



Neutral Citation Number: [2021] EWHC 2625 (Admin)

Case No: CO/678/2020

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 30/09/2021

**Before:**

**LORD JUSTICE HOLROYDE**  
**MRS JUSTICE CUTTS DBE**

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**Between:**

**LEKE PRENDI aka ALEKS KOLA**  
**- and -**  
**THE GOVERNMENT OF**  
**THE REPUBLIC OF ALBANIA**

**Appellant**

**Respondent**

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**David Josse QC and John Crawford** (instructed by **CLP Solicitors**) for the **Appellant**  
**Mark Summers QC and Daniel Sternberg** (instructed by **CPS Extradition Unit**) for the  
**Respondent**

Hearing dates 14 July 2021  
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**Approved Judgment**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be at 11 am on Thursday, 30 September 2021.

## **Lord Justice Holroyde and Mrs Justice Cutts:**

1. This is the judgment of the court in a rather extraordinary case.

### **Who is the Appellant?**

2. The Respondent asserts that the Appellant is Leke Prendi, an Albanian national born 27 September 1980 in a hamlet near Fushë Arrëz, in the Pukë district of Albania. In December 2000, before a court in Albania, Leke Prendi was convicted in his absence of offences of manslaughter, armed robbery and illegal keeping of military weapons and ammunition (“the offences”). He was sentenced to a total term of 21 years’ imprisonment, the whole of which remains to be served. On that basis, the Respondent seeks the Appellant’s return. The Appellant, however, contends that he is Aleks<sup>1</sup> Kola, a Kosovan national born 5 October 1980 in Gjakove, Kosovo. He denies any involvement in the offences and says that he has been the victim of a mistake of identification.
3. An earlier attempt to extradite the Appellant to Albania failed in 2015, when a Divisional Court held that the Respondent had not proved that he was the requested person.
4. The Respondent subsequently made a fresh request, relying on evidence which was not before the court in 2015, and in January 2020 the Deputy Senior District Judge, Judge Ikram (“the DSDJ”), accepted that the evidence proved on the balance of probabilities that the Appellant is the requested person Leke Prendi. The Appellant now appeals against that decision.
5. The issues in the case relate exclusively to the correctness of the identification of the Appellant as Leke Prendi. The Appellant accepts that there is no other bar to his extradition. We can therefore summarise very briefly the circumstances of the offences and of the criminal proceedings in Albania, before looking more closely at the course of the extradition proceedings and the evidence on which the Respondent relies.

### **The facts:**

6. On the night of 10 April 2000 four armed men stopped a bus travelling from Fushe-Arrez to Kukes in Albania, and robbed the passengers of their possessions. In the course of doing so, one robber fired a shot which fatally wounded another. The uninjured robbers then fled. One, Anton Kola, was later arrested. Two others escaped. The prosecution case in the criminal proceedings was that the two who escaped were Leke Prendi and Nikoll Nikolli, and that it was Leke Prendi who had fired the fatal shot.
7. Leke Prendi had been photographed, and his fingerprints taken, by the police in Lezhë, Albania on 12 June 1999.

### **The criminal proceedings in Albania:**

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<sup>1</sup> Sometimes spelt “Alex”.

8. The three accused were tried by the District Court in Pukë. Anton Kola was present in court; the other two men remained at large, but were legally represented at their trial. Leke Prendi was convicted in his absence and on 13 December 2000 was sentenced as we have previously stated. His sentence was confirmed on appeal to the Shkodra Appeal Court on 30 March 2001.
9. In February 2005, at the request of Albania, Interpol published a red notice showing Leke Prendi to be an internationally wanted person. It described his build (“height 168, weight 68”) and bore a photograph of him (“the Interpol photograph”). The notice was later amended by the addition of copied images of the fingerprints of Leke Prendi, which had been taken by the police in Lezhë on 12 June 1999.

**The initial arrest of the Appellant:**

10. On 20 July 2013 the Appellant was arrested in this country for common assault. He gave his name as Aleks Kola. Fingerprints taken from him that day at Northampton Police Station were found to match those held by Interpol in the name Leke Prendi.
11. On 17 November 2013 the Respondent issued a request for the Appellant’s extradition. Pursuant to that request, the Appellant was arrested on 16 December 2013.
12. Albania has been designated a Part 2 territory for the purposes of the Extradition Act 2003 (“the Act”). Section 78 of the Act (“section 78”) contains provisions relating to the initial stages of an extradition hearing in a Part 2 case. So far as is material for present purposes it requires the appropriate judge to decide, amongst other things –
  - “(4) ... whether –
    - (a) the person appearing or brought before him is the person whose extradition is requested; ...
  - (5) The judge must decide the question in subsection (4)(a) on a balance of probabilities.
  - (6) If the judge decides any of the questions in subsection (4) in the negative he must order the person’s discharge.
  - (7) If the judge decides those questions in the affirmative he must proceed under section 79.”
13. Section 79 of the Act then requires the judge to consider whether extradition is barred for one of the reasons specified in that section.

**The first extradition proceedings:**

14. The Appellant contested the extradition proceedings, contending that he was Aleks Kola and not Leke Prendi. He did not give evidence. In October 2014 a District Judge found that the Appellant was the requested person Leke Prendi and ordered that his case be sent to the Secretary of State.

15. The Appellant appealed to the High Court. In a judgment handed down on 24 June 2015<sup>2</sup>, a Divisional Court<sup>3</sup> held that the District Judge had been wrong to admit the red notice in evidence and had in any event wrongly analysed the evidence and reached a wrong conclusion. The court concluded that the Respondent had not proved on the balance of probabilities that the Appellant was the requested person Leke Prendi, and allowed the appeal.

**The second extradition proceedings:**

16. The Respondent subsequently provided further information relating to the identity of the Appellant and made a fresh request for his extradition. On 15 February 2019 the Home Office certified the request pursuant to section 70 of the Act.
17. On 16 July 2019, in Essex, the Appellant was arrested by PC Maskell pursuant to the new warrant.
18. The Appellant again contested the proceedings on the ground that he is not the requested person Leke Prendi.
19. Before the DSDJ, the Respondent relied on evidence including further information provided by Albania on two occasions in 2019; the expert evidence of a fingerprint examiner Mr Macie; and the evidence of PC Maskell. PC Maskell's evidence was that having arrested the Appellant, he took him to the custody suite at Grays, Essex. There, he showed the Appellant the Interpol red notice in the name Leke Prendi, which bore a photograph, and asked whether he was the man shown. After a pause, the Appellant (who was under caution) replied "Should be".
20. The appellant did not give evidence. He relied on a proof of evidence in which he said that he was Aleks Kola, born 5 October 1980 in Kosovo. He said, amongst other things, that he left Kosovo when he was about 16, went to Italy, travelled through Europe to Belgium, and came to the UK in May 2000. He said he had subsequently made a number of visits to Italy, and admitted that he had used an alias, Nikolin Pacani, when he was in Italy in about 2007. He had been arrested by the Italian authorities, and sent to Albania, where he was detained for a few hours. His photograph and fingerprints were taken by the police in Tirana. A few days later, he returned to Italy.
21. The Appellant in his proof of evidence denied that he had told PC Maskell that the photograph on the Interpol red notice "should be" him: he said that he had consistently denied being that person. He denied any involvement in the offences, saying that he was living in Belgium at the relevant time. He asserted that there had been a mistake regarding fingerprints, saying in his proof of evidence:

"I do not know where the fingerprints from 1999 came from, I was not in Lezhë police station in September 1999<sup>4</sup>. Before I was in Brussels I had been living in Italy and in Serbia and so cannot have been in Lezhë police station in September 1999."

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<sup>2</sup> [2015] EWHC 1809 (Admin)

<sup>3</sup> Aikens LJ and Kenneth Parker J

<sup>4</sup> The fingerprints were in fact taken in June 1999. It is not suggested that anything turns on this point.

22. The appellant also relied, as expert evidence, on a report written in October 2019 by Mr Raymond Evans, an image comparison analyst. Mr Evans had compared images in the name Aleks Kola with images in the name Leke Prendi. He indicated in his report that only one of the black and white photographs of Leke Prendi was suitable for a meaningful comparison: it was consistent with being the Appellant, but was not of suitable quality to allow positive identity. A very small, low resolution scanned colour image of Leke Prendi was not consistent with the Appellant. The images of Aleks Kola were of small size and poor resolution, but Mr Evans said it was nonetheless possible to perform “a general facial comparison” between the features of the subjects and he found them to be consistent with the Appellant. His overall conclusion was that the material lent no support to the contention that the Appellant, and the images in the name Aleks Kola, were Leke Prendi.

**The judgment of the DSDJ:**

23. The DSDJ noted the contents of the Appellant’s proof of evidence but bore in mind that the Appellant had not given evidence and that he had therefore not been able to assess his credibility. He accepted that Mr Evans had done his best with the limited imagery provided to him, but regarded his conclusions as unreliable because they were based on poor quality photographs and because Mr Evans had not been provided with all the information which was before the court. He concluded that he could not place any weight on Mr Evans’ opinion.
24. The DSDJ accepted the Appellant’s submissions as to the weakness and unreliability of certain evidence of visual comparison relied on by the Respondent, and left that evidence out of account in reaching his decision.
25. The DSDJ did however find the fingerprint evidence relied on by the Respondent to be both reliable and strong. In summary, that evidence – which had not been available to the court in the first extradition proceedings - established the following:
- i) The Interpol bureau in Tirana holds two fingerprint cards: one set, in the name Leke Prendi, was taken on 12 June 1999 by police in Lezhë; the other, in the name Nikolin Pacani, was taken at an Albanian border post on 23 October 2007. Those two sets are the same.
  - ii) The fingerprints taken from the Appellant by the police in Northampton on 20 July 2013 are the same as those in the name Nikolin Pacani.
26. The DSDJ accepted that evidence, rejecting as “mere speculation” submissions on behalf of the Appellant questioning the provenance of the various fingerprint records.
27. The DSDJ also accepted the evidence of PC Maskell as to what was said by the Appellant in the custody suite following his arrest. The DSDJ noted that PC Maskell had not given the Appellant an opportunity to read and confirm the officer’s note of what had been said. However, the DSDJ found the officer to be a credible witness, and was satisfied that the Appellant’s command of English was sufficient to enable him to understand the simple question which he was asked.
28. In his judgment handed down on 24 January 2020 the DSDJ accordingly found that the Appellant is the requested person Leke Prendi, and that he has used the name

Aleks Kola as an alias. There being no statutory bars to extradition, he sent the case to the Secretary of State for her consideration.

29. The Secretary of State subsequently ordered that the Appellant be extradited to Albania. He remains in custody in this country, pending the determination of this appeal.

**The appeal to this court:**

30. The appeal is brought pursuant to section 103 of the Act on the sole ground that the judge erred under section 78(4)(a) of the Act in finding that the Appellant is the requested person Leke Prendi. Leave to appeal was granted by Sir Duncan Ouseley on 11 September 2020.

31. The powers of this court are set out in section 104 of the Act (“section 104”), which so far as material provides –

“(1) On an appeal under section 103 the High Court may –

(a) allow the appeal;

(b) direct the judge to decide again a question (or questions) which he decided at the extradition hearing;

(c) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that –

(a) the judge ought to have decided a question before him at the extradition hearing differently;

(b) if he had decided the question in the way he ought to have done he would have been required to order the person’s discharge.

...

(5) If the court allows the appeal it must –

(a) order the person’s discharge;

(b) quash the order for his extradition.”

32. On 7 July 2021 the Respondent applied to admit in evidence in this appeal a bundle of additional material which had been served on the Appellant on 14 May 2021. Some of the material (translations of documents which had not previously been translated, and improved copies of some documents which were before the DSDJ) is uncontentious, but the Appellant objected to the admission of other documents (including further

information provided by the Albanian authorities in May 2021) and of the expert evidence of Mr Robert Butler, an imaging expert.

33. The further information includes information about the Interpol photograph<sup>5</sup> which was for several years attached to the red notice but was removed from it in 2018. It explains that the photograph was taken on 18 April 2007 by the Italian police, using “operative ways” at a time when Leke Prendi was thought to be hiding in Italy. The photograph showed what was thought to be a group of friends but was subsequently cut. The man shown in the Interpol photograph was no longer thought to be Leke Prendi, and it was therefore removed from the red notice.
34. Mr Butler was provided with material which was not available to Mr Evans: better quality images of the photograph of Leke Prendi taken at Lezhë police station on 12 June 1999; and photographs known to show the Appellant in 2000-2001. His report dated 10 May 2021 indicates that he compared (a) the photograph taken by the Lezhë police on 12 June 1999, with (b) a photograph taken by the Italian authorities on 1 May 2000 showing the Appellant when he was using the name Altin Preni, and (c) and (d) photographs taken by the police in this country on 5 August 2000 and 7 June 2001 showing the Appellant when he was using the name Aleks Kola. He concluded that there were no significant differences between photograph (a) and photographs (b), (c) and (d), and that there were a number of similarities and correlations between the photographs which provided support for the man shown in (a) being the same person as the man shown in (b), (c) and (d).
35. Submissions were made in relation to this issue at the hearing of the appeal. On behalf of the Appellant, Mr Josse (who did not appear below) pointed out that the Respondent had unsuccessfully attempted to adduce further evidence before the High Court at a late stage of the previous extradition proceedings in 2015. He submitted that, in the light of what was said by the court in that case, the Respondent should have got its house in order before applying for a new warrant. Far from doing that, the Respondent had served this additional material at a very late stage after the DSDJ’s decision, and had given no explanation for why the material was not provided before the hearing in the Westminster Magistrates’ Court. The absence of any explanation is in itself, he submitted, a reason why this court should decline to receive it.
36. Mr Josse further submitted that the report of Mr Butler must have been commissioned by the CPS, not by the Albanian authorities, and is clearly a response to the evidence of Mr Evans. No reason has been given why this evidence was not provided to the DSDJ if the Respondent wished to address Mr Evans’ report. The Appellant has been prejudiced, he submitted, because there has been no opportunity for the judge at first instance to consider this evidence and no opportunity for the Appellant to respond to the evidence at first instance. The serving of this material in May 2021 was the first indication that the Respondent was no longer asserting that the man depicted in the operative ways photograph was the Appellant. The presentation of the Appellant’s case, and the Appellant’s decision as to whether to give evidence, might have been different if the report of Mr Butler had been relied on before the DSDJ. Mr Josse questioned whether the photograph said to have been taken at Lezhë police station may have been doctored in some way.

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<sup>5</sup> Also referred to as the “operative ways photograph”

37. In those circumstances, and in the context of the long history of the attempts by the Respondent to extradite the Appellant, Mr Josse submitted that the interests of justice plainly require the exclusion of this further material. In the alternative, he submitted that if this court decides to admit the fresh evidence, it should then remit the case pursuant to section 104(1)(b) so that the DSDJ can again decide the issue of identification under section 78(4). Mr Josse realistically and properly acknowledged that if the further evidence were admitted, he could not ask this court to allow the appeal.
38. Mr Summers (who also did not appear below) did not put forward any specific justification for the late service of this material. He submitted however that the evidence is highly probative: it shows that the Interpol photograph came from Italy, had nothing to do with the photograph taken at Lezhë police station in 1999 and was a false lead. Mr Butler's evidence, he submitted, is decisive. It is in the interests of justice for the evidence to be admitted, the alternative being for extradition proceedings to start again. The Appellant has had the additional material for two months, and a copy of the 1999 Lezhë police station photograph since the start of the case, but has made no application in relation to adducing any evidence in response. The additional material proves not only that the Appellant's fingerprints match those in the name Leke Prendi, but also that the photograph of Leke Prendi matches the Appellant.
39. We decided to consider all the additional material *de bene esse* and indicated we would rule on its admissibility when giving judgment.
40. We accordingly turn to the argument on the merits of the appeal.

**The submissions:**

41. We are grateful to counsel for their detailed written and oral submissions. We can summarise them comparatively briefly, but we have considered all the points made on both sides.
42. Mr Josse QC and Mr Crawford, on behalf of the Appellant, accept that the fingerprints in the name Leke Prendi taken at Lezhë police station in 1999 and held by Interpol in Tirana are those of the Appellant, that the Appellant has used the alias Nikolin Pacani and that the fingerprints taken from "Nikolin Pacani" in 2007 are those of the Appellant. They submit nonetheless that the DSDJ's decision was wrong. They rely on what was said by a Divisional Court<sup>6</sup> in *Lauri Love v United States of America* [2018] 1 WLR 2889, at [26]:

“The true approach is more simply expressed by requiring the appellate court to decide whether the decision of the District Judge was wrong. ... The appellate court is entitled to stand back and say that a question ought to have been decided differently because the overall evaluation was wrong: crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed.”

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<sup>6</sup> Lord Burnett CJ and Ouseley J



43. The Appellant contends that his fingerprints were wrongly placed in the Lezhë police file relating to Leke Prendi, and subsequently passed to Interpol. It is submitted that there is evidence relating to at least two different persons in that police file, showing that evidence relating to a third party has incorrectly been added to the file. The DSDJ, however, failed properly to engage with that point or with other inconsistencies in the Respondent's case. It is further submitted that the DSDJ took an incorrect approach to the evidence of facial recognition and placed too much reliance on the evidence of PC Maskell.
44. The three principal points which Mr Josse submits reveal the inconsistency and weakness of the Respondent's case are these:
- i) The Interpol photograph was for a long time said by the Respondent to be a photograph of Leke Prendi, alias Aleks Kola – the Appellant. That was the Respondent's position both before the Divisional Court in the first extradition proceedings and before the DSDJ in the present proceedings. But in the additional material served in May 2021, the Respondent for the first time asserted that the photograph does not show Aleks Kola. It follows, submits Mr Josse, that it can no longer be said to be a photograph of the requested person Leke Prendi. Mr Josse refers to the evidence of Mr Evans in this regard and submits that the DSDJ was wrong not to attach any weight to that evidence. Mr Josse further submits that the additional material contains no explanation of how an incorrect photograph came to be in the Leke Prendi file. He points to the Respondent's earlier reliance on what is now conceded to be an incorrect photograph as an indication that errors have been made in the identification process, and that the fingerprint evidence should not have been given the weight which the DSDJ attached to it. The DSDJ was wrong to dismiss the Appellant's criticisms of the identification evidence as mere speculation.
  - ii) The Respondent's case now is that the Albanian authorities do not have any record of Leke Prendi's height. But earlier in the proceedings the Respondent took a different stance: the Interpol red notice described Leke Prendi as being 168cm tall; and in 2019 the Albanian authorities sought to explain a discrepancy between that description, and an earlier record showing Leke Prendi as being 163cm tall, by saying that Leke Prendi had grown in the years which passed between the two measurements of his height. Mr Josse points to the fact that before the Divisional Court in 2015 the Respondent similarly suggested natural growth as the explanation for the difference between the height stated in the red notice and the Appellant's actual height of 179cm. He again refers to the shifting position of the Respondent as indicating the weakness of the asserted identification of the Appellant.
  - iii) Mr Josse submits that there is an absence of clarity as to the provenance of the fingerprints taken by the Lezhë police in June 1999. He relies in this regard on a number of documents provided by the Albanian authorities, which he submits are muddled and mutually inconsistent. He submits that all the fingerprint evidence relied on by the Respondent depends on the Lezhë fingerprints having been correctly filed, and that the DSDJ was therefore wrong to regard "the various prints that have been compared" as being independent of each other.

45. For those reasons, Mr Josse submits that the material relied on by the Respondent has changed over the years and is inconsistent and unreliable. No adequate explanation has been given for the changes in the Respondent's stance, which now contradicts information which the Respondent previously asserted to be correct. In those circumstances, the Respondent has failed to discharge the burden of proving on the balance of probabilities that the Appellant is Leke Prendi.
46. As to the evidence of PC Maskell, Mr Josse submits that it is significant that the Appellant was never given an opportunity to verify the officer's note of a comment which the Appellant denies having made. It is, he suggests, inherently improbable that the Appellant would have made such a comment, given that he had for years been denying that he is Leke Prendi. In any event, even if it was made, it is ambiguous. For those reasons, he submits, the DSDJ was wrong to rely on this evidence as proving an admission by the Appellant.
47. On behalf of the Respondent, Mr Summers QC and Mr Sternberg point out that the Appellant has never produced any document supporting his claim to be Aleks Kola. The information provided by the Respondent is that searches of national records have not found any Kosovan Aleks Kola. There is however an Albanian man called Aleks Kola who was born in May 1980 in Pukë: the Respondent has provided a photograph of this man, which it is submitted clearly does not show the Appellant. In addition, Kola was of course the surname of one of those convicted of the robbery. The Respondent contends that the Appellant has created a fictitious identity as a Kosovan called Aleks Kola.
48. The Respondent further contends that the information provided to the court shows that a man calling himself Nikolin Pacani, born 4 July 1980, had repeatedly come to the attention of the Italian police and had been convicted in 2005 of an offence of attempted murder. Having served his sentence for that offence, he was deported to Albania on 23 October 2007. He was photographed upon his arrival in Albania. The Respondent contends that the photograph shows the Appellant, a contention which was accepted by the Appellant's expert witness Mr Evans. Also on 23 October 2007, the Albanian border authorities took the fingerprints of "Nikolin Pacani": the Appellant accepts that they match the fingerprints taken from him in this country in 2013. The Appellant accepts he is "Nikolin Pacani"; from which it follows that he has access to false identity documents and used them to travel in Italy.
49. The Respondent also relies on information, confirmed by the matching of fingerprints, that on 1 May 2000 – days after the robbery, and days before the Appellant arrived in the UK – the Appellant gave his name as "Preni" to the Italian authorities.
50. In June 1999, when the police in Lezhë took fingerprints from Leke Prendi, Albania did not keep electronic records of fingerprints. The paper records were however later provided to Interpol. In 2018 Interpol entered them into its electronic system, and matched them against those taken from "Pacani" when he was deported from Italy in 2007.
51. The Respondent relies on this fingerprint evidence to demonstrate that the Appellant's fingerprints match those of Leke Prendi. It submits that the issues which arose in the first extradition proceedings as to the provenance of various records have now been resolved. The Appellant now accepts that his fingerprints are in the Lezhë police file

in the name Leke Prendi. The Respondent submits that the basis of the Appellant's case, that the Appellant's fingerprints mistakenly found their way into that police file, is wholly implausible. Mr Summers submits that the fingerprint evidence is not undermined by the differing information as to height which has been recorded in various documents: that information was not part of the Leke Prendi police file.

52. The Respondent advances two submissions, one of law and the other of fact.
53. First, the Appellant accepts that he is the man whose return is sought: his case is that the Respondent is pursuing the wrong person. Mr Summers submits that no issue arises under section 78(4)(a) and (5) of the Act. It is a matter for the domestic courts in Albania to determine any issue as to whether the Appellant is the man who committed the offences. In support of that argument he refers to a number of cases, including *Nur v The Netherlands* [2005] EWHC 1874 (Admin) at [22-23]; *Starzomski v Poland* [2014] EWHC 2673 (Admin) at [4]; and *Shah v France* [2015] EWHC 3746 (Admin) at [46].
54. Secondly, Mr Summers submits that the Appellant has given no sensible explanation as to how his fingerprints could wrongly have been added to a file at Lezhë police station. In his proof of evidence, the Appellant said that he had never been to Lezhë police station, and did not know when or where the fingerprints held there were taken from him. Mr Summers submits that the Appellant's case was correctly characterised by the DSDJ as a speculative attack on the integrity of the police records.
55. Mr Summers goes on to submit that the Appellant's case involves the proposition that his fingerprints were taken without his knowledge by police officers he has never met at a police station he has never attended, that the form bearing those fingerprints must have been left otherwise blank for a number of years, and that at some later stage the details of another person were handwritten onto it. It involves the further proposition that by a similar coincidence the Lezhë police file contained a photograph dated 12 June 1999 which Mr Butler's evidence proves to be a photograph of the Appellant. These propositions, it is submitted, are absurd.

### **Discussion:**

56. We consider first the issue as to the additional material on which the Respondent seeks to rely.
57. In *FK v Stuttgart State Prosecutor's Office* [2017] EWHC 2160 (Admin) ("*FK*"), an appeal under Part 1 of the Act, a Divisional Court held that the criteria in section 27(4) of the Act, and the familiar criteria for the admission of fresh evidence stated in *Szombathely City Court, Hungary v Fenyvesi* [2009] 4 All ER 324, apply where an appellant seeks to have fresh evidence admitted, but not where a respondent seeks to put in new evidence in order to defeat an appeal. At paras 39-40 Hickinbottom LJ, with whom Green J (as he then was) agreed, said –

“39. For those reasons, in my view, there is no restriction on the inherent jurisdiction of the High Court on appeal to admit further evidence from a respondent to an extradition appeal. It is open to a respondent to apply to this court to exercise its

inherent jurisdiction and admit further evidence in support of an extradition decision of a district judge.

40. I endorse the observation of Aikens LJ in *Elashmawy*<sup>7</sup> (at [82]), that this does not allow such a party *carte blanche* to adduce new material to bolster an existing decision in his favour, particularly if the material was “available” before the district judge. “Availability” of evidence in the sense discussed in *Fenyvesi* is still a relevant factor in this context; but it is only one of several material considerations. The court will assess such an application to admit further evidence against the measure of whether it is in the interests of justice to admit it. There is no other restriction on the exercise of the court’s inherent jurisdiction in this regard. Although whether admission of the evidence is in the interests of justice will be quintessentially dependent upon the circumstances of the particular case involving an exercise of judgment by the court, where the new evidence sought to be admitted merely confirms a factual finding made by the district judge, or clarifies an issue of fact or law that might otherwise be ambiguous or unclear, it may be straightforward to persuade the court that it is in the interests of justice to admit it.”

58. The present appeal is of course brought under the provisions of Part 2 of the Act. Mr Josse accepts that the principle in *FK* must also apply to a Part 2 appeal. He submits, however, that a greater level of scrutiny should be applied by the court in a Part 2 case, and that the need for expedition in Part 1 cases, pursuant to the Framework Decision, may be a material difference from Part 2. He relies in this regard on what was said recently by Lord Lloyd-Jones JSC in *Zabolotnyi v Mateszalka District Court, Hungary* [2021] UKSC 14, [2021] 1 WLR 2569. Having referred to *FK* and other cases, Lord Lloyd-Jones went on to say, at paragraph 57 –

“In this context, however, an important consideration will be the policy underpinning sections 26-29 of the 2003 Act that extradition cases should be dealt with speedily and not delayed by attempts to introduce on appeal evidence which could and should have been relied upon below (*Fenyvesi*, paras 32-33).”

59. We do not accept that submission. The particular emphasis on the need for Part 1 cases to be dealt with speedily may well be a relevant factor in the decision as to where the interests of justice lie in a particular case; but in our view, the principle in *FK* applies to a respondent in a Part 2 appeal as it does to a respondent in a Part 1 appeal.
60. In deciding whether it is in the interests of justice to admit this additional material in evidence, we regard the following as relevant factors.
- i) The Respondent’s application was made at a very late stage: the material was not served until several months after the DSDJ had given his judgment; and

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<sup>7</sup> [2015] EWHC 28 (Admin)

that needs to be seen against the background of protracted efforts to extradite the Appellant and an unsuccessful attempt to admit further evidence at a late stage of the first extradition proceedings.

- ii) However, the documents were served on the Appellant's lawyers on 14<sup>th</sup> May, nearly two months before this hearing. There has been sufficient time for the Appellant to consider and to be advised about any response to that evidence. No application was made for any witness to attend this hearing to face cross-examination; or for the Appellant to give oral evidence or for any expert evidence to be adduced. Nor was there any application for an adjournment on the ground that further time was needed to obtain evidence in response.
  - iii) We accept that the Appellant has had limited time to address this evidence, but we are satisfied he has had sufficient time. If the reliance by the Respondent on this further evidence tipped the scales in favour of his wishing to give evidence, he could and should have made that decision well before the appeal hearing, and any application in that regard could then have been considered. We note that the Appellant chose not to attend the hearing of the appeal. Mr Josse confirmed that no Covid-related or other practical difficulties had prevented the Appellant's legal representatives from taking his instructions.
  - iv) Equally, if there was any wish to call expert evidence, there has been time to instruct Mr Evans or another expert witness, or to explain to the court that more time was (for good reason) necessary. Mr Josse suggested that one possible area of expert evidence might be to investigate whether the photograph of Leke Prendi taken at Lezhë police station might in some way have been doctored. But if that was the Appellant's wish, steps could and should have been taken before the hearing.
  - v) There is now an explanation for the lateness of the evidence and for the earlier reliance on evidence which is now contradicted.
  - vi) The additional material is undoubtedly important evidence, but we are not persuaded that the Appellant will suffer unfair prejudice if it is admitted at this late stage. We accept Mr Summers' submission that the Respondent could if necessary bring yet further extradition proceedings relying on this evidence.
  - vii) We are satisfied that it is in the interests of justice to receive this evidence, which materially adds to the information which should properly be considered, and to take it into account in deciding this appeal.
  - viii) We are not persuaded that, having admitted the evidence, we should remit the whole case for a fresh hearing before the DSDJ. To do so would achieve nothing other than delay.
61. On the overall merits, it is undoubtedly the case that the respondent has shifted its ground and that a number of flaws in its previous submissions have been exposed. Mr Summers rightly concedes that the Albanian authorities made errors in their records and that there were errors in communications between police and prosecutors. In particular, he accepts that Lezhë police at some stage wrongly provided Interpol with a physical description of Leke Prendi which had never been recorded in the Leke

Prendi police file and must therefore have come from some other file. He also rightly concedes that what was said by the Appellant to PC Maskell, even if correctly recorded, was ambiguous, and he places no reliance on it.

62. Nonetheless, we reject the submission that the DSDJ came to a wrong decision on the evidence before him. The burden was on the Respondent to prove on the balance of probabilities that the Appellant is the requested person Leke Prendi. In deciding that it had discharged that burden, the DSDJ did not rely on the Respondent's evidence as to visual comparison of images. He had no regard to the Interpol photograph, and his decision is therefore not affected by the new information that that photograph does not show the Appellant. He was entitled to conclude that he could attach no weight to the evidence of Mr Evans, who on his own account had been doing his best with imagery of poor quality. He was entitled to regard the fingerprint evidence as proving the match between the prints admitted to be those of the Appellant, the prints admitted to be those given by the Appellant at a time when he was using the alias Nikolin Pacani, and the prints which (as he was entitled to find) were proved to have been taken from the man calling himself Leke Prendi. He was entitled to reject as speculative the Appellant's challenge to the provenance and/or reliability of that fingerprint evidence. The Appellant did not give evidence himself and therefore provided no direct evidence to contradict or undermine the fingerprint evidence. For those reasons, even on the basis of the evidence and information before the DSDJ, we are not persuaded that his decision was wrong.
63. Further, and as is realistically accepted by Mr Josse, the additional evidence which we have admitted makes it impossible for this appeal to succeed.
64. We do not accept Mr Summers' submission of law<sup>8</sup> to the effect that no issue arises under section 78 of the Act. The case law to which he has referred establishes, uncontroversially, that where it is clear that a defendant is the person sought by a requesting state, the extradition court in this country is not concerned with issues as to whether the requested person is guilty of the offences alleged against him. But in the unusual circumstances of this case, we do not see that the Respondent's argument is supported by that principle. The correct analysis, as it seems to us, is that the Respondent seeks the return of Leke Prendi, the man who was convicted and sentenced in his absence: not simply the man whose fingerprints were held in the Lezhë police file. The presence of those fingerprints in that file is evidence that the Appellant is Leke Prendi, but it does not follow that there is no issue under section 78 for the DSDJ, or for this court, to resolve.
65. We do however accept Mr Summers' submissions as to the complete implausibility of the Appellant's challenge to the provenance of the Leke Prendi fingerprints, which involves a series of remarkable coincidences. The Appellant has not put forward any suggestion as to how his fingerprints might have been placed in the Lezhë police file in the name Leke Prendi: he has not, for example, suggested that he was at Lezhë police station on some other occasion. There is no basis for suggesting that the photograph of Leke Prendi taken at Lezhë police station may have been doctored.
66. The additional evidence shows that the Appellant's case requires not only the unexplained inclusion of his fingerprints in the Leke Prendi police file, but also the

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<sup>8</sup> See [53] above

unexplained inclusion in that file of a photograph which has features of similarity with photographs known to show the Appellant at around the same time. It requires also a number of further coincidences: the Appellant has repeatedly used aliases; there is no record of any Kosovan with the surname Kola, but that was the surname of one of the robbers; the alias Preni used by the Appellant is close to the name Prendi; and the Appellant arrived in the UK, without documents, a very short time after Leke Prendi fled Albania to avoid arrest for the offences, and only days after he had passed through Italy using the alias Preni.

67. We accept Mr Summers' submission that previous issues as to the provenance of some of the information previously relied upon have now been resolved, and – importantly – that the explanations do not undermine or impugn the reliability of the photograph and fingerprints taken in 1999 at Lezhë police station.
68. The additional evidence thus confirms, and provides a separate secure foundation for, the conclusion of the DSDJ that the fingerprint evidence proves on the balance of probabilities that the Appellant is the requested person Leke Prendi: he has not only used the alias Nikolin Pacani but has also used the alias Aleks Kola.
69. This appeal accordingly fails and is dismissed.