative Court in *Badre v Italy* [2014] EWHC 614 (Admin). *Badre* was heard shortly after this case, but judgment was delivered earlier, on 11th March. Having considered *Badre*, I must change my decision. On reflection I have decided to leave this judgment exactly as I originally intended to deliver it, but with the addition of this paragraph and new final paragraphs, and a different decision.

Is the warrant valid?

The first two matters I am asked to decide are whether the warrant is valid and whether there has been an abuse of process.

It is argued that the warrant does not comply with section 2 Extradition Act, as it lacks the details required by s2(6), is unspecific, and inconsistent with the one it replaced. The replacement warrant contains "such hyperbole that it is seriously and, apparently deliberately, misleading".

The warrant says that the offences took place in Palermo from 17th December 1987 to 13th April 1995. The earlier warrant said the same. Although a wide time span, in the circumstances this is sufficient, and I do not understand Mr Jones to argue otherwise. Both warrants say the conviction is under article 416 bis paragraphs 1,4 and 6 of the Criminal Code: Criminal Association of the Mafia-type. The new warrant provides further details. Both specify a sentence of 7 years' imprisonment. This is all correct.

The current warrant has four paragraphs about the circumstances in which the offence was committed, and the degree of participation. On the face of it the statement of facts is reasonably clear, and meets the requirements of s2. The defendant can find further details of what he has been convicted of from the lawyers

who represented him at the time and he has, indeed, obtained the transcript (albeit after some delay). I understand the transcript of this trial (and two other trials that ended in acquittals) was obtained to see whether there is a double jeopardy argument. That argument has not been pursued, but Mr Jones has taken me through the transcript to show that the warrant does not reflect – or more especially exaggerates – the participation of which the defendant has been convicted.

The same facts underlie the abuse argument. I will deal with them together.

I have been provided with transcripts (in an English translation) of three trials involving Mr Rancadore as a defendant. It is trial two that is relevant here. In that trial he had been declared a fugitive, but was represented by a lawyer, Mr Bellissimo. On 9th June 1998 the Court of Palermo declared Domenico Rancadore guilty "of the crime set out in art 416(a), including that set out at comma 4 and 6 of the Criminal Code". We went through the transcripts in court. I found them difficult to absorb in that way, and told the parties I would read them carefully outside court. This I have done.

The trial heard from witnesses who gave evidence of their involvement in mafia crime, including extortion and murder. A number of witnesses placed this defendant as a "man of honour", a member of the mafia. One described him as head of the Trabia mafia family, and describes taking to him a kickback from a government contract. The court concluded that he was an important point of reference for the people at the top of the organization and representative of the Trabia area. He was found guilty of mafia type criminal association, as opposed (as I understand it) to specific typical mafia type actions. Membership, as a man of honour, implies an obligation "to increase the ability of the family to subtly and violently infiltrate the social fabric". An aggravating circumstance was that the group had access to weapons and uses them. Mr Rancadore was sentenced to nine years in prison, with a year on probation after his release, because it had been shown that he belongs to an extremely dangerous armed mafia type organization [p70 transcript].

That conviction was appealed. Mr Rancadore was not present at the appeal, but was represented by Mr Bellissimo, again, and by Mr Barone. The evidence against this defendant was considered [from p96-p115 in transcript]. The appeal court, in its judgment dated 21st July 1999, upheld conviction on the basis of participatory conduct in Cosa Nostra "by far the most dangerous of the mafia organizations". However, although the evidence showed that he "firmly adhered to the heart of the mafia fellowship", information is lacking about his "particularly prominent and effective position within the organization…and, above all, the involvement of Rancadore himself in serious crimes of violence". To this extent the appeal was successful, and sentence was reduced to seven years in prison (including two years for the aggravating circumstances in paras 4 and 6 of the Criminal Code).

It therefore appears that although the statement of facts in the EAW is justified by the summary of the first-instance trial, they may well overstate the position as found on appeal. The description as "head of the organization" does not seem justified by the judgment, and the descriptions of "one of the heads" and "leading role" and much of paragraph three of the warrant are hard to justify from the appeal judgment. I add that the sentence imposed is at the bottom end of the scale as set out in the warrant, even without the aggravating features found. All this was confirmed in evidence before me by the lawyer at the appeal hearing, Mr Barone. He said the facts as set out in the warrant would have led to a much longer sentence.

As far as section 2, the validity of the warrant, is concerned, the law has been helpfully set out for me by Miss Hinton in her skeleton argument. As a general rule, this court is bound to take the statements and information in the warrant at face value. The validity of the warrant depends on whether the prescribed particulars are in it, and not on whether they are correct. Extraneous evidence, such as the transcripts I have here, in these circumstances cannot be used to show that the statements in the warrant are wrong.

Sufficient details of the underlying offences have been provided to enable the defendant to understand what he has been convicted of and to enable him to consider whether any bars might apply. The level of participation is provided.

This warrant is valid.

Abuse of Process

An allegation of abuse of process is made by the defendant. The conduct alleged to constitute the abuse is that the warrant contains such serious hyperbole that it is seriously and, apparently intentionally, misleading. I must consider whether this conduct, if established, is capable of amounting to an abuse of process. If it is, I must next consider whether there are reasonable grounds for believing that such conduct may have occurred. If there are, then I should not accede to the request for extradition unless I am satisfied that such abuse has not occurred.

For some years now, it has been accepted that a magistrates' court cannot permit the manipulation of the procedures of the court in a way intended to oppress or unfairly prejudice a defendant. If such manipulation had occurred here, it would be capable of amounting to an abuse.

Here I am satisfied that there has been no manipulation or unfair prejudice. There may well have been a mistake, or overstatement of the role, in the warrant. (I should add that the transcripts were not, at least to me, immediately clear as to what had and had not been found. No doubt unfamiliarity with the Italian system and the effect of translation both played a part. I could have asked for further information from Italy. However, I was helped by Mr Barone, and have no reason to doubt his evidence.) Nevertheless, even if the warrant misstates the participation, as I accept it does, there is no obvious unfairness or manipulation. The facts as found by the appeal court are sufficient to make out the framework offence of participation in a criminal organization. The person's involvement by association could have been supplied, without overstatement, and still have complied with the Act.

Mr Jones argues that there was prejudice as far as bail was concerned. When bail was refused by the Divisional Court, the court was told of the facts as asserted in the warrant, including that he was one of the heads of the armed criminal organization, Cosa Nostra. However, it is clear from the reasons given by the court that the key factor was the likelihood that Mr Rancadore would flee, based on evidence that he deliberately left Italy and went into hiding, doing all that he could to avoid detection. It was found that he has every incentive to try to avoid serving the seven-year sentence imposed and the resourcefulness to achieve it. It is the seven-year sentence (rather than simply the conduct) and the fugitive status, that informed the frankly unsurprising decision to refuse bail.

I am satisfied there is no manipulation designed to treat Mr Rancadore unfairly. I am aware of dicta in *Zakrzewski v Lodz* [2013] UKSC 2 that appear to widen the abuse test beyond the traditional test. In particular para 13 of that case suggests that an abuse might be founded or misleading (though not necessarily intentionally misleading) statements in the warrant. In *Haynes v Malta* [2009] EWHC 880 it was accepted that a mistake had been made in the warrant, which referred to three charges of GBH, when there were only two. The Divisional Court concluded [para 18] that "the whole saga smacks plainly of carelessness and mistake rather than any deliberate attempt to mislead the English court". There were no reasonable grounds for believing that the judicial authority had acted, or may have acted, in bad faith and in such a way as deliberately to mislead the English court. More recently, in *Aleksynas and others v Latvia* [2014] EWHC 437 the court said [para 80] that the courts have characterized abusive conduct in slightly different ways, but nevertheless the paradigm manifestation of such conduct is bad faith. The court rejected the defence argument on the basis that bad faith could not be shown.

Unlike the higher courts, a magistrates' court has no inherent jurisdiction. Such abuse of process jurisdiction as we have has been acknowledged expressly (though exceptionally and not without controversy) by the higher courts. It may very well be that in due course the *Zakrzewski* test will be approved explicitly to be applied by

this court. Until then, I am reluctant to assume a wider inherent power than has previously been decided. Even if I am wrong about that, the mistake that appears in the warrant is neither clear and beyond legitimate dispute (observation 2 in *Zakrzewski*) nor material to the operation of the statutory scheme in extradition proceedings (observation 3 in *Zakrzewski*).

There has been no abuse of process.

Extradition Offence

Mr Rancadore has been convicted and sentenced (after an appeal) to seven years' imprisonment for membership of a criminal gang, which is an extradition offence because the framework list is ticked. As I am satisfied that the specified offence is an extradition offence I must go on to consider whether any of the bars to extradition specified in section 11 are applicable.

Rule against double jeopardy

A person's extradition to a Category 1 territory is barred by reason of the rule against double jeopardy if (and only if) it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction on the assumption -

(a) that the conduct constituting the extradition offence constituted an offence in England and Wales.

(b) that the person was charged with the extradition offence in England or Wales.

This argument has not been pursued.

Passage of time (s14)

A person's extradition to a Category 1 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him

by reason of the passage of time since he is alleged to have committed the extradition offence or since he is alleged to have:

(a) committed the extradition offence (where he is accused of its commission), or

(b) become unlawfully at large (where he is alleged to have been convicted of it).

"Unjust" is directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, "oppressive" is directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping, and between them they would cover all cases where to return him would not be fair.

To help me consider this bar, and other arguments, I have considered whether Mr Rancadore is a fugitive.

a. Fugitive

Some time before 17th December 1996 Mr Rancadore was declared a fugitive in Italy, and the trial proceeded in his absence, with him represented by Mr Bellissimo. When Mr Barone, who appeared in the appeal (together with Mr Bellissimo) was asked in cross-examination by Miss Hinton why he did not challenge the fugitive status at the appeal hearing, he replied that he couldn't. "It is a fact." He was not there, and there had been an arrest warrant and a failed search.

At the appeal hearing, the defence lawyers were appointed by a document bearing the signature of "Rancadore Domenico". I understand that at the time it was a requirement that a lawyer on appeal be specifically appointed in this way. A copy of the document, called a special power of attorney, was filed with the court. It was produced by the Ministry of Justice in Rome after it had become clear that Mr Rancadore said in his proof that he had no knowledge of the Palermo appeal proceedings. On oath the defendant denied that he had signed the document. He

did not know he had been convicted and had no contact with the lawyers about any appeal. He did not know of the sentence or the appeal until arrested here on the EAW. He denied the statement in his proof that he heard that he had received seven years' imprisonment in about 2002, probably from the internet. (His English, he said, is not very good.) However, he had heard, from papers and TV in about 1996 or 1997, that a trial had started in 1996.

Both Mr Barone and Mr Bellissimo had signed under the signature "Rancadore Domenico" as a true signature. Mr Barone said they did so after verifying the signature from other documents held by Mr Bellissimo. He never met the defendant in the course of the appeal, and did not receive any other specific instructions from him. As a result there was a limit on the extent he could challenge the prosecution evidence. He did not have an opportunity to advise his client on the advantages of a short trial, where the penalty is reduced. He was paid by a relative, Mr Vuole, who has since died. Mr Vuole attended some hearings, but not all of them. Mr Barone has never doubted that this was a true signature representing true instructions. As he said: "Who else would benefit?"

Daniela Skinner (nee Rancadore) states in her proof that she believes a former boyfriend told the UK police that her father was Domenico Rancadore and that he had been convicted in Italy for mafia association. That information can only have come from the Rancadore/Skinner family.

Mr Rancadore and his wife both gave evidence that he came to England in 1994. He never returned to Italy or Sicily, and had no contact with his family there. Miss Hinton does not dispute that he came to England in 1994. This means he came here before these proceedings were instituted in Sicily.

Mr Rancadore is married with two children. His wife and children were born here (Giuseppe in 1977 and Daniela in 1979). For some years the family moved between Sicily and the UK. Mrs Rancadore says (and her evidence was not challenged) that Mr Rancadore moved back to the UK permanently in early 1994. He stayed with her

parents until he could find a place for the family to live. She and the children moved back to London in the summer of 1994. Shortly afterwards they changed their names from Rancadore to Skinner, Mrs Rancadore's mother's name. She produced two documents dated 30th June 1994 and sworn in front of a priest, changing her name and that of Daniela, from Rancadore to Skinner. She also produced copies of passports for her and for Daniela issued on 2nd August 1994 in the name of Skinner. The defendant tells me he also swore his name change in front of a priest, and that his wife had the document. That document was not produced at the hearing on 21st-22nd February, but was produced before final submissions on 28th February. The name-change documents are unusual – I have never seen anything similar, and there is the unexplained fact that the name Domenico does not appear in the typed text, only the signature – but it is sufficient to say here that it seems unlikely that these documents (and especially Mr Rancadore's) would ever come to official attention, at least unless further action was taken on them.

The requesting authority has asserted since the arrest last August that for nearly 20 years it was almost impossible to trace Mr Rancadore. No identity documents were found on arrest. The house is in his wife's name. There is no national insurance number. There are no work records. He has no passport. There is a paper driving licence (for which no proof of identity is required) in the name of Mark (or Marc?, he appears to have used both spellings) Skinner, but no new-style driving licence. In short, they say he has lived here without trace for 20 years, actively avoiding coming to the attention of the authorities.

The defendant has not produced any documentary evidence to refute these assertions. Apart from the name change document, he appears to accept them. On oath he said he has no ID documents in his name. (It should be noted that he had bank cards in the name of Mark Skinner at the time of his arrest.)

It is common ground that when Mr Rancadore came to London in 1994 he was free to do so – the earlier trial had concluded and the current proceedings had not begun. He says in his proof that as soon as he was eligible for his pension from his

work as a teacher in Sicily, he left the country to avoid the stigma of being associated with his father's name. On oath he said he had no contact with his family there, or indeed anyone else (which his wife says was hard for him). "I never gave my address to anyone in Italy." He said his experience of the maxi-bis trial was terrible, he was not secure and he was worried they would arrest him again. Coming to England would give a better life to the children. In cross-examination he said again that he was worried about being arrested.

It may be of note that Mr Rancadore told me of a flight to the USA to visit a relative, when he was refused entry by the American authorities.

From this evidence I conclude that:

- When Mr Rancadore left Sicily for the final time in 1994 the current proceedings had not commenced, and he was free to leave.

- Nevertheless a prime motive for coming was to avoid arrest and detention in Italy.

- The only explanation for his living scarcely without trace for 20 years is that throughout that time he wanted to avoid arrest and detention.

- He knew of the proceedings from at least 1996. He instructed lawyers to appeal against conviction. I accept the evidence of Mr Barone. He was satisfied that the instructions, such as they were, came from this defendant, and so am I.

- It is untrue that he did not know the result of the appeal. He knew he was wanted to serve a sentence of seven years. It is inconceivable that he would know of these proceedings against him, from TV, papers, Mr Vuole, possibly his uncle in the USA, but not learn the result. Had he been acquitted of all charges (and he was acquitted of one of the charges, and in the other two trials – one in his absence) he would have been able to live here openly. He could have resumed his relationship with his family in Italy without fear that the authorities would want to trace him through his family.

b. Decision on passage of time

Everything happened a very long time ago. The offences date back over 20 years. The defendant came to England in 1994. The trial and appeal were concluded 15 years ago. In 1994 his children were teenagers, now they are grown up.

In an ordinary case such a delay would be oppressive. This is not an ordinary case. Mr Rancadore went to quite extraordinary lengths to avoid detection. He and his entire family changed their names. He lived here, as observed above, virtually without trace.

Criticism has been made of the Italian authorities for not tracing him to the UK and issuing the EAW earlier. I do not think that criticism has weight. In his appeal authority to Mr Barone he gave his Italian address. Both the Italian and the UK authorities (DC Dossett) tell me extensive enquiries were made. Even if this were the not the case, my decision would be the same. It is not open to someone who has used considerable resourcefulness to hide successfully, then to complain that the authorities did not find him earlier. "There is always the possibility, often a strong possibility, that the requesting state, for want of resources or whatever other reason, may be dilatory in seeking a fugitive's return. If it were then open to the fugitive to pray in aid such events… it would tend to encourage flight rather than… discourage it." *Le Torre*, cited below.

Even though Mr Rancadore came to London before these proceedings began in Italy, he is a classic fugitive. I am aware that the facts of this case go beyond those in, for example, *Hertel* [2010] EWHC 2305, where it was said [para 21] that; "the distinction between an awareness of the proceedings on the one hand, and a deliberate flight from justice on the other, which is of its nature fragile, collapses on its facts". However the same principles apply and the reasons in *Le Torre* [2007] EWHC 137 at para 27 also apply. The delay is entirely, or almost entirely, of his own making. He knew of proceedings and avoided them. It is important to minimize the incentive to flee. Extradition is neither unjust nor unfair. It is not oppressive. (See also article 8 below.)

Conviction in absence

Section 20 of the Extradition Act 2003 provides:

1) If the judge is required to proceed under this section ... he must decide whether the person was convicted in his presence.

2) If the judge decides the question in subsection 1 in the affirmative he must proceed under section 21.

3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.

4) If the judge decides the question in subsection 3 in the affirmative he must proceed under section 21.

5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.
6) If the judge decides the question in subsection 5 in the affirmative he must proceed under section 21.

7) If the judge decides that question in the negative he must order the person's discharge.

8) The judge must not decide the question in subsection 5 in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights –

    a. the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interest of justice so required;

    b. the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

This person was convicted in his absence and is not entitled to a retrial or (on appeal) to a review amounting to a retrial. I must decide whether the defendant deliberately absented himself from his trial. In Italy a defendant is not obliged to attend his trial, and Mr Barone said it can be in a defendant's interests not to attend (for example to avoid confrontation by witnesses, or cross-examination).

I am satisfied he was deliberately absent from his trial, and decide the question in subsection 3 accordingly. He certainly knew of proceedings from 1996, and there is direct evidence (that I accept) that he instructed lawyers in the appeal. The only inference that can be drawn from his behaviour over 20 years is that he was hiding from the Italian authorities to avoid detention and trial. When I look at the facts as a whole I am satisfied he had the interest, contacts and resourcefulness to know about proceedings against him from an early stage, and chose not to participate.

Having decided this question in the affirmative I must now proceed under section 21.

Section 21 Human Rights

As the issues arising above have been decided adversely to the defendant, I must decide whether extradition would be compatible with the defendant's Convention rights within the meaning of the Human Rights Act 1998. If it would not be so compatible, the defendant must be discharged.
The defence argues that extradition breaches articles 3 and 8.

The defence evidence and argument

The article 3 argument revolves around prison conditions in Italy. In *Torreggiani and others v Italy* [8th January 2013] the ECHR in Strasbourg found that there had been a breach of article 3, based on overcrowding. Although the court concentrated on conditions in two named prisons, this was a pilot judgment. The court found that the breach was not isolated, but arises from a systemic problem that is likely to affect many people. The court ruled that Italy should, within a year from May 2013, establish plans to address prison overcrowding. On 8th October 2013 the President of the Republic sent a formal written request to parliament in which he talked about "the dramatic situation in Italian prisons", the humiliating position on the international arena for "the very many violations on the ban of inhuman and degrading treatment", and calls for immediate action.

I have considered the judgment in *Torreggiani,* have considered expert reports, and heard from Patrizio Gonnella, called by the defence. Mr Gonnella has extensive experience of Italian prison conditions. He is managing director, or president, of Antigone, an NGO dealing with human rights protection in the prison system. His association is authorized to visit all prisons in Italy. He is also a jurist and previously worked as a deputy warden of prisons in Padua and Pisa. He is undoubtedly an expert.

Mr Gonnella adopted two reports, which I need not summarize in any detail here. He told me that "for the ECHR cell space of less than 3 square metres for any prisoner in any case means a violation of article 3." Beyond that minimum requirement other factors, such as hot water, lighting, food and hours in the open air, are relevant. He told me about cases demonstrating that Italian magistrates have been fighting against inhuman conditions in jails. He told me about the operation of the system for high security prisoners. For Mr Rancadore there is a real risk he will be detained under this regime, 41 bis. 41 bis has been criticized in the past for attempting to break a prisoner's resistance and in 2007 an American judge refused extradition of an Italian citizen wanted for mafia related crime, for this reason.

Everything in Italy is very dynamic. There is a new president and will be (he gave evidence on 20TH February) a new minister with responsibility for prisons. The future is not certain and much depends on political choices. Many politicians are against an amnesty. "It should be said that now more than ever the Italian government appears resolute in intervening in the prison situation", but the effect of proposed measures will only be measurable after they have been voted for by parliament.

The prison population has fallen recently and is now 61500 (down from 67,961 in 2010, 66585 in April 2012 (*Torreggiani*), 65701 at the end of 2012 and 62,536 at the end of 2013). The official accommodation capacity is 47,615, but Antigone believe the true capacity is 37,000. He rejected the government notion of tolerability as subjective and variable. Official figures do not necessarily take into account parts of the prisons closed for reconstruction. Recently (since 2008), for the first time, it has

been recognized that healthcare in prisons is a public responsibility. Improvements in healthcare have been patchy and depend on regional financing. In Tuscany it works well but in Sicily it does not. “The general state of health among the prison population is abysmal.” Sometimes prisoners die from lack of appropriate treatment. Not every prison has a doctor available 24 hours a day.

The defence argues that the evidence demonstrates that article 3 breaches in Italy are widespread. Overcrowding remains very high. Healthcare facilities are poor. The assurance (which I refer to later) is vague, and cannot be relied on (for example because Italy contended, wrongly, in *Torreggiani* that their prisons do not breach article 3).

Submissions on behalf of Italy

Miss Hinton reminds me of the starting point, which is for the court to assume that ECHR signatories will comply with the Convention. Clear and cogent evidence is required to rebut the presumption, and this must be by way of a fact specific argument. *Torreggiani* shows that the authorities acted promptly in six of the cases by moving detainees to another prison. Action has been taken in recent moves to reduce overcrowding, which in any event does not necessarily breach human rights. Prison conditions in Italy vary from region to region and there is no evidence to suggest that Mr Rancadore will be detained in inhuman or degrading conditions. On the contrary, the Italian Ministry of Justice has given an assurance that Mr Rancadore will be held in conditions compatible with article 3. There is a verification process.

She also took me through a comparable situation following *Orchowski v Poland*. In that case the ECtHR concluded in 2009 that for many years overcrowding in Poland revealed a structural problem incompatible with the Convention. For many years the authorities appeared to ignore the existence of overcrowding. The court noted that solving the problem will require significant financial resources (or an abandonment of “its strict penal policy”). Miss Hinton reminded me that this judgment was

followed by a number of decisions of the Divisional Court in England and Wales that held that nevertheless extradition to Poland was not incompatible with the ECHR. While every situation is different, I accept there is an obvious parallel.

Decision on article 3

I take into account Mr Rancadore's age and health. The Divisional Court took the view, with which I respectfully agree, that his health is not a sufficient reason for him not to remain in custody in this country. An undated letter from Dr Garsin replying to a request dated 4th October 2013 refers to treatments for essential hypertension. However his blood pressure has generally been well controlled on medication, and his most recent blood pressure reading in July 2013 was excellent. In December 2012 he had a stent inserted in a narrowed artery. However he continued to have some atypical chest pains, probably stress related. Prison records from November 2013 suggest further chest pain and at that time he was awaiting an appointment with a specialist.

Principles established by the ECHR, as summarized in *Torreggiani* [para 65] are that "in this context, article 3 imposes on the authorities a positive obligation to ensure that all prisoners shall be held under conditions compatible with respect for human dignity and that…implementation…does not subject the person concerned to distress or testing of an intensity that exceeds the level of unavoidable suffering inherent in detention and that… the health and welfare of prisoners are adequately ensured". At para 68: "as soon as it was faced with overcrowding that fact alone is sufficient to conclude a breach of article 3."

Overcrowding is clearly to be avoided. "An overcrowded prison means that detainees are held in narrow and unhealthy spaces; a constant absence of closeness (even with regard to natural needs); limited activities outside the cell because of demand that exceeds the personnel and infrastructure available; overloaded health services; increased tension, and thus more violence between detainees and between

detainees and staff. This list is far from exhaustive." (Seventh CPT report, para 13, quoted in *Torreggiani* at page 16.)

However, is the article 3 test apparently adopted by the ECHR in *Torreggiani*, admirable though it is, not wider than the test used for extradition in England and Wales? As I understand it, the words "inhuman or degrading" are not a term of art, with sharply defined edges, but in this jurisdiction are given their ordinary, everyday meaning. Courts in this jurisdiction have resisted the conclusion that overcrowding alone establishes an article 3 breach (see, for example *Achmant v Greece* [2012] EWHC 3470 at para 36). I have considered Mr Gonnella's evidence, including the time spent outside a cell by a sentenced prisoner (from 6 to 8 hours), his evidence on health care and violence. Even without the assurance from Italy I am not satisfied that there is a real risk, in Mr Rancadore's case, of article 3 breach. Causing distress that exceeds the level of unavoidable suffering inherent in detention is not the same, in the eyes of our extradition courts, as torture or inhuman or degrading treatment. I am not aware that any other country has refused to extradite to Italy because of *Torreggiani.* However, having said all that, this view is not determinative of my decision. For current purposes I proceed on the basis that the test is the same in Strasbourg as domestically.

There is the assurance from the Italian Ministry of Justice that Mr Rancadore shall be held in conditions compliant with the provisions laid down in article 3. Mr Jones QC says this is too vague. It does not take into account his health and age. It does not say where he will be held. It is inexact and imprecise. Moreover, as the Italian government denied breach of article 3 in *Torreggiani*, the assurance cannot be trusted.

I do not agree. The assurance is not vague. In context it is clear to me that Mr Rancadore will not be held in an overcrowded cell, and that his health care will be adequately provided for, and more. We already know convicted prisoners are out of their cells for six to eight hours a day. It is clear that the Italian government, at the highest level, is motivated to improve conditions. The prison population has reduced

significantly in a short period of time, and it is accepted that more progress is needed. Magistrates, Antigone and Mr Rancadore's own lawyers are well placed to monitor compliance. Some prisons are better than others.

Although any heart condition and chest pain is worrying, the medical records that I have seen do not suggest any particularly unusual medical condition that cannot be treated within the Italian prison system. Antigone refers to insufficient medical services, and prisoners at risk of dying from inappropriate treatment. That is obviously a matter of great concern. However, there is no specific reference to dealing with the conditions suffered by Mr Rancadore, which are likely to be not uncommon.

We now know that specific assurances, such as the one given by Lithuanian authorities that remand prisoners will be held at Kaunas prison, can be problematic (see *Aleksynas and others* above*)* One prisoner needed to be transferred out for health care. Another preferred another prison so as to be closer to his family. The position could be worse, not better, if a specific prison were named for Mr Rancadore, for the reasons just mentioned, or for security, and particularly because over a long sentence the position may change. Other prisons may become more suitable. Looking over the *Abu Qatada* checklist that the parties took me to, there may be an argument that the assurances are not specific (though that may be a good thing), but they are certainly not vague. Given the provenance they are entirely acceptable.

I am satisfied the Italian authorities can and will comply with their obligations and assurance. There is a long history of mutual respect in extradition and other matters between this country and Italy. I accept the assurance without hesitation.

There are no strong grounds for believing that there is a real risk of torture or inhuman or degrading treatment if returned to Italy.

Article 8

The defendant and his family have a right to family life. He has been here for twenty years. He has a long-standing marriage and children who are now adults. He lives in a house owned by his wife. There is no evidence that he has worked legally. He is not in good health, and is in his sixties.

In considering whether extradition is proportionate to his article 8 rights, and those of his family, three facts stand out. He is a fugitive. I am satisfied his wife and daughter, at least, have known that for some time. He is wanted to serve a sentence of seven years' imprisonment. There is an importance to honouring our international obligations.

Extradition does not breach article 8.

Decision

It will be clear that in my original draft the decision was that as I am satisfied that the warrant is valid, there is no statutory bar and extradition is compatible with the defendant's Convention rights, including prison conditions, I must order that Mr Rancadore be extradited to Italy. However *Hayle Abdi Badre v Court of Florence* [2014] EWHC 614 changes my decision. The judgment of the administrative court is binding on me. The higher court accepted that a similar assurance given in that case was in good faith, but was not sufficient [para 54].

> "Whilst every case will be fact specific, in the face of a pilot judgment identifying a systemic failure of a state's prison system, a simple assurance from that state that the article 3 rights of an individual (who if returned is at risk of being detained) will not be breached, will, without more, rarely if ever be sufficient to persuade a court that there is no risk of such a breach."

I cannot distinguish this case from *Badre.* While it is true that I heard more up-to-date evidence than was available to the court in that case, my intended decision, as expressed above, was based squarely on my acceptance of an assurance that has recently, and in similar circumstances, been rejected by a higher court.

I have also considered whether to seek a further assurance from Italy, but have decided not to for two separate reasons. First, such a request would contradict my expressed view above on the difficulties caused by specific prison assurances. (Even so, I recognize it is not impossible to come up with an assurance that would satisfy the court above, and this one. I also recognize that with some countries, especially those outside the EU, such a more specific assurance is helpful or necessary.) Secondly, I said (when evidence closed on 21st February) that I would not consider further evidence, bar exceptional circumstances. I was not asked to do so then, but in any event the issue as to Italian prison conditions had been raised many months ago, and the hearing had already been adjourned from October at least partly for that purpose. That means that the defendant has already been in custody awaiting this decision for seven months. An application for an adjournment in *Badre* was refused [para 60] on essentially the same points.

For the reasons given above, Mr Rancadore is discharged. The requesting authority has a right to appeal.

Howard Riddle
Senior District Judge (Chief Magistrate)

17th March 2014