

1983 November 9

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF AN APPLICATION BY AHMED
YOUSSEF WEHBE FOR AN ORDER OF HABEAS CORPUS.

(Civil Application No. 14/83).

Fugitive offenders—Extradition proceedings—Committal order—Based on evidence not admissible under section 13 of the Extradition of Fugitive Offenders Law, 1970 (Law 97/70)—Committal legally wrong —Order of habeas corpus made.

The applicant applied for an order of habeas corpus, under 5
section 10 of the Extradition of Fugitive Offenders Law, 1970
(Law 97/70), challenging a committal order, for the purpose
of extraditing him to Denmark, which was made by the District
Court of Limassol, under the provisions of this Law.

The District Court formed the view that there existed sufficient 10
evidence justifying the making of the committal order because
it found that evidence implicating the applicant in respect of
the offences in relation to which his extradition was being sought
had been given by a certain Johnny Jensen. From the relevant 15
records it appeared that such evidence was not evidence given
by the said Johnny Jensen before a Danish Court or evidence
otherwise admissible in extradition proceedings under section
13 of Law 97/70 and it was nothing more than what was stated
in a report signed by Karl Skov, a Detective Inspector in
Denmark, as having been said by Johnny Jensen. 20

Held, that for the purposes of the extradition proceedings
in the present case the contents of the statement of Johnny
Jensen, which are recorded in the report of Inspector Skov,
could not be treated, in the light especially of the provisions
of sections 9 and 13 of Law 97/70, as legally admissible evidence 25
on the basis of which the committal order could have been
made by the District Court of Limassol; that, therefore, the
order for the committal of the applicant, which was based on
what was erroneously treated as legally admissible, for the pur-

poses of extradition proceedings, "evidence" of Johnny Jensen, is legally wrong and, consequently, the order for habeas corpus which is being applied for by the applicant should be made.

Application granted.

5 Cases referred to:

In re Hayek (1983) 1 C.L.R. 266 at pp. 280-284;

In re Mutke (1982) 1 C.L.R. 922;

Ex parte Singh [1981] 3 All E.R. 23;

Ex parte Budlong [1980] 1 All E.R. 701;

10 *Ex parte Passingham* [1982] 3 All E.R. 1012;

Dowse v. Government of Sweden [1983] 2 All E.R. 123.

Application.

Application for an order of habeas corpus by Ahmed Yousef Wehbe following his committal to custody, awaiting extradition, by Fr. Nicolaides, Ag. S. D. J. of the District Court of Limassol.

15 *E. Efstathiou with S. Patsalides and N. Stylianidou (Miss)*, for the applicant.

M. Kyprianou, Senior Counsel of the Republic with *E. Loizidou (Mrs.)*, for the Republic.

20 *Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following judgment. By means of this application for an order of habeas corpus, which was filed under section 10 of the Extradition of Fugitive Offenders Law, 1970 (Law 97/70), the applicant challenges a committal order, for the purpose of extraditing him to Denmark, which was made by the District Court of Limassol, under the provisions of Law 97/70.

The powers of this Court in dealing with an application for habeas corpus, such as that which is now before me, have been expounded already in the case of *In re Hayek*, (1983) 1 C.L.R. 266, 280-284, and need not be reiterated in this judgment; and useful reference may, also, be made, in this respect, to Halsbury's Laws of England, 4th ed., vol. 18, pp. 96, 97, paras. 234, 235.

35 The procedural requirements which govern proceedings for extradition and the need for compliance not only with the European Convention on Extradition, which was ratified by

the European Convention on Extradition (Ratification) Law, 1970 (Law 95/70), but, also, with the provisions of Law 97/70, and, especially, with sections 9 and 13 of such Law, have been dealt with in, inter alia, the case of *In re Mutke*, (1982) 1 C.L.R. 922 and in the *Hayek* case, supra, and nothing need be stated further in this respect in this judgment. 5

It is clear from the complained of by the applicant decision of the District Court that it formed the view that there existed sufficient evidence justifying the making of the committal order because it found that evidence implicating the applicant in respect of the offences in relation to which his extradition is being sought had been given by a certain Johnny Jensen. 10

Having perused the material which was available before the District Court I am of the opinion that what was described by it as evidence given by Johnny Jensen is nothing more than what is stated in a report signed by Karl Skov, a Detective Inspector in Denmark, as having been said by Johnny Jensen and, in so far as I can ascertain from the relevant records of the Danish Courts which have been produced, it is not evidence given by the said Johnny Jensen before a Danish Court or evidence otherwise admissible in extradition proceedings under section 13 of Law 97/70; and, actually, it should be stressed that the date of the report of Inspector Skov—(6th April 1983)—shows that such report and its contents concerning the statement allegedly made by Johnny Jensen was not even available at the time of the relevant proceedings before the Danish Courts which resulted in the process for the extradition of the applicant being set in motion in Cyprus. 15 20 25

In an effort to persuade me that the said report of Inspector Skov could be treated as sufficient to justify the committal order made by the District Court counsel appearing for the Republic has referred to case-law in England such as the cases of *Ex parte Singh*, [1981] 3 All E.R. 23, *Ex parte Budlong*, [1980] 1 All E.R. 701, *Ex parte Passingham*, [1982] 3 All E.R. 1012, and *Dowse v. Government of Sweden* [1983] 2 All E.R. 123. 30 35

As far as the case of *Ex parte Budlong*, supra, is concerned I cannot regard that case as doing away with the need for legally admissible evidence justifying the making of a committal order

for extradition purposes, but only as relating to the formal documents that were required to be placed before a Court of committal; and it is worth noting (at p. 706 of the report of that case) the following passage from the judgment of Griffiths J.:

“It is to the evidence that the magistrate is directed to look to see whether there are sufficient facts established to constitute an offence contrary to English law and not to any formal document”.

It may be observed, too, that a perusal of the report of the *Ex parte Budlong case*, supra, shows that, in addition to the formal documents that were produced, there was evidence which justified the extradition order made in that case.

The other three cases, those of *Ex parte Singh*, *Ex parte Passingham* and *Dowse*, supra, are all cases in which what was in issue was whether unsworn evidence which was given before judicial organs had been sufficiently affirmed to be true and in none of those cases there was accepted as admissible evidence for extradition purposes a statement which was not made before a judicial organ.

In my opinion the aforesaid three English cases cannot be treated as supporting the proposition that for the purposes of the extradition proceedings in the present case the contents of the statement of Johnny Jensen, which are recorded in the report of Inspector Skov, could be treated, in the light especially of the provisions of sections 9 and 13 of Law 97/70, as legally admissible evidence on the basis of which the committal order could have been made by the District Court of Limassol.

In the light of the foregoing I find that the order for the committal of the applicant, which was based on what was erroneously treated as legally admissible, for the purposes of extradition proceedings, “evidence” of Johnny Jensen, is legally wrong and, consequently, the order for habeas corpus which is being applied for by the applicant should be made.

In the light of all relevant considerations I have decided to make no order as to the costs of this case.

Application granted. No order as to costs.