



Neutral Citation Number: [2021] EWHC 1339 (Admin)

Case No: CO/3766/2020  
and CO/3762/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19/05/2021

**Before:**

**MR JUSTICE CHAMBERLAIN**

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**Between:**

**(1) JOHAN van MANSART**  
**(2) GINA de WULF**

**Claimants**

**- and -**

**PUBLIC PROSECUTOR'S OFFICE, EAST**  
**FLANDERS (BELGIUM)**

**Defendant**

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**Emilie Pottle** (instructed by **Taylor Rose MW Solicitors**) for the **First Claimant**  
**Saoirse Townshend** (instructed by **BSB Solicitors**) for the **Second Claimant**  
**James Stansfeld** (instructed by **the Crown Prosecution Service**) for the **Defendant**

Hearing date: 11 May 2021  
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**Approved Judgment**

## **Mr Justice Chamberlain:**

### **Introduction**

- 1 These two applications arise from four European arrest warrants issued by the Public Prosecutor's Office in East Flanders, Belgium, against Johan van Mansart and Gina de Wulf. Mr van Mansart and Ms de Wulf are husband and wife. They are also the parents of four young children. Ms de Wulf is pregnant.
- 2 EAW1 against Mr van Masart and EAW1 against Ms de Wulf, issued on 20 May 2020 and certified on 28 May 2020, seek their surrender to serve a sentence of 4 years' imprisonment imposed on each of them following a conviction in their absence for 10 offences before the East Flanders Court of First Instance, Ghent Division, on 28 October 2015. The sentences were imposed for offences connected with the collapse of a business run by Mr van Mansart and Ms de Wulf between 17 August 2010 and 10 December 2013. The framework list is ticked for fraud and swindling.
- 3 EAW2 against Mr van Mansart and EAW2 against Ms de Wulf, issued on 3 September 2019 and certified on 17 September 2019, seek their surrender to serve sentences imposed following convictions in their absence before the East Flanders Correctional Court on 15 July 2016 and 19 June 2017 respectively. The sentence are 18 months and 4 months' imprisonment in his case and 8 months and 4 months respectively in hers. These were imposed for offences of forgery and fraud in connection with the sale of a plot of land between 4 November 2014 and 31 January 2015.
- 4 The extradition hearing took place before District Judge Snow at Westminster Magistrates' Court. For reasons contained in a judgement dated 9 October 2020, the judge ordered the extradition of Mr van Mansart, but discharged Ms de Wulf on the basis that in her case extradition would be contrary to Article 8 of the European Convention on Human Rights ("ECHR"). Mr van Mansart appeals against the judge's extradition order. The Belgian judicial authority appeals against the order discharging Ms de Wulf. In both cases, permission to appeal was refused on the papers by Johnson J.

### **Mr van Mansart**

- 5 Mr van Mansart relied on a number of points before the judge. Two grounds were taken on appeal: first, that some of the offences for which he is sought (offences 2, 3, 6, 9 and 10) are not adequately particularised for the purposes of ss. 2 and 10 of the Extradition Act 2003 ("the 2003 Act"); secondly, that extradition would be incompatible with Article 8 ECHR.
- 6 I turn first to ground 1.

#### Ground 1

- 7 Under this ground, it is necessary to consider the offences separately. Before doing so, however, it is important to recall the principles applicable to the categorisation of offences in EAWs.

- 8 The international framework for extradition to the EU in cases where an individual was arrested pursuant to a European arrest warrant before 11pm on 31 December 2020 is governed by the Framework Decision 2002/584 (“the Framework Decision”).
- 9 Article 2.2 of the Framework Decision contains a list of offences for which, if punishable in the issuing State by a maximum sentence of at least 3 years’ imprisonment, the executing State is required to surrender the requested person without “verification of dual criminality”. This is the “European framework list”. The annex to the Framework Decision has a template for an EAW. It contains the following statement before the list appears:
- “If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least three years as defined by the laws of the issuing Member State.”
- 10 These provisions are reflected in s. 65(5) (which continues to apply to cases where the arrest took place before 31 December 2020). It provides as follows:
- “(5) The conditions in this subsection are that—
- (a) the conduct occurs in the category 1 territory;
- (b) no part of the conduct occurs in the United Kingdom;
- (c) a certificate issued by an appropriate authority of the category 1 territory shows that the conduct falls within the European framework list;
- (d) the certificate shows that a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct.”
- 11 In *Assange v Swedish Prosecution Authority* [2011] EWHC 2849 (Admin), Sir John Thomas P and Ouseley J said this at [112]:
- “[I]t seems to us that although the court executing the EAW must scrutinise the EAW to ensure that it complies with the requirements of particularity, it should ordinarily accept the classification of the issuing Member State, unless there is an obvious inconsistency which shows that the conduct alleged does not amount to the offence under the law of that state.”
- 12 That was followed in *Jama v Germany* [2013] EWHC 3276 (Admin), [22], in a passage relied upon by the judge here.
- 13 In this case, box e on EAW 1 is structured in the following way. First, it is said that the warrant relates to 10 criminal offences. Then, a summary is given of the overall conduct. Next, the framework list is ticked for “fraud” and “swindling”. Finally, a description is given of each of the 10 offences. The judicial authority has not, however, indicated on the EAW which of the 10 offences falls within the generic descriptions of “fraud” and

“swindling”. Some clearly do – for example offence 3 (fraud). Some clearly do not – for example offence 9 (insufficient collaboration with the receiver).

- 14 Offence 2 is referred to in the EAW as “misappropriation of assets”. The allegation is that “in the process of bankruptcy, with fraudulent intent or the aim to harm,” Mr van Mansart embezzled or hid a part of the assets of four separate entities. The judge held that he could rely on s. 65(5) of the 2003 Act, given that the framework list had been ticked for “fraud” and “swindling”. At [67], he said this:

“I am satisfied that I should accept the categorisation for each offence unless the offence clearly falls outside that categorisation or if it is not capable of being such an offence on a proper construction of the expression.”

- 15 Ms Emilie Pottle, for the appellant Mr van Mansart, submits there is nothing on the face of the warrant or otherwise to indicate whether the Belgian judicial authority intended to classify this particular offence as fraud/swindling. Given the authority’s obligation to satisfy the court to the criminal standard that the requirements of s. 2 are satisfied, this was fatal.

- 16 In my judgment, it was not fatal. This is because, as the authorities have repeatedly made clear, an EAW must be read as a whole. Although the warrant did not on its face say that offence 2 was to be categorised as fraud/swindling, that is the clear implication. The mental element of offence 2 includes “with fraudulent intent or the aim to harm” and the description of the offence includes “having embezzled or hidden” a part of the assets of the company. Given the presence of an offence described in that way on an EAW with the framework list ticked for “fraud” and “swindling”, the judge was right to conclude that the requirements of s. 65(5) were satisfied. The contrary is not arguable.

- 17 This makes it unnecessary to consider the alternative argument that, even if offence 2 did not satisfy the requirements of s. 65(5), the requirements of dual criminality were satisfied.

- 18 As to offence 6, EAW 1 gives this description:

“Abuse of patient creditors

Infringement of Article 489 bis, 1<sup>st</sup> Penal Code, with the aim to postpone the declaration of bankruptcy, having made purchases with the aim to sell lower than the market price or having consented in loans, transaction of securities or other costly means in order to get funds...”

- 19 After the particulars, the following clarification is given:

“By not paying deliberately the social insurance contributions, direct taxes and VAT, grants to the debtor himself an irregular credit. Moreover the credit has a ruinous character, the non paid government debts generate high interests and fines which will absorb [sic] the proceed of the assets after the declaration of bankruptcy.”

- 20 The judge considered that this was properly regarded as falling within the categories of fraud or swindling.
- 21 Ms Pottle advances two arguments to challenge that conclusion. First, she says that the description given in the EAW does not amount to fraud. Second, she submits that, even if it does, the judge should have rejected the judicial authority’s categorisation. In my judgment, neither of these points is reasonably arguable. Both involve parsing the EAW rather than reading it sensibly and as a whole. The definition of the offence requires acting “in order to postpone the declaration of bankruptcy”. The description includes “deliberate” non-payment of taxes in order to procure “an irregular credit”. It is inherent in the offence definition and in the use of the word “deliberate” that the person accused had a choice. The description makes clear that Mr van Mansart made a conscious choice to do something which gave him an irregular credit to the detriment of the revenue or of other creditors. In those circumstances, in an EAW where the framework list was ticked for “fraud”, it was in my judgment open to the judge to conclude that offence 6 satisfied s. 65(5). The contrary is not reasonably arguable.

- 22 Offence 9 is described as follows:

“Insufficient collaboration with receiver

Infringement of Article 489, 2<sup>o</sup>, having failed without being legitimately prevented, to comply with the obligations imposed by Article 53 of the Bankruptcy Law, to comply with the convocations that she/he has received of the Judge Commissioner and of the receiver and to provide with all required information...”

- 23 The judge concluded that this satisfied the dual criminality provisions because the conduct described would amount to the offence under s. 353(1) of the Insolvency Act 1986 (“the 1986 Act”). Adequate particulars had been given, because the information in the warrant provided details of the companies involved, the date of their bankruptcy and the dates of non-compliance with the receiver. The EAW also asserts that the appellants failed to provide the receiver with “all the required information”.

- 24 Section 353 provides as follows:

“(1) The bankrupt is guilty of an offence if—

(a) he does not to the best of his knowledge and belief disclose all the property comprised in his estate to the official receiver or the trustee, or

(b) he does not inform the official receiver or the trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.

(2) Subsection (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.”

- 25 Ms Pottle submitted that the judge should have found that the EAW lacked the particulars required by s. 2(6) of the 2003 Act. She argued that the particulars given did not enable the court to consider whether the conduct alleged, if done in this jurisdiction, would have fallen within s. 353(2) and, for that reason, outside the offence in s. 353(1). If this submission were correct, it would require a wholly unrealistic level of specificity by the issuing State. The offence in the requesting State does not have to “map on to” the English offence in every respect. By the same token, once it is established that the conduct description on its face falls within the parameters of a domestic offence, it cannot in my judgment be the duty of the issuing State to establish to the criminal standard that none of the exceptions or defences provided for in English law applies.
- 26 In this case, offence 9 is an offence of failing to provide the receiver with the information which the law required Mr van Mansart to provide. The companies in respect of which the information had to be provided are specified. This is equivalent to the offence in s. 353(1) of the 1986 Act. There is no suggestion that the failures in fact relate to disposals of a kind that would be caught by s. 353(2) and, as I have said, the requirement of dual criminality cannot be construed as requiring the issuing State to negate every possible argument that might be available to a person being prosecuted for the equivalent offence under English law.
- 27 It is not reasonably arguable that the judge’s conclusion on this point was wrong.
- 28 The only complaint in respect of offence 10 is that the judge was wrong to find that, in this jurisdiction, “VOF van Mansart and de Wulf” would not have been regarded as a company within the meaning of the Companies Act 2006. Again, there is in my judgement nothing in this point. The EAW describes it as a company, says that it was established by private instrument and registered as a company at the central business registry in Belgium. The fact that VOF is translated as “general partnership” does not provide any basis for concluding that the entity in question was not a company. Whilst partnerships and companies are distinct entities in this jurisdiction, this is not necessarily so in the laws of other states. It is not reasonably arguable that the judge erred in this respect.

## Ground 2

- 29 As to Article 8, the judge correctly directed himself on the law. He referred to *Norris v Government of the USA (No. 2)* [2010] UKSC 9, [2010] 2 AC 487, *HH v Italy* [2012] UKSC 25, [2013] 1 AC 338 and *Celinski v Poland* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551.
- 30 The judge’s factual findings were set out at [152]. So far as relevant to the Article 8 bar, he accepted Dr Brown’s findings as to Ms de Wulf’s mental health, that her symptoms were likely to recur or worsen in the event of extradition and that there was a risk of suicide if she was extradited, albeit not a high or substantial one. The judge noted that Ms de Wulf was pregnant and the baby was due in December. He continued:
- “The family have three young children who have lived substantially disrupted lives including living in a tent in woods, on a boat from which they had to be rescued and in three different countries. They are now settled, happy and progressing well at school.”

- 31 The judge accepted that the children would be “at significant risk of emotional harm if they were separated from their parents as a result of them being extradited”. He found that there was no family member who would be prepared to care for the children if both parents were extradited and that, as a consequence, it was likely that they would be placed in foster care. There was a real risk that they would not be placed together despite the best efforts of the local authority. They would be likely to remain in the UK, so communication with their parents in a Belgian prison was likely to be difficult. Ms de Wulf would face “significant difficulties if [Mr van Mansart] alone is extradited in the light of her pregnancy, the age of her children, livestock on her farm and loss of [Mr van Mansart’s] income. However, benefits were likely to be available and the family was likely to receive support from social services and the school.
- 32 As to the factors in favour of extradition the judge referred to the following:
- (a) The strong public interest in the UK honouring its international extradition obligations.
  - (b) The strong public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice.
  - (c) Decisions of the issuing judicial authority should be accorded a proper degree of confidence and respect.
  - (d) The independence of prosecutorial decisions must be borne in mind when considering issues under article 8.
  - (e) The offences are serious and involve significant losses.
  - (f) Substantial terms of imprisonment have been imposed.
  - (g) Ms de Wulf was a fugitive from justice.
  - (h) The Judicial Authority had applied its mind to the impact of extradition of both parents on the children.
- 33 Against extradition were the following factors:
- (a) The requested persons’ residence in the UK since 2015.
  - (b) The likely deterioration in both requested persons’ mental health if they were surrendered.
  - (c) The interest of the children.
  - (d) Ms de Wulf’s pregnancy.
- 34 At paragraph 180, the judge reminded himself that the interests of the children were a primary consideration, these children had already been through significant disruption and some drama throughout their young lives. If both parents were extradited they would face

significant uncertainty. The children would almost certainly be placed in foster care but might not be placed together. As a result, they faced a substantial risk of emotional harm. The judge gave substantial weight to the rights of Ms de Wulf's unborn child and the likely impact of the stress of extradition upon that child.

35 At paragraph 182, the judge noted the concerns of Dr Brown, a psychiatrist instructed in the proceedings, as to the likelihood of deterioration in Ms de Wulf's mental health if either she or Mr van Mansart were extradited.

36 At paragraph 183, he said this:

“I recognise that substantial countervailing factors must be present before it can be incompatible with GDW's article 8 rights for her to be surrendered. I accept that a combination of the damaging consequences for her children, her pregnancy and mental health make it incompatible with the rights of her and her children for her to be surrendered at this time. However, it would not be inappropriate for the JA to resume its request following the release of JVM from his prison sentence as he would at that point be able to take over the care for his young family.”

37 Ms Pottle criticises the judge for failing to carry out an Article 8 balancing exercise focussing on the rights of Mr van Mansart, rather than an exercise considering the rights of both requested persons together. To my mind, this is an unfair criticism. The summary given by the judge at [179] of the factors against extradition was concise. But this is because the judge had already made detailed factual findings at [152], based on the evidence he had heard. There, he accepted the evidence of Dr Brown, whom he recorded at [133] as saying that Ms de Wulf was “at risk of a significant deterioration in her mental state if she and/or her husband is extradited”. It is plain from the use of “and/or” that the judge had well in mind that there was a risk to Ms de Wulf's mental health even if only Mr van Mansart were extradited. The weight that could be given to this was, however, limited in the light of the judge's finding that Ms de Wulf had lied to Dr Brown.

38 Ms Pottle submits that the judge left out of account the fact that, if Mr van Mansart were extradited, the family would have to move, which may require a change of schools for the children. This too is an unjustified criticism. The judge had detailed information before him about what would happen if Mr van Mansart were extradited. This information did not say that the family would have to move from the caravan where they currently live or that the children would have to change schools. The fresh evidence which Ms Pottle now seeks to admit does say that, but the judge can hardly be criticised for failing to have regard to something which was not and could easily have been adduced before him.

39 As to the risk to Mr van Mansart's mental health, the judge at [128] and [130] made reference to the risk of suicide for Mr van Mansart and at [129] accepted Dr Brown's evidence that there was a significant risk of deterioration in his mental health if extradited. Again, although these matters are not specifically listed as factors against extradition, the references to this evidence earlier in the judgment indicates that it was taken into account. Even if it had not been, the omission was not material, given that the degree and intensity of the anticipated effect of extradition on Mr van Mansart's mental health is far from unusual in cases of this kind.



- 40 As to the length of separation, the judge plainly understood that Mr van Mansart was sought to serve a substantial sentence. He recorded at [150(2)] the evidence that detainees may be granted conditional early release after serving one third of their sentence. The failure to mention the fact that the remainder would have to be spent in Belgium was not, as it seems to me, a critical error. The family might well have some difficult decisions to make in the event that Mr van Mansart were released early but not permitted to return to the UK immediately. The possible options might include returning to Belgium to be with him (although in that case Ms de Wulf's sentence might be executed if it were not then time-barred). But I do not think the judge can be faulted for failing to engage in speculation about what might happen at the early release point. He had already taken account of the fact that Mr van Mansart would be separated from his family for a substantial period.
- 41 As to the delay, the judge was not sure that Mr van Mansart was a fugitive from justice, though he had "strong suspicions". Contrary to what Ms Pottle seemed to suggest, however, the lack of a finding to the criminal standard that Mr van Mansart was a fugitive did not mean that the delay between the offences and the issue of the warrant should be regarded as culpable. The further information makes plain that the Belgian authorities were looking for Mr van Mansart and Ms de Wulf. She was a fugitive, from 2016, on the judge's findings. The delay in this case was, in any event, not particularly substantial, given that the conduct the subject of EAW 1 continued until December 2013, the conviction was not until October 2015 and the first warrant in respect of the offences for which Mr Van Mansart is now sought was issued in September 2019. I would not fault the judge for failing to identify delay as a factor against extradition in this case. Even if he should have taken it into account, it was not such a compelling factor that, had he taken it into account, he would have been obliged to discharge Mr van Mansart.
- 42 Reading the judgment as a whole, the judge cannot be shown to have left out of account any substantial or material factor. His overall decision was not wrong. Even factoring in the matters set out in the fresh evidence, his decision was not wrong. The contrary is not reasonably arguable.

### **Ms de Wulf**

- 43 The Belgian judicial authority's appeal in Ms de Wulf's case challenges the judge's finding that "a combination of the damaging consequences for [Ms de Wulf's] children, her pregnancy and mental health make it incompatible with the rights of her and her children for her to be surrendered at this time".
- 44 There are three grounds of appeal. I deal with these in turn.

#### Ground 1

- 45 Under this ground, it is said that the judge failed to acknowledge that, if convicted in this jurisdiction, Ms de Wulf would have received a custodial sentence. Mr Stansfeld, for the Belgian judicial authority, submitted by reference to the relevant sentencing guideline that she could expect to receive a sentence in the range of 18 months to 4 years' imprisonment.

- 46 I do not consider this ground reasonably arguable, for three reasons.
- 47 First, as Saorise Townshend submitted for Ms de Wulf, if the sentencing range is as Mr Stansfeld suggests, and Ms de Wulf had been sentenced towards the bottom end of that range, the sentence might have been suspended given her family responsibilities and effect of incarceration on her children. It is therefore not possible to say that, had these offences been tried here, both parents would have been sentenced to immediate custody.
- 48 Second, and in any event, this is a conviction case. There is no need to speculate on the length of any sentence that might be imposed in this jurisdiction. A sentence has in fact been imposed in Belgium. The judge had express regard at [178] of his judgment to the fact that the offences were serious, that they involve significant losses and that substantial periods of imprisonment had been imposed.
- 49 Third, there is nothing in the point that the judge failed to have regard to the fact that the execution of Ms de Wulf's sentence will be time-bared in 2026, so the decision to discharge her now may mean she cannot be extradited at all. The evidence before the court was that Mr van Mansart might expect to be released after serving one third of his sentence. If he is extradited soon, he will have completed that long before 2026. Whether the Belgian authorities will consider it appropriate to issue a fresh request for Ms de Wulf at that stage cannot be known. There was no obligation to speculate on that eventuality.
- 50 Ground 1 is not reasonably arguable.

#### Grounds 2 and 3

- 51 Under these grounds it is said that the judge failed to give appropriate weight to the fact that the judicial authority had given careful consideration to whether he should only seek extradition of one parent (ground 2) and that Ms de Wulf was a fugitive (ground 3).
- 52 The difficulty with this submission is that the judge referred in terms both to the fact that such consideration had been given as a factor in favour of extradition (see [178(h)]) and to the fact that Ms de Wulf was a fugitive (see [178(b)]). In reality, these are complaints about the weight given by the judge to a factor which he took into account. In the end, both were outweighed by the exceptionally severe impact that extradition of both parents would have on four children and one unborn child. In reaching this decision, the judge applied the relevant authorities, took account of the relevant facts and reached a decision that was properly open to him in the circumstances. The contrary is not reasonably arguable.

#### **Conclusion**

- 53 For these reasons:
- (a) Mr van Mansart's application for permission to appeal is refused; and
  - (b) the Belgian judicial authority's application for permission to appeal is also refused.