

The Exceptional Extradition of Sholam Weiss

By Piers Gardner
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845 years Imprisonment for Fraud

Sholam Weiss, 48, a US citizen, was convicted in Miami in 1999 of defrauding an insurance company and sentenced to 845 years, the longest sentence ever imposed in the United States. He absconded during a recess in his trial and was ultimately arrested in October 2000 in Vienna, where he has been fighting extradition for twenty months, on human rights grounds.

Then, on Sunday 7 June 2002 at seven o'clock in the morning, he was told he was going to see the doctor, but was taken from the Austrian jail, driven to Vienna airport and spirited out of the country in a US government plane, bound for Florida.

His extradition, or possibly kidnap, would not have been surprising except that the Austrian administrative court had issued an injunction which forbade Weiss' removal from Austria and the UN Human Rights Committee in Geneva had given an interim measures ruling, requesting the Austrian Government to ensure that he was not be removed, while the Committee examined his human rights complaints.

These were the latest of a remarkable series of decisions and appeals which have involved contradictions between Austria's highest courts, as well as both the European Court of Human Rights in Strasbourg and the United Nations Human Rights Committee in Geneva.

No chance to appeal

Because Weiss fled from the United States he lost the right to appeal there against his conviction and sentence. He argued that this fact, coupled with the length of the sentence from which he could not be released before actually serving over seven hundred years in jail, amounted to an "inhuman" punishment and denied him the right of appeal, both of which are protected by the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The Convention and the Covenant are both part of Austrian law, as the Convention is in the UK under the Human Rights Act.

At issue in Austria has been whether a court or the Minister of Justice has the responsibility to decide on these claims. At first the Austrian courts refused to allow Weiss' extradition because of the absence of an appeal. But the Austrian Supreme Court reversed

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that conclusion, holding that the appeal question was for the Minister of Justice to decide. When the Minister gave no reasons for his decision in May to remove Weiss, the Constitutional Court held that this question was one for the courts to decide after all.

Weiss challenged the Minister's decision before the Austrian administrative court, which gave the injunction forbidding his extradition, on the same day that the UN Human Rights Committee issued interim measures with the same purpose.

That was on a Friday evening. Thirty six hours later, on the following Sunday, Weiss was taken from his cell, injected by force with a sedative, and taken to Vienna Airport by officials of the Ministry of Justice to be extradited to the United States. Intervention with the Airport Police on the basis of the administrative court's injunction, and Weiss' collapse on the steps of the aircraft, prevented his removal then.

Officials of the Ministry of Justice stated later that the investigating judge responsible for Weiss' detention had ordered his removal, but how this could happen in the face of the injunction from the administrative court, let alone the interim measures from Geneva, was not explained. Weiss' appeal against the instruction given by the investigating judge was rejected because, ultimately that instruction, to remove him on that specific day, had not been implemented.

The flaw in that reasoning was illustrated when matters reached a climax at 0700 on Sunday 9 June 2002, when Weiss was taken from his cell "to see the doctor". When he stepped off the specially chartered plane which had brought him back to Florida, it was to appear before the US Federal Court which first granted him bail for his trial in 1999.

The reaction of the Austrian administrative court was clear enough. In its judgment of 13 June 2002 it held that Weiss' removal, while the injunction applied to prevent it, lacked "any proper legal basis". However, it did not answer the simple question whether extradition was unlawful. It held that, now that Weiss had been removed, "there was no longer any legal interest in resolving that issue".

For some, the real interest starts now: if political pressure leads officials not to wait for the courts' decisions, whether one way or the other, the principle of the rule of law is threatened. The protection of that principle is now in the hands of the UN Human Rights Committee, to whom Austria has yet to offer an explanation for its decision to remove Weiss while interim measures had been imposed.