IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2021] EWHC 2910 (Admin)

No. CO/4101/2020
CO/4095/2020

Royal Courts of Justice

Thursday, 14 October 2021

Before:

THE HONOURABLE MR JUSTICE HOLMAN

B E T W E E N :

ANDRZEJ DYKO

Appellant

- and -

POLISH JUDICIAL AUTHORITY

Respondent

MS L. HERBERT (instructed by Montagues Solicitors) appeared on behalf of the appellant.

MS A. BOSTOCK (instructed by the Crown Prosecution Service (Extradition)) appeared on behalf of the respondent

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J U D G M E N T
(A s a p p r o v e d b y t h e j u d g e)

MR JUSTICE HOLMAN:

1. These are substantive cross-appeals arising out of a decision and orders made by District Judge Jabbitt in the Westminster Magistrates' Court on 3 November 2020 in extradition proceedings. There are two warrants, which I will call “EAW1” and “EAW2”. Both are conviction warrants. EAW1 related to offences committed as long ago as 1996. The offences themselves were relatively minor, consisting of thefts from cars and handling a stolen microwave. EAW2 concerned a much more serious offence of street robbery, committed in August 2006, some ten years after the offences which were the subject of EAW1.

2. The decision of the district judge was to discharge the Requested Person in relation to EAW1, but to order his extradition in relation to EAW2. As a result, both sides have cross-appealed.

3. The Polish Judicial Authority contends that the district judge should not have discharged the Requested Person in relation to EAW1. The Requested Person contends that he should not have been ordered to be extradited in relation to EAW2.

4. The essential argument of the Judicial Authority, in relation to EAW1, is that, once the district judge had decided that he would order extradition under EAW2, it was illogical of him to still come to the view in relation to EAW1 that extradition was disproportionate. In short, the argument is that, as the district judge was ordering extradition in any event, there was no disproportionality or unjustifiable interference with the Requested Person’s home and family life, in terms of Article 8, in ordering his extradition also under EAW1.

5. It follows that, if I consider that the Requested Person’s own appeal in relation to EAW2 should be allowed, there is no remaining case for allowing or, frankly, even considering the appeal of the Judicial Authority in relation to EAW1. For that reason, we have so far during the

course of this hearing - with the agreement of both counsel - focused solely on the Requested Person's appeal from the order for his extradition on EAW2, and that is the subject of the present ex tempore judgment.

6. The essential factual background and circumstances are as follows. The Requested Person is Polish. He is now aged about 46 or 47. The robbery, which is the subject of EAW2, was committed in Poland on 19 August 2006. At that time, the Requested Person was already fully adult and aged about 30. He was, indeed, already living in a settled relationship with the person who is still his partner, and they already had two daughters in that relationship. Those daughters are now described as fully adult.

7. The circumstances of the robbery are described in the EAW and further described by the district judge at paragraph 8 of his decision and reasons. He said there that the Requested Person, acting together with others, robbed the victim of items to the value of PLN 250, which I understand to be the equivalent of about £50. During the course of the offence, the victim was beaten and kicked all over his body, resulting in injuries which are described as follows:

> "bruises and swelling in the frontal area of the head and dorsum of the nose, linear abrasion of the epidermis in the neck area, livedo of the right side and rear surface of the trunk, livedo of the bottom eyelid of the left eye and subconjunctival haematoma of the left eye."

8. That was, on any view, a serious offence in which the victim suffered a range of nasty, although not life-threatening, injuries to many parts of his body. The offence is aggravated by the fact that it was carried out jointly with others.

9. The Requested Person was prosecuted. He duly attended all stages of his trial. He pleaded guilty, which is to his credit. He was convicted in his presence on 15 February 2007 and, on the same day, still in his presence, sentenced to two years and four months of imprisonment.

He had already spent some time remanded in custody before being released on bail or parole. The amount currently outstanding under that sentence is now two years and 21 days.

10. Under the system at that time in Poland, a person sentenced to imprisonment, who was not on that date already in prison, was required to present himself on a specified later date to prison. Before he was actually required to present himself to prison, this Requested Person left Poland in March 2008, but, of course, he left Poland in full knowledge that he had been sentenced to that term of imprisonment and that the day would soon come when he was required to serve it. It is beyond question in the present case - and not disputed by him - that he came to England originally as a fugitive, and he has, indeed, remained a fugitive ever since.

11. Being unable to find the Requested Person, when he was required to attend prison, the Polish authorities, who had some information to the effect that he was in England, issued the European Arrest Warrant, which is now EAW2, on 17 October 2011. Under the scheme of European Arrest Warrants, such a warrant then required to be certified here by the National Crime Agency ("NCA").

12. In this particular case, the warrant was not certified until 30 May 2017, some five and a half years or more after it had been issued. So far as I am aware, even now there is simply no explanation or narrative as to why there was that very long period of delay between the warrant being issued in Poland and certified here. Frankly, I have absolutely no idea whether there was some breakdown or delay in the warrant being transmitted from Poland to the NCA here in England; or whether, for some reason, it lay unnoticed here in England without being processed and, ultimately, certified. It is simply a complete mystery.

13. Once the warrant had been certified in May 2017, another two and a half years elapsed until the Requested Person was arrested here, on 30 December 2019. By now, that was over eight years from the date of the warrant and nearly 13 years from the date of the conviction. When the Requested Person did travel to England in March 2008, he was accompanied by his partner and

by his two daughters. The Requested Person and his partner have lived here together continuously since March 2008 and he says, and I accept, that, by the time of the hearing in front of the district judge, he and his partner had been in a continuous settled relationship for 27 years. One of the daughters continues to live here in England. The other daughter has, in fact, returned to Poland and now lives there. So she is clearly, geographically, completely independent of her father and, indeed, her mother.

14. The Requested Person has not lived a completely blameless life here in England, and had two relatively minor convictions around 2009. But he has lived openly here and, indeed, as a result of those convictions, his presence here has been known to the police and other authorities since 2009. He has worked here and I fully accept that he has completely made his home here, together with his partner and the daughter who remains here. However, he remains a Polish citizen and not a British citizen.

15. One ground of appeal relied upon in the present case is under section 2 of the Extradition Act 2003. That has currently been stayed behind final resolution of the lead case in relation to Poland of *Wozniak*. The other ground of appeal, which is before me today, is, essentially, under Article 8.

16. On behalf of the Requested Person, Ms Laura Herbert, who also appeared on his behalf before the district judge, essentially raises two points. They are discrete, but there is overlap between them. Her first point is that the district judge erred in his approach to the undoubted long delay in this case. Her second point is that the district judge did not correctly and appropriately weigh that in the balance. She submits that the probability, if not virtual certainty, is that, if the Requested Person is now extradited to serve a sentence in Poland, he will not be permitted to return to live in the United Kingdom, following the complete withdrawal of the United Kingdom from the European Union. For convenience, I will call this the “Brexit point”.

17. The respect in which the two points overlap is that Ms Herbert submits that, if there had not been a very long delay in implementing the EAW, this Requested Person might have been extradited a considerable number of years ago and would have served his sentence in Poland and been able to return to resume living here with his partner long before Brexit was finally implemented by our final withdrawal from the European Union.

18. The district judge correctly directed himself with reference to very well-known authorities on the impact of Article 8 in extradition and the balance that is required to be performed, as described in the authority of *Celinski*. He then listed factors against extradition and factors in favour of extradition as follows:

> "Factors against extradition.
>
> (a) EAW1 relates to offending 23 years ago, the three offences are not particularly serious, and the RP has served all but five months of the two-year sentence.
>
> (b) EAW2 relates to an offence committed 13 years ago. [The district judge, in fact, was mistaken in saying 13 years. Even by the date of his decision in November 2020 the period since the offence was 14 years. Now it is 15 years, although it is not suggested that anything turns on that minor error.]
>
> (c) The RP has led a productive life in the UK.
>
> (d) He has a long-term partner and has brought up two daughters here.
>
> (e) His partner would suffer a financial and emotional impact if he was extradited.

Factors in favour of extradition

(a) The offending in EAW2 is serious, a robbery, where the victim suffered significant injuries.

(b) The RP left Poland to attempt to put himself beyond the reach of the Polish authorities.

(c) The private life the RP has acquired was in the knowledge that he may be required to return to Poland to serve the outstanding sentence.

(d) The high public interest in the UK not being regarded as a safe haven for convicted individuals to come to, in order to avoid their sentence."

19. The district judge then said, "I draw a clear distinction between EAW1 and EAW2" and described why he considered that extradition was now disproportionate in relation to EAW1, since the offence was relatively minor; the delay was now over 23 years; and the Requested Person had already served 19 months of a 24-month sentence.

20. In relation to EAW2, however, the district judge continued as follows:

"35. The offence, the subject of the EAW2, by contrast is serious, involving the street robbery of an individual on 19 August 2006, where the victim was beaten and kicked and received significant injuries [which the district judge had previously described at paragraph 8]. During the trial process the RP was initially remanded on custody for three months and then conditionally released … The sentence of two years and four months imprisonment was passed and he was again conditionally released, to await a summons to prison. He admits that he left Poland to avoid the sentence. Thus, he sought to put himself beyond the reach of the Polish authorities for a serious offence, where the public interest in extradition

is high. The counterbalancing factors are the age of the offence, and family life and work record do not carry the same weight in relation to EAW2.

36. The common factor applies that the Requested Person has acquired his family life in the knowledge that at some point he may be required to return to Poland to serve his sentence. The second EAW was issued on 17 October 2011, and certified by the NCA on 30 May 2017. This delay is unexplained, but it is not appropriate to confer blame, when I do not know the reason for the delay. The primary reason for the delay was the RP's decision to leave Poland.

37. I acknowledge that the Requested Person may find it difficult to return to the UK in the future as a consequence of the UK's departure from the EU, however it would not be appropriate to speculate, and give substantial weight to this factor.

38. There will be a substantial emotional and financial impact on his partner, sadly a frequent consequence of extradition, however she is in employment, and has two adult daughters, who may be able to provide her with some support.

39. I am unable to find strong counterbalancing factors that outweigh the public interest in relation to EAW2."

21. In relation to delay, Ms Herbert, on behalf of the Requested Person, submits that there is significant error in the approach of the district judge in paragraph 36, which I have quoted above. He said there,

> "… This delay is unexplained, but it is not appropriate to confer blame, when I do not know the reason for the delay …"

22. Ms Herbert relies, in particular, on a decision by William Davis J in 2018 in *Adamek v. Poland* [2018] EWHC 578 (Admin.). In that case, as in this one, there had been a very long delay between the issue of the European Arrest Warrant in November 2010 and its notification to the authorities here in March 2015. William Davis J said,

> "I have no satisfactory explanation as to why the warrant was not notified to the authorities … until March 2015. Nor did the district judge … The authorities in Poland, on the face of it, … did nothing about it for five years."

23. William Davis J continued at paragraph 16 by saying that,

> "Mr Adamek was not hiding in this country; he was working; his children were at school here … There was a delay of five years between the issue of the European Arrest Warrant and it arriving in this country and a delay of two years between the arrival of the European Arrest Warrant and notification by the Polish Judicial Authority to this country of an address for Mr Adamek. Both delays are in broad terms unexplained. They certainly lack any cogent explanation."

Then the sentence upon which Ms Herbert particularly relies,

> "Given that they are unexplained, it seems to me I am bound to infer that they were culpable. If I have no explanation at all it does not seem to me that there is any other sensible conclusion I can draw."

The decision of the judge on the facts and in the circumstances of that case was to allow the appeal and discharge the order for extradition.

24. So, very understandably, Ms Herbert submits that, if what William Davis J said in the last sentence of paragraph 16 of his judgment is the correct approach, then District Judge Jabbitt erred in the present case in what he said in the penultimate sentence of paragraph 36 of his decision and reasons. In *Adamek*, the approach was clearly taken that, in the absence of any explanation for the long delay, the court was

> "bound to infer that they were culpable. If I have no explanation at all it does not seem to me that there is any other sensible conclusion I can draw."

On the other hand, District Judge Jabbitt took the view that, although, as he said, the delay in the present case is unexplained

> "… it is not appropriate to confer blame, when I do not know the reason for the delay …"

25. Further, Ms Herbert submits that there was additional error by the district judge when he went on to say, "The primary reason for the delay was the RP's decision to leave Poland." She submits that there is no real causal connection between his decision to leave Poland and the fact of the ensuing delay. It is true that the Requested Person is a fugitive, but, she submits, if the Polish and/or British authorities had got on with this case with normal promptitude, the five and a half years would not have elapsed between the issue of the warrant and its certification; and, she submits, the entire reasons for that delay must lie with the Polish and/or British authorities and not, as such, with the Requested Person at all.

26. That is a powerful submission. It is, however, to some extent, countered by the reliance of Ms Amanda Bostock, on behalf of the Judicial Authority, upon an authority of the House of Lords of *Gomes v. Government of Trinidad and Tobago* [2009] UKHL 21. That case also concerned extradition, although not, of course, extradition under the European mechanism.

27. In a passage at paragraphs 27 and 28 of the report prepared by Lord Brown of Eaton-Under-Heywood, there is reference to earlier authority in which Lord Diplock had pointed out that deciding whether "mere inaction" on the part of a Requesting State "was blameworthy or otherwise" could be "an invidious task". Lord Brown continued:

> "… it will often be by no means clear whether the passage of time in requesting the accused's extradition has involved fault on the part of the requesting state and certainly the exploration of such a question may not only be invidious (involving an exploration of the State's resources, practices and so forth) but also expensive and time consuming …"

At paragraph 28, Lord Brown continued:

> "In the ordinary way the accused gets the benefit of the passage of time (unless he has caused it) irrespective of any blameworthiness on the part of the requesting state. Why then, save perhaps in a rare borderline case, consider whether the requesting state itself should in addition be found at fault?"

28. Quite apart from the status of those observations as authority from the House of Lords, they seem to me to be good sense. In the present case, there is the objective fact that there were five and a half years between the issue of the warrant and its certification, and it is an objective fact that it is now over 15 years since the offence in question. The very fact of that delay must, inevitably, impact on the *Celinski* balance, whether it is the product of culpability by any person or body or not. In my view, it does remain the overarching fact on this aspect of the case that it was the decision of the Requested Person to leave Poland in March 2008, when he knew that he had to serve this sentence of (by then) just over two years' imprisonment, which has resulted in him facing extradition all these years later. He did not face up to the consequences

of his offending and serve his sentence at the time. Finally it has caught up with him, and I am unable to disagree with the observation of District Judge Jabbitt that "The primary reason for the delay was the RP's decision to leave Poland."

29. The second and discrete heading, or ground, under Article 8 is the Brexit point. Ms Herbert submits that the manner in which the district judge dealt with that point, at paragraph 37 of his decision and reasons, failed adequately to get to grips with the gravamen and severity of the point.

30. It is my impression, dealing, as I do, with very many applications for permission to appeal from extradition orders, that this Brexit point is bubbling under almost every case, currently, where extradition is sought pursuant to a European Arrest Warrant. So far as I am aware, and indeed so far as both counsel today (who are both well-known experts in this field) are aware, there has been no clear consideration of the point yet by a Divisional Court.

31. Two authorities in particular have been drawn to my attention today. The first in time is a decision of Sir Ross Cranston in March 2021 in *Rybak v. Poland* [2021] EWHC 712 (Admin.). In that case, as in this case, extradition was sought to Poland to serve an outstanding term of about two years and eight months' imprisonment. At paragraph 36 of his judgment in the case, the district judge had said,

> "The appellant will be able to return to the UK, subject to the UK's probable departure from the EU, and resume his life here."

That comment was made in a judgment dated 21 January 2020. In his judgment, also at paragraph 36, Sir Ross Cranston said,

> "In my view, the district judge ought to have taken into account the potential difficulties in the appellant returning to the UK as an express factor in the *Celinski* balancing exercise. His decision was handed down on 21 January 2020, two days before the European Union (Withdrawal Agreement) Act 2020 became law. It was clear that free movement between the UK and the European Union would come to an end at some point. … It seems that UK citizens without settled status will be on a similar footing as others seeking entry clearance to the UK and it has been common knowledge for many years that criminal convictions, and other signs of poor character, negatively affect applications for leave to enter the UK.
>
> 37. In summary, I have come to the conclusion that the district judge was unfortunately in error in the manner he treated the conspicuous delay … and the Brexit point … Both points weaken the public interest in ordering the appellant's extradition notwithstanding that it is coupled with the seriousness of his offending as factors favouring extradition."

32. When considering the authority of *Rybak*, however, it is then important to see what Sir Ross Cranston went on to say, for there were some powerful factors militating against extradition in that case which are not present on the facts and in the circumstances of the present case. He said,

> "However, there were all the other factors militating against extradition which the district judge carefully identified in the *Celinski* balance - the appellant was 18 when the offences were committed; he has served more than two thirds of his sentence; he travelled to the UK with the permission of his probation officer and was in touch with his lawyer and contactable through his mother; he has been

> gainfully employed in the UK; and he now has a young family dependent on him - a wife whose employment relies on his presence, and children who were born here, have never lived in Poland and do not speak Polish as their first language. If they do not move to Poland with their mother, there is a risk, because of the Brexit point, of separation from the father, at least for what seems to be a not insignificant period."

As a result, when he re-performed the *Celinski* balance, Sir Ross Cranston concluded that extradition was not proportionate in that case. He allowed the appeal and ordered the appellant's discharge.

33. It is clear that there were powerful features in the case of *Rybak* – particularly, young children who had never lived in Poland and who did not speak Polish as their first language - such that the Brexit point impacted heavily in that case.

34. Ms Bostock relies on an even more recent authority, namely *Pink v. Poland* [2021] EWHC 1238 (Admin.) in which Chamberlain J gave judgment on 11 May 2021 and dismissed an appeal against extradition, notwithstanding the Brexit point. He said at paragraph 52 of his judgment,

> "Fifth, I accept on the basis of the appellant's latest evidence that there is a prospect that, if extradited, the appellant may not be readmitted to the UK after completing his sentence; and that this would put his current partner (who has settled status) in the difficult position of having to leave if she wishes to continue the relationship. But I do not think that this can properly be regarded as a consequence of extradition. It is, rather, a consequence of (i) the appellant's criminal convictions in Poland and (ii) the change to the immigration rules as a result of Brexit …"

Chamberlain J went on to make some observations about whether it would be "safe" to make the assumption that extradition would make a difference to a person, such as the appellant in that case.

35. So one sees there, somewhat in contrast to the approach adopted by Sir Ross Cranston, that Chamberlain J took the view that any problem of returning here after extradition and serving the sentence cannot "properly be regarded as a consequence of extradition."

36. To my mind, the whole question of the proper approach of courts to the Brexit point in extradition will require, sooner or later, and preferably sooner, to be considered and made the subject of a definitive ruling by a Divisional Court. When I was confronted with these two somewhat conflicting authorities this morning, I raised with counsel whether I should, indeed, adjourn the present appeal, not part heard, and direct that it be relisted for hearing by a Divisional Court. But neither counsel invited me to do so, and in any event, it does not seem to me that the evidential position in the present case makes this a suitable test case.

37. There is not complete evidence in the present case with regard to the Requested Person's status, and the whole question of what line a Secretary of State might take, if he were extradited and served his sentence and then sought to be reunited with his partner here, is, frankly, speculative and opaque.

38. I wish to stress that in this ex tempore judgment, given immediately after the argument today, I am not seeking to add in any way to the existing somewhat tenuous jurisprudence on this point. But, on the particular facts and in the particular circumstances of this case, I do not accept the submission of Ms Herbert that there is any significant error in what the district judge said in paragraph 37 of his decision and reasons, which I have quoted above. To my mind, he was entitled to say that he acknowledged that the Requested Person may find it difficult to return to

the UK, but entitled also to say that it would not be appropriate to speculate. It was within his overall discretion to decide not to give "substantial weight" to this factor.

39. I do accept and appreciate that there is a world of difference between being extradited in order to serve a sentence of imprisonment of just over two years (or, indeed, two and a half years if the outstanding sentence under EAW1 is aggregated) and, in effect, being exiled from the United Kingdom forever.

40. I also accept Ms Herbert's point that, if there had been less delay in implementing the European Arrest Warrant procedure, this Requested Person might have been extradited and might fully have served his sentence and been able to return to the United Kingdom (being a Polish citizen) before Brexit came finally into force and effect. But the exile is, ultimately, the consequence of macro-political movements and changes, and does not alter the fact that this Requested Person was convicted of a serious offence for which a significant sentence remains outstanding.

41. For all these reasons, I am not in the end persuaded that there is any error in the reasoning and approach of the district judge in this case in relation to EAW2. Accordingly, the conditions in section 27(3) of the Extradition Act 2003 are not even engaged, and I do not myself re-perform the *Celinski* balance. I may or may not, ultimately, have ordered extradition in this case myself if I was the district judge. But I am not persuaded that there was any error in his approach, and I am certainly unable to say that he was wrong in relation to EAW2. Accordingly, insofar as the present appeal relates to EAW2 and any ground other than the stayed ground under section 2, it is dismissed.

LATER

42. I now turn to the Judicial Authority's appeal in relation to EAW1 in the light of my decision in relation to EAW2. The present short judgment should, of course, be read as a seamless

continuation of my first judgment, albeit that I have now heard further submissions from both counsel.

43. It is important to stress in the present case that both warrants are conviction warrants. Ms Herbert has just made a powerful submission to me based on a hypothetical example where one of two warrants may be an accusation warrant and the other a conviction warrant. As different considerations do, or may, apply to the approach to accusation and conviction warrants respectively, it may well be that, where there are two warrants of those different kinds, there may be no tension or illogicality in discharging the Requested Person in relation to the accusation warrant, but, nevertheless, ordering his extradition in relation to the conviction warrant. That, however, is all for another day. The present case, I stress, involves two conviction warrants, with known outstanding sentences. As I mentioned earlier, the conviction warrant under EAW1 relates to thefts from two cars (or attempted thefts) in which the cars were damaged, and also handling a stolen microwave. The offences were committed in 1996. The Requested Person was sentenced in February 2000 to two years' imprisonment, of which five months and four days remain outstanding. At the time of the commission of those offences, he was aged about 20. The district judge said at paragraph 34 of his judgment,

> "The offending in EAW1 is relatively minor, occurred 23 years ago, and the Requested Person has served 19 months of the 24-month sentence, although the Requested Person left Poland knowing it was highly likely that he would be required to serve the balance of the sentence, the public interest in extradition is diminished by the above factors. The counterbalancing factors of the family life and productive life he has acquired since he came to the UK in 2008 are sufficient to render extradition disproportionate for EAW1."

44. The short submission of Ms Bostock, on behalf of the Judicial Authority, is that this is, of course, a single composite decision and judgment by the district judge on a single occasion. It is, indeed, a reserved and written judgment which he handed down on a later date. So at the point of, as it were, signing off his judgment, the district judge knew what his decision was in relation to EAW2. His error, it is submitted, is that he did not go back to reconsider his decision in relation to EAW1 in the light of the decision he had reached in relation to EAW2.

45. In support of that submission, Ms Bostock relies upon observations by Irwin J in *Zakrewski v. Poland* [2015] EWHC 3393 (Admin.) at paragraph 14. There Irwin J said,

> "For example, if hypothetically EAW1 was in respect of a relatively minor offence, committed or allegedly committed a long time ago, whereas EAW2 arose in respect of a very serious offence committed recently, it would be wholly artificial to refuse extradition on the former by reference to an Article 8 impact rendered quite academic by the latter."

Later, at paragraph 23 of the same judgment, Irwin J said,

> "The essence of any consideration of proportionality is to take all relevant matters into account, and balance the competing factors and interests …
>
> The alternative would be absurd. A trivial offence could properly lead to extradition if listed in the same warrant as a serious offence … but a different outcome would be reached if the serious offence was in a separate warrant before the court on the same day …"

Irwin J was careful to stress, as I also stress, at paragraph 25 of his judgment that,

> "I should also stress that this approach only arises where the proportionality of extradition is in question. Where formal defects are, or may be, in question, each warrant will of course be the subject of separate and discrete consideration."

46. Those words, indeed, do require to be stressed. If there was any formal defect in EAW1 in the present case, then, of course, that might be a complete bar to extradition on EAW1, whatever the outcome in relation to EAW2. But, having stressed that point, it seems to me that the observations of Irwin J that I have quoted are, frankly, bang in point in the present case.

47. The only reason that there are two EAWs in the present case appears to be that the respective offending occurred in different places and was the subject of convictions in different courts. That consideration apart, both matters could have been the subject of a single warrant, albeit that the offending was separated by about ten years in time.

48. In my view, and with respect to him, District Judge Jabbitt in the present case did fall into a result which Irwin J characterised as "absurd" and "wholly artificial". The plain fact of the matter is that (subject only to the remaining ground of appeal under section 2) this Requested Person will be extradited, in any event. He has to serve just over two years of imprisonment under EAW2 and, frankly, there is no residual weighty Article 8 ground or reason for refusing extradition in relation to EAW1 and the outstanding term of about five months.

49. So, for those reasons, I will allow the appeal by the Judicial Authority. I am satisfied that the district judge decided a question wrongly in relation to EAW1 and that, if he had decided that question correctly, he would have been required to order extradition.

50. I will allow the appeal, quash the order discharging the Requested Person, and remit the case to the district judge and direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.

Do we have to define the relevant question?

MS BOSTOCK: Possibly. It may be easier if we do.

MR JUSTICE HOLMAN: Is the relevant question, "The inevitable impact on the extradition decision in relation to EAW1 of the decision to order extradition on EAW2"?

MS BOSTOCK: Yes.

MR JUSTICE HOLMAN: I am sure the two of you can formulate----

MS BOSTOCK: Yes, it renders the decision -- We can well have a think and propose something.

MR JUSTICE HOLMAN: I am sure you can. I think that you will have to formulate a question, but you have got the gist of it.

MS BOSTOCK: Yes, we will do.

MR JUSTICE HOLMAN: He must order extradition because his reasoning at the moment is illogical.

MS BOSTOCK: Yes, illogical.

MR JUSTICE HOLMAN: I will leave it to you.

MS BOSTOCK: Yes, thank you very much, my Lord.

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5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

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