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Extradition - denial of procedural fairness - dual criminality - due authentication of supporting documents - nature of review of Magistrate's order – (Australia)

K had lived in Australia since February 1999. On 8 March 2001, the local court of Tiergarten, Berlin, issued a warrant for his arrest. The warrant stated that K was under strong suspicion in Berlin that in ten cases during the period from 16 April 1998 until 20 February 1999:

“... with the intention of obtaining an illegal pecuniary advantage for himself or for a third party, of having caused damages to the property of another in the way of causing an error by fraudulent representation of true facts.”

An Australian Magistrate determined that K was eligible for surrender to the Federal Republic of Germany pursuant to s 19(9) of the Extradition Act 1988 of Australia, in respect of ten charges of fraud under s 263 of the German Penal Code. A warrant was duly issued under s 19(9)(a) of the Act committing K to Remand to await surrender to Germany. K informed the magistrate that he could not afford legal representation and requested that the DPP serve and file a list of the equivalent Australian offences upon which it relied to establish the requirement of dual criminality under s 19 of the Act. Finding that the request was fair and not unusual, the magistrate directed that the DPP file and serve a written statement setting out “the elements in the evidence” and the reasons relied upon to establish dual criminality, within a set time limit. The DPP purported to file the statement but sent it to the wrong department of the Prisons Services. Despite K's protestations, the magistrate found that K had had sufficient time to prepare and refused him an adjournment. He then held that dual criminality was established and proceeded with the order for surrender. K applied for an order of review of the Magistrate's order pursuant to s 21 of the Act, on the following grounds:

- (i) the Magistrate erred in finding that the supporting documents produced by the requesting state under s 19(3) of the Act were duly authenticated under s 19(7) of the Act.
- (ii) the Magistrate erred in finding that the requirement of double criminality required by s 19(2)(c) was satisfied.
- (iii) K was denied procedural fairness in the conduct of the proceedings because the Magistrate failed to take account of

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For further information or copies, please
contact: The Editor, Criminal Law Section,
Legal & Constitutional Affairs Division (LCAD),
Commonwealth Secretariat,
Marlborough House, Pall Mall,
London SW1Y 5HX, United Kingdom.
Tel: +44 (0)20 7747 6417/6420/6423
Fax: +44 (0)20 7839 3302
E-mail: k.prost@commonwealth.int
v.wright@commonwealth.int

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an earlier direction to the DPP to supply K with a list of equivalent Australian offences relied upon to establish dual criminality under s 19 of the Act. The list was supplied on the morning of the hearing of the application.

▷ **Held:**

The outcome of the application depends upon whether, notwithstanding the finding that the court had made of the conduct of the proceedings before the Magistrate, it was entitled under s 21(2)(a) of the Act to confirm the Magistrate's order. The answer to this question depended upon the nature of the review under s 21 of the Act.

DENIAL OF PROCEDURAL FAIRNESS

The functions of a magistrate under the 1988 Act are administrative and the Federal Court of Australia had held in *Zoeller v Federal Republic of Germany* (1989) 23 FCR 282 at 290 that procedural fairness must not be denied to the person who is the subject of the proceedings under s 19. Section 19(1)(d) involves one aspect of procedural fairness as a prerequisite to a magistrate's determination of eligibility for surrender. This is because the magistrate is required to consider whether the person who is sought to be extradited has had reasonable time in which to prepare for the conduct of the proceedings.

In *Charron v Government of the United States of America* [2000] 1 WLR 1793 at 1800-1801 the Privy Council referred to a number of English authorities in which it had been stated that it was "a respectable practice" to supply a fugitive with particulars of the offences formulated under English law.

In *Zoeller* at 297, the Court noted that s 10(2) of the Act distinguishes the Australian legislation from that in England. Notwithstanding the differences, the cases referred to in *Charron* provide some authority for the proposition that a "fugitive" is entitled to know the details of the Australian offences relied upon to establish dual criminality.

Counsel representing the magistrate had argued that there was nothing in the Act, which required the DPP to make available to K the list of Australian offences. But the issue of procedural fairness turned on the orders made by the magistrate. The order was made for the purpose of establishing procedures to be followed to ensure that K received a fair

hearing. The failure of the extradition Magistrate to take into account the order that the DPP furnish a statement of offences resulted in the denial of procedural fairness to K. It was not sufficient for the Magistrate to merely accept the DPP's contention that it had been served. In the light of K's contention that he had not received the statement, it was incumbent upon the Magistrate to grant K a reasonable adjournment so as to ensure that the procedural protection accorded by the order could be observed.

THE NATURE OF THE REVIEW UNDER SECTION 21 OF THE ACT

In *Republic of South Africa v Dutton* (1997) 77 FCR 128 at 133-136, Hill J noted that s 19 of the Act contemplates that the Magistrate will make a determination on the papers, and that the person to whom the proceedings relate is not entitled to adduce evidence in support of his or her innocence. In almost all cases, regard will be had only to the authenticated written statement setting out the conduct constituting the offence and the description of the penalties. Moreover, section 21(6) of the Act averts specifically to the possibility that the review court may determine that the relevant person is eligible for surrender.

The court therefore had power under s 21(2)(a) to confirm the order of the Magistrate notwithstanding the denial of procedural fairness, which occurred at the local court. This was simply a matter of determining the legislative intention, which underlies s 21 of the Act.

AUTHENTICATION

The supporting documents consisted of:

- (i) a certificate given by Dr Wolfgang Klapper, the First Secretary of the Embassy of the Federal Republic of Germany in Australia, certifying that the documents related to the request by Germany for K's extradition
- (ii) another certificate relating to the identity of K.

The documents annexed to the certificate consisted of a warrant of arrest, a certificate which included a statement of the provisions of sections 53 and 263 of the German Penal Code together with a translation and also a certified photograph of K together with an English translation of the certificate. All the pages contained seals on the English translations.

K's objections to the documents were that (1) Dr Klapper was not an officer of the extradition country, (2) Dr Klapper must have signed the certificate after it was sealed, (3) the "front seal", related only to the certificate and not to the supporting documents, and (4) although translations were provided of the supporting documents, not all of the seals were translated.

In the court's view, the first submission was contrary to the views expressed by the full Court in *Prabowo v Republic of Indonesia* (1997) 74 FCR 599 at 603, that the word "officer" is not to be confined narrowly. All that is required is that the person be an officer "in or of" the Requesting State. The person must be the holder of a public rather than a private office in or of the State. It is not necessary that the officer be a judicial officer of the Requesting State. The court was satisfied that Dr Klapper was the holder of a public office of the FRG and that, accordingly, he was an officer within the meaning of that term as stated by the full Court in *Prabowo*.

The second submission seemed to have missed the point that Dr Klapper could only give his certificate after he had received the supporting documents from Germany.

As to the third submission, the effect of Dr Klapper's certificate was that he had certified that the supporting documents, which were annexed and secured by the red seal, related to the extradition request. In *Cabal v United Mexican States* (No. 3) [2000] FCA 1204 at par 170 French J said:

"A certificate may be endorsed upon the document in question. It may also appear in a separate document provided that it identifies the document to be authenticated and attests its genuineness. There is no mandate for imposing a technical requirement not derived from the meaning of the word or the terms of the Act which would require a certificate to be endorsed upon or attached to the document to be certified.

..."In my opinion the sealing of supporting documents for the purposes of s 19(7) may be effected by a seal placed on the first page of the bundle provided that it is of such a nature and so placed that it relates to all of them and purports to seal all of them."

Accordingly, the supporting documents in this case were duly authenticated for the purposes of

s 19(7)(a) because they purported to be certified by an officer of the extradition country and the documents purported to be sealed with an official or public seal in accordance with s 19(7)(b) of the Act.

As to the fourth point, Dr Klapper's certificate contained the necessary translation. Even if this was not the case, the requesting country was entitled to rely upon the seals appearing on each page of the documents. There were translations of the seals which satisfied the statutory purpose of ensuring the genuineness of the documents placed before the magistrate: *Prabowo* at 603 and *Cabal* at par 169.

Accordingly, the court found that the documents comprised a duly authenticated statement in writing in accordance with s 19(3)(c)(i) and a duly authenticated statement in writing setting out the conduct constituting the offences in accordance with s 19(3)(c)(ii) of the Act.

DOUBLE CRIMINALITY

S 193(c)(ii) of the Act requires the Requesting State to produce to the magistrate a duly authenticated statement setting out the conduct constituting the offence.

In *De Bruyn*, at 292, the court said that the production of a written statement setting out the conduct is an essential step in the extradition process. They observed that the magistrate is required to determine whether the conduct is an offence under Australian law, and that it was implicit in s 19(2)(c) that the section 19(2)(c) test was to be applied to the statement of conduct under s 19(3)(c)(ii).

In *Zoeller* at 297, the Full Court stated that s 19(3)(c)(ii) requires that there be produced to the magistrate a statement of the acts or omissions by virtue of which the offence is alleged to have been committed. The Court also pointed out that what is required is a statement of what is alleged to have been done or omitted, not a mere restatement of the charge in respect of which extradition is sought.

The question of whether each statement of conduct meets the requirements of s 19(3)(c)(ii) is a matter for practical judgment and not for "over zealousness"; the "acts or omissions" which must be established are the elements or ingredients of the offence, not the evidence adduced to prove the acts or omissions: see *Zoeller* at 295 and *Wiest* at 502-503.

The question for the court was whether if the acts or omissions mentioned in the statement of conduct had taken place in New South Wales, they would have constituted an offence carrying a penalty of not less than 12 months imprisonment. Section 178A of the *Crimes Act* sets out the offence of fraudulent misappropriation. Section 178B sets out the offence of obtaining money or property by deception. The deception that must be established is a deception as to the present intentions of the person creating the deception. Section 179 sets out the offence of false pretences. It is necessary, for this offence to be established, that the accused obtained money or property by a false pretence or by a willful false promise.

In the opinion of the court, the statements of conduct of three of the offences for which K was wanted, would not give rise to an offence under any section of the *Crimes Act* referred to above. The statement of conduct used the words "was not ready and in the position" or similar wording. This was to be contrasted with the use of the words "had not the intention" or "did not intend". The Court agreed with K that a person may not be ready or prepared to do something but that does not mean that he or she does not intend to do it. It held that the use of the words "not ready" in the statement suggested that this term had a different meaning from "the intention" in the other paragraphs.

However, in respect of the remainder of the charges, the statements constituted duly authenticated statements in writing setting out conduct which satisfied the double criminality requirement set forth in s 19(2)(c) of the Act.

The court ordered that K was eligible for surrender to Germany in respect of seven of the ten extradition offences for which his extradition was sought.

Knauder v Moore [2002] FCA 850

Extradition – detention on conditional bail pending surrender – jurisdiction over offences – whether requesting country has jurisdiction over offences committed onboard ship – inference as to flag of origin – whether conspiracy and attempt could be intra-territorial – (United Kingdom)

The government of the Netherlands requested the extradition of G from the United Kingdom. He had been tried, convicted and sentenced in

his absence in the Netherlands in respect of offences involving the smuggling of large consignments of cannabis. The charges spanned 16 counts, set out in four groupings of offences, namely: (a) conspiracy with others fraudulently to evade the prohibition on the importation of a controlled drug of Class B; (b) being knowingly concerned in a fraudulent evasion or attempt to evade the prohibition on the importation of a controlled drug of Class B; (c) possessing a controlled drug of Class B with intent to supply to another; and (d) possession of a controlled drug of Class B. There was also an 'over-arching' conspiracy charge alleging a conspiracy to commit the offences set out in the earlier charges.

In the first group of charges, G was alleged to have attempted to import 19,188 kg of hashish into the Netherlands from Morocco on board two vessels, namely the 'Canute' and the 'Onderneming'. G was said to have been concerned in purchasing the vessel 'Canute', recruiting the crew, organising the transport from Morocco to the Netherlands, and transferring the drugs from the 'Canute' onto the 'Onderneming'. The vessels were intercepted in the North Sea by the Dutch authorities and G along with eleven others, were arrested on board.

The second batch of charges related to an attempt to import 13,000 kg of hashish into the Netherlands from Morocco on board the vessel 'Guerrero'. The vessel ran into a storm and was rescued off the Spanish coast by a Dutch Navy vessel. The crew of that vessel were prosecuted and sentenced in Spain. G, who had not been on board, was prosecuted in the Netherlands, but on this group of charges he was acquitted.

The next set of charges concerned the successful importation of an unknown quantity of hashish into the Netherlands from Morocco on board the vessel 'Judith'. That vessel was not intercepted and the drugs never recovered. The evidence as to the importation and G's involvement in this consignment was proved by the statements of his co-conspirators.

The final set of charges concerned another successful importation of an unknown quantity of hashish into the Netherlands from Morocco on board the vessel 'Blue Spirit'. This vessel was also not intercepted and the drugs never recovered but G's co-conspirators made statements to the fact of importation and his involvement.

G was arrested on a vessel in Southampton and a formal extradition request was consequently

made. The Secretary of State issued an Authority to Proceed pursuant to section 7 of the Extradition Act 1989, of the United Kingdom. G was then committed on conditional bail under section 9(8)(a) of the Act in respect of some of the committal charges against him, whilst others were discharged.

In committing G, the District Judge rejected the arguments against committal on the inchoate offences, the conspiracies and the attempts, on the grounds that those offences could be said to be intra-territorial without the need to prove the flags under which the ships were sailing. He therefore committed G upon those charges.

G then challenged his detention on conditional bail seeking a Writ of Habeas Corpus ad Subjiciendum.

He submitted that there was no jurisdiction in relation to the conspiracy and attempt charges relating to the consignments which had either been in the intercepted vessels, or the vessel which had foundered off the Spanish coast. The District Judge should have applied the same reasoning when considering conspiracy and attempt as he applied to possession with intent to supply and possession. The Court had to look at the conduct itself not at the intended consequences of such conduct. In the case of both the conspiracies and the attempts the relevant conduct was extra-territorial and hence there was no jurisdiction.

➤ **Held:** dismissing the application;

1. Inference as to the flag of origin.

It was submitted that Dutch jurisdiction had to be based either upon the vessel flying the Dutch flag or the Defendant being of Dutch nationality. In the case of the 'Guerrero' the court ruled that the Netherlands did not have jurisdiction as that vessel was sailing under the British flag and G was of British nationality. It must follow, the Respondents also submitted, that the Dutch Court found that it did have jurisdiction in relation to the 'Onderneming' because it was flying the Dutch flag. That was the only possible inference and under section 9(8)(a) provided sufficient information to justify a prima facie case. Such inferential reasoning is permitted by *Athanasiadis -v- the Government of Greece* (note) [1967] 1971 AC 282.

Although the court found it unnecessary to decide this point, it was reluctant to draw such inference on the information available because the actual basis upon which jurisdiction was

accepted was simply not known, though such information could have been readily obtained.

2. The Conspiracy was intra-territorial.

Whether the conspiracy was contrary to common law, or the Criminal Law Act 1977, an inchoate crime committed abroad which is intended to result in the commission of criminal offences in England is justiciable in England. (*Re: Somchai and R -v- Sansom* and also *DPP -v- Stonehouse* [1978] AC 55 and *Treacy -v- DPP* [1971] AC 573.)

The Court agreed with the Respondent's submission that *Re: Somchai and R -v- Sansom* and *R (Al Fawwaz & others) -v- Governor of Brixton Prison & others* [2002] 2WLR 101 para 72 and 111 - 112 were examples of intra-territorial jurisdiction. There may be cases where the offence to which the conspiracy relates is itself extra-territorial and hence the conspiracy to do that offence would also be extra-territorial. In this case, however, the issue was the importation of cannabis under section 170(2) of the Customs and Excise Management Act 1979, which is itself an intra-territorial offence. It followed therefore that a conspiracy to import cannabis under section 1 of the Criminal Law Act 1977 remained intra-territorial. Thus this was a section 2(1)(a) case. In the court's judgment there was no answer to the proposition that the importing of cannabis is an intra-territorial offence, as is a conspiracy to commit that offence. (*R -v- Wall* [1974] 59 Crim App R 58.)

3. The attempts.

The court was satisfied that the principle in *Re Somchai* applied equally to attempt as to conspiracy as they are both inchoate offences. Provided the offence, if completed, is to take effect in the United Kingdom jurisdiction will exist. Section 1(4) of the Criminal Attempts Act 1981 refers to any offence 'which if it were completed would be triable in England and Wales'. This indicates that attempt is a 'result' crime, to which the principles in *Re Somchai* apply.

The attempts to evade the prohibition on the importation of the drug were also intra-territorial offences and thus, the Respondents' submissions on the point were accepted as well. Where section 22(6) applies, as it did in this case, the offences are deemed to be committed within the territory of the foreign state, and that fiction is continued when the matter is transposed for consideration under section

2(1)(a). Section 18 of the Criminal Justice (International Co-operation) Act 1990 provides that anything which will constitute a drug trafficking offence, if done on land in any part of the United Kingdom, shall constitute that offence if done on a British ship. The purpose of both that section and the Vienna Convention is to facilitate jurisdiction in order to deal with the evils of drug trafficking. Section 22(6) should be construed in accordance with that purpose and such a construction did not wrongfully diminish the rights of the subject of extradition proceedings.

Therefore there was jurisdiction.

Stephen Maurice Goatley v. Governor of Brixton Prison and the Government of Netherlands [2002] EWHC 1209 (Admin)

Deportation — Risk of torture — Whether deportation of refugee facing risk of torture contrary to principles of fundamental justice- Whether the terms “danger to the security of Canada” and “terrorism” in legislation unconstitutionally vague — Whether deportation for membership in terrorist organization infringes freedom of association and expression – (Canada)

S, a Convention refugee from Sri Lanka applied for landed immigrant status in Canada. The Canadian Security Intelligence Service (“CSIS”) reported that he was a member and fundraiser of the Liberation Tigers of Tamil Eelam (“LTTE”), an organization alleged to be engaged in terrorist activity in Sri Lanka. The security forces also reported that members of LTTE were subjected to torture in Sri Lanka. In 1995, the Canadian government detained him and commenced deportation proceedings on security grounds. Upon application to the Federal Court, Trial Division, the deportation certificate was upheld as reasonable and there followed a deportation hearing, at which an adjudicator held that S should be deported. On the basis of an Immigration Officer’s memorandum the Minister of Citizenship and Immigration issued an opinion declaring S to be a danger to the security of Canada under s. 53(1)(b) of the Act, and concluded that he should be deported. Although S had presented written submissions and documentary evidence to the Minister, he had not been provided with a copy of the Immigration Officer’s memorandum, nor was he provided with an opportunity to

respond to it orally or in writing. S applied for judicial review, alleging that:

- (1) the Minister’s decision was unreasonable;
- (2) the procedures under the Act were unfair; and
- (3) the Act infringed ss. 7, 2(b) and 2(d) of the Canadian Charter of Rights and Freedoms.

The application for judicial review was dismissed on all grounds. The Federal Court of Appeal upheld that decision. S appealed to the Supreme Court of Canada.

➤ **Held:** allowing the appeal;

1. Deportation to torture may deprive a refugee of the right to liberty, security and perhaps life protected by s. 7 of the *Charter*. Section 7 applies to torture inflicted abroad if there is a sufficient causal connection with Canadian government acts. In determining whether this deprivation is in accordance with the principles of fundamental justice, Canada’s interest in combating terrorism must be balanced against the refugee’s interest in not being deported to torture.

Canadian law and international norms reject deportation to torture. Canadian law views torture as inconsistent with fundamental justice. Section 12 of the *Charter* affirms Canada’s opposition to government-sanctioned torture by proscribing cruel and unusual treatment or punishment in s. 12. Torture has as its end the denial of a person’s humanity; this lies outside the legitimate domain of a criminal justice system. The prohibition of torture is also an emerging peremptory norm of international law which cannot be easily derogated from. The Canadian rejection of torture is reflected in the international conventions which Canada has ratified. Deportation to torture is prohibited by both the *International Covenant on Civil and Political Rights* (“ICCPR”) and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (“CAT”). Article 33 of the *Convention Relating to the Status of Refugees*, which on its face does not categorically reject deportation to torture, should not be used to deny rights that other legal instruments make available to everyone. International law generally rejects deportation to torture, even where national security interests are at stake.

2. In exercising the discretion conferred by s. 53(1)(b) of the *Immigration Act*, the Minister

must conform to the principles of fundamental justice under s. 7. Insofar as the Act leaves open the possibility of deportation to torture (a possibility which was not excluded in this case), the Minister should generally decline to deport refugees where on the evidence there is a substantial risk of torture. Applying these principles, s. 53(1)(b) does not violate s. 7 of the *Charter*.

3. The terms "danger to the security of Canada" and "terrorism" are not unconstitutionally vague. The term "danger to the security of Canada" in deportation legislation must be given a fair, large and liberal interpretation in accordance with international norms. A person constitutes a "danger to the security of Canada" if he or she poses a serious threat to the security of Canada, whether direct or indirect, bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be "serious", grounded on objectively reasonable suspicion based on evidence, and involving substantial threatened harm. Properly defined, the term "danger to the security of Canada" gives those who might come within the ambit of s. 53 fair notice of the consequences of their conduct, while adequately limiting law enforcement discretion. While there is no authoritative definition of the term "terrorism" as found in s. 19 of the *Immigration Act*, it is sufficiently settled to permit legal adjudication. Following the *International Convention for the Suppression of the Financing of Terrorism*, "terrorism" in s. 19 of the Act includes any act intended to cause death or bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its very nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act.

Section 19 of the *Immigration Act*, defining the class of persons who may be deported because they constitute a danger to the security of Canada, as incorporated into s. 53 of the Act, does not breach the appellant's constitutional rights of free expression and association. The Minister's discretion to deport under s. 53 is confined to persons who pose a threat to the security of Canada and have been engaged in violence or activities directed at violence. Expression taking the form of violence or terror, or directed towards violence or terror, is

unlikely to find shelter under the *Charter*. Provided that the Minister exercises her discretion in accordance with the Act, the guarantees of free expression and free association are not violated.

4. Section 7 of the *Charter* does not require the Minister to conduct a full oral hearing or judicial process. However, a refugee facing deportation to torture under s. 53(1)(b) must be informed of the case to be met. Subject to privilege and other valid reasons for reduced disclosure, the material on which the Minister bases her decision must be provided to the refugee. The refugee must be provided with an opportunity to respond in writing to the case presented to the Minister, and to challenge the Minister's information. The refugee is entitled to present evidence and make submissions on: whether his or her continued presence in Canada will be detrimental to Canada under s. 19 of the Act; the risk of torture upon return; and the value of assurances of non-torture by foreign governments. The Minister must provide written reasons for her decision dealing with all relevant issues. These procedural protections apply where the refugee has met the threshold of establishing a *prima facie* case that there may be a risk of torture upon deportation. The appellant had met this threshold. Since he was denied the required procedural safeguards and the denial cannot be justified under s. 1 of the *Charter*, the case was remanded to the Minister for reconsideration.

5. Although it was unnecessary in this case to review the Minister's decisions on deportation, where such a review is necessary the reviewing court should generally adopt a deferential approach to the Minister's decision on whether a refugee's presence constitutes a danger to the security of Canada. This discretionary decision may only be set aside if it is patently unreasonable in the sense that it was made arbitrarily or in bad faith, cannot be supported on the evidence, or the Minister failed to consider the appropriate factors. Likewise, the Minister's decision on whether a refugee faces a substantial risk of torture upon deportation should be overturned only if it is not supported on the evidence or fails to consider the appropriate factors. The court should not reweigh the factors or interfere merely because it would have come to a different conclusion. *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] SCC

Immigration — Removal orders - Whether Immigration Appeal Division entitled to consider potential foreign hardship when dealing with appeals from removal order by permanent residents — Words and phrases: “having regard to all the circumstances of the case” - s. 70(1)(b) Immigration Act, - (Canada)

A, an Iraqi by birth, left Iraq permanently in 1981 in order to avoid the military draft. He then lived in the United States, Egypt and England before moving to Canada in 1986, where he became a permanent resident. Following three convictions for property related offences, A was ordered to be removed from Canada under section 27(1)(d) of the Immigration Act. A appealed to the Immigration Appeal Division (“I.A.D.”) of Canada’s Immigration and Refugee Board against the removal order. The Board dismissed the appeal, holding that it could not consider potential hardship in the country of removal. The Federal Court, Trial Division allowed the appellant’s application for judicial review but the Federal Court of Appeal set aside that decision. A appealed to the Supreme Court of Canada.

○ Held: allowing the appeal;

1. The I.A.D. could take potential foreign hardship into consideration under s. 70(1)(b) of the *Immigration Act* whenever a likely country of removal has been established by an individual facing removal. The Minister could also determine the country to which a person would be removed, pursuant to s. 52 of the Act, provided that the removal order had not been quashed or stayed by the I.A.D. The Minister could make submissions regarding the country of removal at the hearing of a s. 70(1)(b) appeal or make a s. 52 decision prior to the hearing.

2. The case should be remitted to the I.A.D. for trial de novo. It was clear in this case, that A would be removed to Iraq and that the I.A.D., having found that A would suffer extreme hardship if returned to Iraq, might have exercised its discretion to allow him to remain in Canada if it had believed it was able to consider this potential foreign hardship. Since this was an administrative decision requiring a complex balancing of numerous foreign and domestic factors by the I.A.D, it was the I.A.D., not the Supreme Court, which possessed the necessary expertise to make this decision and apply the appropriate remedy.

Al Sagban v. Canada (Minister of Citizenship and Immigration) [2002] SCC 4

JOBS AT ICC

The International Criminal Court came into existence with the coming into force of its Statute on the 1st of July 2002. It is in the process of recruiting staff for its various sections. Vacancies are posted on its website at www.icc.int

SEMINAR: “PATHS TO ACCESSIBLE JUSTICE”

The British council and the British Institute of International and Comparative Law are jointly holding a Seminar on the “Paths to accessible Justice 0254”. It will be held in Hitchin, Hertfordshire, UK, from 27-31 January 2003. The topics will be of particular interest to policy makers, judges, lawyers, police officers, prison officials, campaigners, journalist and academics.

There is a fee for the event which is fully residential.

Interested persons can contact the event organisers on blueteam.seminars@britishcouncil.org or visit: www.britishcouncil.org/networkevents

