In the Supreme Court Sitting as a High Court of Justice **HCJ 1029/06**
HCJ 8386/06

Before: His Honour Judge E. Levy
Her Honour Judge M. Naor
Her Honour Judge E. Hayut

The Petitioner in HCJ 1029/06: Dr Yuli Nudelman
The Petitioner in HCJ 8386/06: Eliezer Shimoni

- AGAINST -

The Respondents:
1. The Minister of Interior of the State of Israel
2. The Attorney-General
3. Leonid Nevzlin

Petition For The Award Of An Order Nisi

Hearing dates: 7th Nissan 5767 (24th May 2007)
3rd Adar II 5768 (10th March 2008)

On behalf of the Petitioner in HCJ 1029/06: In person
On behalf of the Petitioner in HCJ 8386/06: Adv. G. Raveh

On behalf of the First and Second Respondents: Adv. Y. Gensin; Adv. E. Ravid; Adv. E. Bloom; Adv. G. Karmeneiv

On behalf of the Third Respondent: Adv. David Libai; Adv. Dafna Libai; Adv. D. Weiss

JUDGMENT

Judge E. Levy

1. The background to both the petitions herein is an extradition request that was made to the State of Israel in 2005, in which the Government of Russia - by virtue of an extradition treaty made with it - applied for the extradition of Leonid Nevzlin, the Third Respondent in the petitions (hereinafter referred to as "Nevzlin"), in view of his suspected involvement in the commission of serious criminal offences. Shortly after the petitions were filed, on 4th Ellul 5766 (28th August 2006), the State of Israel gave notice that it could not accede to the request on the ground that the evidential basis produced was

inadequate in order to declare Nevzlin extraditable, according to section 9 of the Extradition Law, 5714-1954. The State did not depart from that conclusion even after the Government of Russia had furnished further evidence to it, and in a notice of 11th Cheshvan 5768 (23rd October 2007) it reiterated its position that the evidence that had been produced was insufficient to order Nevzlin's extradition.

Whilst in Russia Nevzlin held a series of senior positions, including in the Yukos oil company. According to the extradition request, whilst in that position Nevzlin had committed the offences of which he was suspected - murder and attempted murder. Another extradition request that was made in respect of Nevzlin, which is not at the centre of the petitions, dealt with a series of economic offences which he was also suspected of committing when he held office in Yukos. In 2003 Nevzlin immigrated to Israel and made his domicile here. Shortly afterwards, he also gained Israeli nationality by virtue of the Law of Return, 5710-1950.

The Petitions and the Answers to Them

2. The two Petitioners have represented themselves as public petitioners who considered themselves aggrieved as a result of the State's behaviour in the case of Nevzlin. The Petitioner in HCJ 1029/06 defined himself as "an author and journalist who had engraved (sic) on his conscience the battle against corruption and infringement of the rule of law". In his petition he applies for the Minister of the Interior - the First Respondent - to be ordered to revoke the immigrant's certificate and nationality granted to Nevzlin and for the Attorney-General - the Second Respondent - to be ordered to institute proceedings for his extradition to Russia. Similar, albeit not the same, relief is sought by the Petitioner in HCJ 8386/06: he is applying for the Minister of the Interior to be ordered to examine the circumstances in which the nationality certificate was obtained by Nevzlin and to consider its revocation, and also for the Attorney-General to be ordered to transfer to the Minister of the Interior the extradition request that had been made and the material that had been collected, in view of its relevance to the exercise of the Minister's power with regard to the revocation of Nevzlin's nationality. The other relief sought in that petition - to order the Attorney-General to make a decision in respect of the extradition request - has meanwhile become superfluous in view of the State's notice that it had decided to decline the Government of Russia's request.

Both the Petitioners were concerned that when he completed the documents necessary for obtaining an immigrant's certificate, Nevzlin had given false information with regard to his involvement in the commission of criminal offences and concerning the investigations conducted against him in Russia. The Petitioner in HCJ 1029/06 further pleaded that Nevzlin's arrival in Israel was after he had already been investigated for his involvement in the commission of the offences, and in July 2003 he was even called for further

interrogation, to which he did not go. The Petitioner inferred from that that Nevzlin *knew* that an investigation was being conducted against him in Russia, and against that background he emigrated to Israel, declared that he had not committed any crime and was not being sought by any state, and in that way he gained Israeli nationality. It is pleaded that in those circumstances - even if suspicions were involved that had not matured into a conviction - it was proper to examine whether it was appropriate to order the revocation of nationality by virtue of the power laid down in section 11(c) of the Nationality Law, 5712-1952.

As regards the extradition request - the Petitioner in HCJ 1029/06 believes that the request ought to be allowed in view of the grave suspicions raised in it, suspicions that make Nevzlin's staying in Israel dangerous. It is further pleaded that Nevzlin's extradition to Russia is also necessary in view of Israel's international obligations and in view of the desire not to turn Israel into a refuge for offenders. The Petitioner further emphasised that the strength of the evidence necessary for extradition is not such as necessary for a criminal conviction and, in his opinion, it was sufficient for the evidence produced not to be worthless on the face of it in order to declare a person extraditable.

3. The Respondents seek to dismiss the petitions. The First and Second Respondents believe that the Petitioners - private citizens in all respects - had not explained the nature of the harm caused to them as a result of the Respondents' behaviour and had therefore also failed to substantiate their standing to seek the relief. As regards the revocation of nationality, the Respondents state that the same is a drastic step involving serious harm, which necessitates the exercise of extreme care when exercising the power. It is pleaded that from the evidential basis laid before them, it appeared that Nevzlin's statements, when he made his application for an immigrant's certificate, did not include false particulars and, such being the case, no cause had been found for the revocation of nationality. In that context it is pleaded that it was a few months *after* Nevzlin had immigrated to Israel and given his statements that he was declared wanted by Russia. Shortly before he immigrated, Nevzlin had indeed been called for questioning *as a witness* but in that investigation no suspicions were addressed against him, and certainly not with respect to offences of murder, and he was ultimately released home without any restrictions. As regards the question of extradition, the Respondents' position is that there were no flaws in their decision because the extradition request had been carefully scrutinised, and the conclusion reached was that the evidence produced in it was hearsay that is inadmissible according to Israeli law, and *ipso facto* the extradition of a person could not be ordered on the basis thereof. The Respondents further stated that the additional extradition request that was made in respect of Nevzlin - that dealing with the suspected commission of economic offences - was being examined at that very time, and after its treatment had been completed a decision would also be made in respect thereof.

4. These pleas of the Respondents are joined by Nevzlin himself and he adds the following: the accusations against him are the result of political persecution by government in Russia, which is seeking to eradicate its opponents and take over their capital; similar persecution is being conducted against other senior Yukos personnel - both those in Russia and those abroad - and what is common to many of them is the fact that they are wealthy, influential Jews who have opposed the policy of the Russian administration. It is also pleaded that anyone, the efforts to prosecute whom in Russia succeeded, gained a show trial, the result of which was known in advance, during which he was denied his rights. Evidence of this is that a series of states and human rights organisations have already cried out at the political persecution that is being conducted against Yukos personnel. For this reason the courts in Britain have, in a number of decisions, declined to extradite to Russia senior Yukos personnel who have come into its territory. It is further pleaded that the international recognition of the political persecution of senior Yukos personnel reached a peak in July 2005, when Nevzlin was invited to lecture a committee of the American Congress in Washington on the state of democracy in Russia. During that visit it transpired that Russia had also asked the USA to extradite Nevzlin but those requests had been met with a refusal. To reinforce the plea that he was being persecuted against a political background, Nevzlin further stated that it was in January 2004, just one day after he had published his support of the opposition candidate for government, that Russia had declared him wanted because of the commission of offences.

The Question of Extradition

5. Extradition is an act that gives expression to cooperation between states in criminal matters. It concerns the delivery of a person, who is in the sovereign territory of one state, to another state, so that the latter can exercise penal authority against him because of the commission of a criminal offence (S.Z. Peller, *Extradition Law* 17(1980)).

In Israel, the conditions and exceptions with respect to the extradition of a person and the way in which the proceedings are conducted for declaring a person extraditable are laid down in the Extradition Law. The procedure with regard to extradition is laid down in the Extradition (Procedure and Rules of Evidence in Petitions) Regulations, 5731-1970. The proceedings for the extradition of a person are instituted by the making of an extradition request to the State and its referral to the Minister of Justice, who has been empowered in section 3 of the Extradition Law to order the filing of a petition in the District Court with the object that the latter should declare that the accused is extraditable. That power, which is vested in the Minister, as appears from the wording of the Law ("the extradition request by the requesting state shall be submitted to the Minister of Justice, *and he may* direct that the wanted person be brought before the District Court in order to determine whether he is

extraditable"), is a discretionary administrative power, and the Minister is not obliged to make a petition to the Court (Crim.App. 308/75, *Peshovitz v. The State of Israel*, PD 31(2) 449, 452 (1977); Crim.App. 74/85, *Goldstein v. State of Israel*, PD 39(3) 281, 285 (1985)). Judicial review of the extradition request is only conducted at the next stage, provided that the Minister has decided to direct that a petition be filed in Court. The Court than examines the evidential basis that has been produced to it and insofar as it is satisfied that the conditions laid down in the Law have been fulfilled, it is empowered to declare the accused extraditable (section 9 of the Extradition Law). However, that declaration still does not bring the extradition proceedings to an end and at that stage the ball passes back to the Minister of Justice, who has been empowered to order the extradition and deliver the accused into the hands of the requesting state (section 18 of the Extradition Law). That power is also discretionary. The Minister of Justice may therefore determine "including on the basis of 'extra-normative factors, to which the judicial authority is not empowered to have regard' (*Extradition Law*, p. 445) that, despite all the aforegoing, the extradition is not to proceed" (Crim.App. 4596/05, *Rosenstein v. State of Israel*, paragraph 16 (not yet published, 30th November 2005) (hereinafter referred to as "*Rosenstein*"); as regards the scope of the discretion vested in the Minister according to section 18 of the Extradition Law, see HCJ 852/86, *Aloni v. Minister of Justice*, PD 41(2) 1 (1987)).

6, In the case herein the Petitioner in HCJ 1029/06 is seeking to challenge the discretion exercise at a preliminary stage of the proceedings, namely the decision not to petition the Court to declare Nevzlin extraditable. I would immediately say that the Petitioners' application against only *the Attorney-General* is flawed in view of the fact that the power to order the instigation of proceedings for the declaration of a person as extraditable is vested in *the Minister of Justice*. The fact that in order to make the decision the Minister avails himself of opinions that are prepared by personnel of the International Affairs Department of the State Attorney's Office, does not deny him that power because it is he whom the Law has empowered to decide whether to order the making of a petition to the Court (Peller, supra, 396).

Against the background of that comment, we shall go on to consider the decision to reject the Government of Russia's extradition request and not to apply to the Court to declare Nevzlin extraditable. It is perfectly clear that the fact that the Minister's said power, which is laid down as aforesaid in section 3 of the Extradition Law, is a discretionary power, does not make his decisions immune to judicial review. On the contrary, like any administrative decision, the Minister of Justice's decisions are also "subject to the rules in force with respect to any decision of another statutory authority. The decision must be the result of weighing all the relevant factors. It must be made in good faith. It must be reasonable and substantiated by the evidence (HCJ 852/86, *Aloni v. Minister of Justice*, PD 41(2) 1 50); it must have regard to the purpose of extradition law (HCJ 3261/93, *Manigav v. Minister of Justice*, PD 47(3) 282,

285)" (*Rosenstein*, paragraph 17; and see also HCJ 7067/07, *Netanel v. Minister of Justice*, paragraph 35 (not yet published, 30th August 2007).

7. As aforesaid, the decision to reject the Government of Russia's extradition request was based on evidential grounds concerning the inadmissibility of the evidence produced in the request according to the law in force in Israel. Section 9 of the Extradition Law provides that in order to extradite a person the Court must be satisfied that it has been produced "evidence that would suffice to prosecute him for such an offence in Israel", in the words of the section. A long series of judgments have dealt with the interpretation of that provision. The case law has emphasised that extradition proceedings are different from prosecution proceedings and, such being the case, it is not necessary to examine in them the weight of the evidence or the reliability of the witnesses' versions, apart from extreme cases in which it is discovered that the evidence is worthless on the face of it. "The hearing of the extradition request is not the trial on the merits and the extradition trial must not become one that deals with the guilt or innocence of the accused. The purpose of the hearing is not to decide the accused's guilt or innocence but merely to determine 'whether the evidence is such as to support the charge' (Crim.App. 308/75, *Peshovitz v. The State of Israel*, PD 31 449, 460)" (Crim.App. 318/79, *Engel v. State of Israel*, PD 34(3) 98, 105 (1980) (hereinafter referred to as "*Engel*"); and see also Crim.App. 6914/04, *Feinberg v. The Attorney-General*, PD 59(6) 49, 66 (2005); Crim.App. 3439/04, *Bezeq v. The Attorney-General*, PD 59(4) 294, 299 (2004); Crim.App. 7303/02, *Hakash v. The Attorney-General*, PD 57(6) 481, 503 (2003)). Nevertheless, it has also been emphasised that a condition for a person's extradition is the production of *evidence admissible* according to the law applicable in Israel because in the absence of evidence of that type, *ipso facto* there is no justification for a prosecution. Indeed, "what is necessary is that according to the laws of evidence accepted in Israel (subject to special provisions laid down in the Extradition Law) the prosecution is in possession of admissible evidence (*apart from hearsay...*) which is such as to justify prosecution and enquiry into the guilt or innocence of the accused" (*Engel*, p. 105; and see also Crim.App. 579/86, *The Attorney-General v. Friedman*, PD 40(4) 301, 306 (1986); *Peller*, supra, p. 354).

I would mention that the answers that were sent to the Government of Russia - declining the extradition request - were put before us by the First and Second Respondents in sealed envelopes in view of the fact that, at this preliminary stage of the proceedings, third parties - even Nevzlin himself - have no right to inspect documents that concern the diplomatic contacts conducted between the States. This also finds expression in section 8 of the Extradition Regulations, which provides that the right to inspect documents relevant to the extradition request arises from the moment when a petition is filed in Court and not before that. Having studied those answers, I am satisfied that the reasons for declining the request were the evidential grounds that the State mentioned in its answer

to the Petitioners, namely the evidence involved in the extradition request was hearsay, on the basis of which a person's extradition cannot be ordered. The extradition request dealt with five events in the course of which several citizens found their deaths and others were injured. According to the suspicion, Nevzlin sent henchmen to do those acts but in the evidence that was produced in the extradition request there was not a single piece of direct evidence linking Nevzlin to involvement in those acts. In four occurrences the evidence was limited to the admissions of the henchmen, who asserted on interrogation that the person who had sent them had claimed to them that he himself had been sent by Nevzlin. Those who committed the offences had therefore never met Nevzlin and merely heard from a third person that it was he who stood behind the commission of the offences. That is hearsay, which is not admissible according to the law applicable in Israel (see, for example, CFH 4390/91, *State of Israel v. Haj Yehie*, PD 47(3) 661, 668 (1993); Crim.App. 7450/02, *Ayad v. State of Israel*, PD 59(6) 366, 375 (2005)). Here it is appropriate to mention that the particular third party, whose version might have shed light on the whole affair, was not called to give evidence because, according to the extradition request, he was murdered in November 2002. That last occurrence is also attributed to Nevzlin, although the extradition request does not specify a single piece of evidence connecting Nevzlin with it. The assumption of those drafting the request is that Nevzlin had an interest in the elimination of that person but clearly, in the absence of evidential foundation, that assumption, insofar as it might sound reasonable, is not such as to substantiate the suspicions to the standard necessary for filing an indictment.

Thus, "evidence that would suffice to prosecute him [Nevzlin] for such an offence in Israel", within the meaning of section 9 of the Extradition Law, is not involved. I would also mention that from studying the documents that have been sent to the Government or Russia, I have gained the impression that the decision to decline the extradition request was made after comprehensive and thorough examination of the evidence, which revealed, as aforesaid, that there was no cause to order Nevzlin's extradition to Russia. In the circumstances I have not found any flaw or defect in the decision not to accede to Russia's request and, such being the case, this head of the petition in HCJ 1029/06 should be dismissed. In the circumstances, I do not consider it appropriate to decide Nevzlin's pleas concerning the political persecution to which he was subject because it was not for that reason that Russia's request to extradite him was declined.

Revocation of Nationality

8. Section 11(c) of the Nationality Law provides that "the Minister of the Interior may revoke the Israeli nationality of a person, if it has been established to his satisfaction that the nationality was acquired on the basis of false particulars". The false particulars that the Petitioners mean are Nevzlin's statements in the forms that he completed when he applied for an immigrant's certificate,

namely that he had not transgressed by committing a criminal offence and that he was not wanted by any state.

Revoking the nationality of someone who is legally entitled to it involves serious harm. Indeed, nationality is a basic right (HCJ 2757/96, *Elrai v. Minister of the Interior*, PD 50(2) 18, 22 (1996); HCJ 2934/07, *Shurat Ha'Din v. The Chairman of the Knesset*, paragraph 6 (not yet published, 16th September 2007)). "The right to an immigrant's certificate and nationality is of great importance and it is therefore not to be revoked except on account of a very weighty reason" (HCJ 1227/98, *Malavski v. Minister of the Interior*, PD 52(4) 690, 704 (1998) (hereinafter referred to as "*Malavski*")). "A person's immigration to Israel and obtaining nationality here are of great importance. Nationality grants paramount rights and duties and that right should therefore be granted or revoked after proper factual enquiry and judgment" (HCJ 2394/95, *Motzanik v. Ministry of the Interior*, PD 49(3) 274, 280 (1995) (hereinafter referred to as "*Motzanik*:)).

The exercise of the power to revoke nationality in accordance with section 11 of the Nationality Law should therefore be based on a sound factual infrastructure from which it appears that the nationality was acquired on the basis of false particulars (HCJ 1712/00, *Orbonovitz v. Minister of the Interior*, PD 58(2) 951, 957 (2004)). The State, in its answer, gave us details of the facts on the basis of which it was decided that there was no cause to revoke Nevzlin's nationality, and they are essentially: on 4th June 2003, before he emigrated to Israel, Nevzlin was summoned for questioning by the Russian Prosecution. On that interrogation Nevzlin was questioned as *a witness* with respect to Yukos's funds but not in connection with any suspected involvement in acts of murder. At the end of the questioning, Nevzlin was released without restrictions. Several months later, Nevzlin came to Israel and at the end of September 2003 he made an application for an immigrant's visa, in which he made those declarations to which the Petitioners take exception. Later, in November that year, Nevzlin was granted Israeli nationality. According to the facts in the Respondents' possession, it was only in January 2004 - some time after he had obtained his nationality - that Nevzlin was declared by the Russian Prosecution as being wanted for investigation. In those circumstances, the Respondents did not believe that Nevzlin's declarations were flawed and *ipso facto* there was no cause for the revocation of nationality.

This conclusion is reinforced in view of that stated in Nevzlin's reply. He annexed to his answer statements that were published by the Russian news agency, Interfax Information Services, in October 2003. In that news the Russian Prosecution's spokesperson was quoted as saying that Nevzlin was not wanted for investigation at all ("at present, there is no criminal case against Neveslin" [sic]) (the news was published on 18th October 2003 and was

annexed as appendix "C" to the Third Respondent's reply). Indeed, at that time, Nevzlin was already staying in Israel.

9. However that is not enough because at the time of his arrival in Israel Nevzlin also stated that he had not transgressed by the commission of a criminal offence. This Court has already held that the proof of a criminal past, as regards the power to revoke the nationality of someone who has given false information about his past, does not need to be based on a criminal conviction, and it can also be based on administrative evidence. This last expression refers *to all* types of evidence and *to all* the methods of proof that a reasonable authority would treat as having weight, upon which it would have been right to rely for the purpose of making its decisions (HCJ 442/71, *Lansky v. Minister of the Interior*, PD 26(2) 337, 357 (1972)). Judge Zamir gave a good explanation of the rationale underlying this rule:

> "The purpose of the statute in this respect is to avoid Israel's becoming a country of refuge for offenders, even if they are Jewish, who choose Israel as a base for criminal activity, which is such as to endanger the public welfare... In this respect there is no difference between an offender who has been criminally convicted and an offender, for whom crime is a way of life, who has not yet been convicted by court... Indeed, the difference between an offender who has been convicted and an offender who has not is not material with regard to the right of return, except in respect of the method of proving the criminal past. As regards an offender who has been convicted by court, the proof is simple and clear, whilst in respect of an offender who has not been convicted, the proof might be difficult and complex" (*Malavski*, pp. 714-715; and see also *Motzanik*, p. 277; HCJ 5067/02, *Goleiv v. Ministry of the Interior*, paragraph 4 (not published, 8th September 2003)).

Naturally, in order to prove a criminal past by means of administrative evidence, the authority cannot rely on any shred of evidence and to that end "clear, unequivocal and persuasive evidence" will be necessary (*Malavski*, p. 716). "The revocation of an immigrant's certificate and nationality that have already been granted is done after the administrative proceeding has been completed and it therefore causes very serious damage to the interest of reliance and expectation. It must therefore be substantiated by particularly strong administrative evidence" (HCJ 394/99, *Maximov v. Ministry of the Interior*, PD 58(1) 919, 930 (2003)). Thus, in view of the lofty standing of the right to nationality, evidence of little weight cannot serve as foundation for the denial of that right.

Against this background, let us return to the instant case. As aforesaid, on arriving in Israel Nevzlin stated that he had not committed criminal offences, and the Respondents believe that it has not been established that the said

declaration was false. The evidence linking Nevzlin with the commission of criminal offences was set out in the Government of Russia's request to extradite him. It should be borne in mind that the examination of the evidence revealed that it was hearsay, which did not even justify the making of a petition to the Court to order Nevzlin's extradition. In those circumstances, I cannot say that the Respondents' decision was unreasonable. Nevertheless, the Respondents did emphasise to us, and we accept, that it is not impossible that they will in future again be called upon to consider the existence of administrative evidence about Nevzlin's criminal past, in accordance with their judgment and the facts that are then in front of them in that connection (paragraph 17 of the reply of 21st May 2007).

10. There therefore remains the plea of the Petitioner in HCJ 8386/06 that an order should be made for the extradition request to be referred to the First Respondent, the Minister of the Interior, for consideration. However, studying the Respondents' reply shows that all the facts relevant to the extradition request were in any event brought to the knowledge of that Respondent and were taken into account in formulating the position presented to us. Consideration of the petitions can thereby be concluded but before I do so, I think it proper to say a few words about the Petitioners' right of standing. The standing of a party to put his case to the courts has gained consideration in a long line of judgments. It is acknowledged that the case law has gradually expanded the scope of the right and thereby laid the courts' doors wide open to those standing at their threshold (HCJ 2148/94, *Gelbart v. The Chairman of the Commission of Enquiry into the Hebron Massacre*, PD 48(3) 573, 595; AA 8193/02, *Reuven v. Paz Oil Company Ltd*, PD 58(2) 153, 161 (2003); HCJ 651/03, *The Civil Rights Commission v. The Chairman of the 15th Knesset Central Election Committee*, PD 57(2) 62, 68 (2003)). If in the past the parties had to indicate a personal interest or right that had been infringed as a result of an administrative act, the road to the courts is now also paved for public petitioners who have no personal connection with the matter, whose petition concerns matters "of public character relating to the promotion of the rule of law, the enforcement of constitutional principles and the rectification of material flaws in the action of the public administration" (HCJ 962/07, *Liran v. The Attorney-General*, paragraph 14 (not yet published, 1st April 2007)). However, that trend does not mean opening the doors of this Court to everyone who wants to come through them. The line that separates a public petitioner and a petitioner who has no right of standing is drawn between someone who is able to indicate possible public harm or constitutional infringement and a petitioner who is unable to do so. I am very doubtful as to whether the Petitioners herein have discharged that burden.

The petition is therefore dismissed. The Petitioners shall bear the costs of the Third Respondent, in the sum of NIS 15,000 each.

Judge

Judge M. Naor

I concur with the detailed conclusions of my friend, Judge E. Levy, with regard to the dismissal of the petitions. In view of his detailed conclusions, the question of the right of standing does not arise.

Judge

Judge E. Hayut

I concur with the conclusions of my friend, Judge E. Levy, with regard to the dismissal of the petitions and the comment of my friend, Judge M. Naor, that in view of those conclusions, the question of the right of standing does not arise.

Judge

Decided as stated in the judgment of Judge E. Levy

Awarded this 9th day of Iyar 5768 (14th May 2008)

Judge **Judge** **Judge**