



Neutral Citation Number: [2024] EWHC 2226 (Admin)

Case No: AC-2024-LON-000360

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/08/2024

Before :

MR JUSTICE JULIAN KNOWLES

Between :

ROBERT KOZAR
- and -
DISTRICT COURT IN LIBEREC,
CZECH REPUBLIC

Appellant

Respondent

Ben Joyes (instructed by Birds) for the Appellant
Georgia Beatty (instructed by CPS) for the Respondent

Hearing dates: **25 July 2024**

Approved Judgment

This judgment was handed down remotely at 10:30 on 28 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. This is an appeal with the leave of Jay J dated 20 June 2024 following an oral hearing, permission having been refused on the papers. The Appellant appeals against the judgment of District Judge Law dated 30 January 2024, ordering his extradition to the Czech Republic pursuant to s 21A(5) of the Extradition Act 2003 (EA 2003). The Appellant is in custody.
2. The grounds of appeal are, in summary, that: (a) extradition would be disproportionate having regard to what is said to be the trivial nature of the offences in question, and so barred by s 21A(4)(b) of the EA 2003 (I will call this statutory disproportionality); (b) extradition would be incompatible with the Appellant's rights under Article 8 of the European Convention on Human Rights (ECHR), and so barred by s 21A(4)(a).
3. On behalf of the Appellant it was conceded before the district judge that extradition would not be disproportionate. However, on this appeal, Mr Joyes (who did not appear below) seeks to argue that it would be, as well being in breach of Article 8. On behalf of the Respondent, Ms Beatty accepted that the issue could be raised on appeal notwithstanding the concession below.
4. I am grateful to Mr Joyes and Ms Beatty for their written and oral submissions.

Background

5. On 24 February 2022 the Respondent issued an extradition arrest warrant (AW1) in respect of the Appellant. It is an accusation warrant which seeks the Appellant's extradition to stand trial for an offence of shoplifting and a related offence of using a bank card to pay for the goods which did not belong to him.
6. It is alleged that on 10 August 2019 he 'grasped' two bottles of wine worth in total CZK 79.80 [about £2.69] in the BILLA shop in Liberec and walked out of the shop without paying, and that when he was stopped by a security guard he tried to pay for the wine using an AirBank payment card issued to one Petr Cihacek, which the Appellant had found the same day on a street in Liberec.
7. As the district judge recorded at [12], the Appellant was interviewed by the police and made full admissions. Further information confirmed that there had been no decision made about whether the Appellant was authorised to leave the Czech Republic. While he was under no obligation to notify the authorities of any change of address as such, he was aware that a criminal prosecution had been commenced and that the police and prosecutor needed to be able to contact him.
8. A domestic arrest warrant was issued by the District Court in Liberec on 7 February 2021 (File No. 1 T 97/2019-74). The conduct is said to amount to (a) the offence of theft, pursuant to s 205 (2) of the Czech Penal Code; (b) the

criminal offence of unauthorised procurement, counterfeiting or alteration of a means of payment, pursuant to s 234 (1) of the Czech Penal Code.

9. At one stage, the Appellant was subject to a second extradition warrant, AW2 (File No. 4T 112-2018). That warrant sought the Appellant's extradition to serve a five month sentence, originally suspended but which was activated in 2021. for stealing a mobile phone and a wallet and its contents (an ID card and €100 cash). The offending on AW1 was committed during the suspension period. He was discharged on AW2 by the district judge on the basis that he had served this sentence by the time of the judgment, he having been in custody in this country since his arrest on 21 August 2023, and the Respondent had revoked AW2.
10. In granting permission, Jay J ordered that the CPS make inquiries of the relevant Czech authorities given the period the Applicant had, by then, spent in custody on AW1 (namely the period from January 2024 (when he was discharged on AW2) – 20 June 2024), the point being that he might already have served any likely sentence by virtue of this remand period.
11. The Czech authorities duly confirmed in further information dated 4 July 2024 that AW1 was maintained. They pointed out that 'there has not yet been a final decision and the imposition of a sentence, and therefore at the present time it is not possible to add to any period the detention that the accused served in Great Britain.' Earlier, in further information dated 31 October 2023, they stated that if convicted on AW1, the Appellant faces a sentence of imprisonment of between six months and three years, pursuant to s 205(2) of the Czech Penal Code.

Legal principles

The test on appeal

12. Section 26 of the EA 2003 confers a right of appeal (subject to obtaining permission) against an extradition order made by a district judge under Part 1. The conditions for allowing an appeal are set out in s 27. In summary, I can only allow an appeal if the district judge should have answered one or more of the questions under Part 1 differently, and if s/he had, s/he would have been bound to order the Appellant's discharge. Pertinently in this case, s 27(4) contemplates an appeal being allowed on the basis that an issue is raised on appeal that was not raised at the extradition hearing; that the issue would have resulted in the district judge deciding a question before him at the extradition hearing differently; and if he had decided the question in that way, he would have been required to order the person's discharge.
13. The general test on appeal is whether the district judge's decision on the relevant question was 'wrong': see *Love v Government of the United States of America* [2018] EWHC 172 (Admin), [22]-[26].
14. This is modified in fresh evidence/change of circumstance cases, where the appellate court is required to make its own *de novo* assessment as to whether

extradition is barred on one or more of the grounds in Part 1: see *Olga C v The Prosecutor General's Office of the Republic of Latvia* [2016] EWHC 2211 (Admin), [26]; *Versluis v The Public Prosecutor's Office in Zwolle-Lelystad, The Netherlands* [2019] EWHC 764 (Admin), [79]; and *De Zorzi v Attorney General, Appeal Court of Paris* [2019] 1 WLR 6249, [66].

Human rights

15. Extradition is barred on human rights grounds where to extradite the defendant would interfere with his or her Convention rights (s 21A(4)(a); I will set this out in a moment). The most commonly invoked right is Article 8. Extradition is, *ipso facto*, an interference with a defendant's Article 8(1) rights. The question is whether in a particular case it would be a disproportionate interference. The principles in relation to proportionality in this context are well-known and set out in *Norris v Government of the USA (No 2)* [2010] 2 AC 487; *H(H) v Italy Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338; and *Polish Judicial Authorities v Celinski* [2016] 1 WLR 551.
16. In *H(H)* Baroness Hale said at [8]:

“8. We can, therefore, draw the following conclusions from *Norris*: (1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life. (2) There is no test of exceptionality in either context. (3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition. (4) There is a constant and weighty public interest in extradition: that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no ‘safe havens’ to which either can flee in the belief that they will not be sent back. (5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved. (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life. (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe.”

Statutory proportionality

17. In relation to proportionality as a free-standing extradition bar, there are two principally relevant provisions.
18. Where an arrest warrant is received from a requesting judicial authority under Part 1, s 2 requires the NCA to certify it provided the statutory conditions in s 2 are met. However, s 2(7A) provides:

“(7A) But in the case of a Part 1 warrant containing the statement referred to in subsection (3), the designated authority must not issue a certificate under this section if it is clear to the designated authority that a judge proceeding under section 21A would be required to order the person's discharge on the basis that extradition would be disproportionate.

In deciding that question, the designated authority must apply any general guidance issued for the purposes of this subsection.

(7B) Any guidance under subsection (7A) may be revised, withdrawn or replaced.

(7C) The function of issuing guidance under subsection (7A), or of revising, withdrawing or replacing any such guidance, is exercisable by the Lord Chief Justice of England and Wales ...”

19. I will come back to the guidance referred to in s 2(7C) later. As I shall explain, it is now to be found in the Criminal Practice Directions 2023 (as amended).
20. Section 21A of the EA 2003 provides:

“21A Person not convicted: human rights and proportionality

(1) If the judge is required to proceed under this section (by virtue of section 11), the judge must decide both of the following questions in respect of the extradition of the person ('D') -

(a) whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998;

(b) whether the extradition would be disproportionate.

(2) In deciding whether the extradition would be disproportionate, the judge must take into account the

specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account.

(3) These are the specified matters relating to proportionality -

(a) the seriousness of the conduct alleged to constitute the extradition offence;

(b) the likely penalty that would be imposed if D was found guilty of the extradition offence;

(c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D.

(4) The judge must order D's discharge if the judge makes one or both of these decisions -

(a) that the extradition would not be compatible with the Convention rights;

(b) that the extradition would be disproportionate.”

27. The leading authority in relation to the application of the statutory proportionality bar in s 21A is *Miraszewski v District Court in Torun, Poland* [2015] 1 WLR 3929. The leading judgment was given by Pitchford LJ.

28. At [28]-[33] he said:

“28. I accept the submission made by Mr Fitzgerald QC on behalf of the appellants that it is appropriate for judges to approach the Lord Chief Justice's guidance as identifying a floor rather than a ceiling for the assessment of seriousness. The test for the designated authority is whether "it is clear...that a judge proceeding under section 21A would be required to order the person's discharge on the basis that extradition would be disproportionate". The Lord Chief Justice's guidance is, it seems to me, deliberately aimed at offences at the very bottom end of the scale of seriousness about which it is unlikely there could be any dispute. It must be so, otherwise the judge's freedom to apply the statutory criteria of proportionality would be unlawfully fettered. The guidance states that in the identified cases the triviality of the conduct alleged would *alone* require the judge to discharge the requested person. Subject to the exceptional circumstances identified in paragraph 17A.4, the NCA's decision-maker can assume that the judge *would be required to discharge* the requested person if he is sought

for an extradition offence in one of the categories listed. However, a judge making the proportionality decision is not limited by these categories. He may conclude that an offence is not serious even though it does not fall within the categories listed in the guidance. If so, the proportionality decision may depend on the paragraph (b) or (c) factors. It is noticeable, for example, that none of the offences of violence to the person, even the least serious, is captured by the guidance, but the terms of paragraph 17A.2 ("the judge will determine the issue on the facts of each case as set out in the warrant, subject to the guidance in 17A.3 below") make it clear that other offences may be assessed by the judge as being non-serious or trivial offences. Further, the fact that one of the paragraph 17A.4 defined "exceptional circumstances" applies, causing the NCA to certify the EAW, does not preclude the judge from holding that extradition would be disproportionate. The judge has responsibility for weighing relevant factors for himself.

29. I also accept the submissions of both counsel that section 21A(1) creates two separate bars to extradition in an accusation case. It may be that the factors influencing an Article 8 balance under section 21A(1)(a) will overlap with an assessment of proportionality for the purpose of section 21A(1)(b), but that they require separate consideration is made plain by the terms of section 21A(2) and (3). Subsections (2) and (3) require a free standing judgment that (subject to the bracketed words in subsection (2), to which I shall return) is formed upon consideration of, and only upon consideration of, the seriousness of the conduct alleged, the likely sentence and alternative methods of securing the requested person's attendance at the court of the Category 1 territory.

30. The Home Office minister, Damien Green MP, when introducing the section 21A amendment to the House of Commons on 16 July 2013, identified the mischief at which the amendment was aimed as:

‘... the disproportionate use of the EAW for trivial offences ... New clause 23 means that UK courts will be able to deal with the long-standing issue of proportionality, which is a fundamental principle of EU law. It will require the judge at the extradition hearing to consider whether extradition would be disproportionate. In making that decision the judge will have to take into account the seriousness of the conduct, the likely penalty, and the possibility of the issuing state taking less coercive measures than extradition; for example issuing a court summons.

Putting that proportionality bar in the legislation will ensure that extradition, which, of course, entails a person being sent to another country and being arrested and likely to be detained, happens only when the offence is serious enough to justify it.’

31. The starting point is that, provided the EAW complies with the formal requirements of section 2 of the Extradition Act 2003, the UK has an obligation under the Framework Decision, subject to the statutory bars, to enforce the warrant by extradition. Section 21A(2) does not otherwise place a specific burden either on the requesting state or on the requested person. The proportionality of extradition is for assessment by the judge. Mr Summers QC, for the respondent, submitted that the proportionality test should be treated as "a simple test to weed out obviously and clearly trivial and/or unnecessary EAWs that the Issuing Judicial Authority would obviously never have voluntarily issued but for the principle of legality". Mr Fitzgerald QC responded that the task of "weeding" out obviously trivial EAWs would, under the scheme, be performed by the designated authority under section 2(7A). It is, in my view, important to note that section 21A(1)(b) applies to all accusation EAWs and not only to those issued by member states that apply the principle of legality. The ambit of judicial judgment is constrained only by the factors identified in section 21A(2) and (3). There are in subsection (3) three factors capable of affecting proportionality of which "seriousness" is just one. I agree with the appellants' argument. The test is identified in straightforward terms but the exercise of the judge's task is not further constrained by any particular standards of 'triviality' – the Lord Chief Justice's guidance recognises this in paragraph 17A.2. Within the boundaries set, the scope for judgement is comparatively broad. The judgement will be made against a background of mutual respect between the UK court and the issuing authority but I cannot accept that the judge will be engaged in an attempt to locate what would have been the action of the issuing authority had the principle of legality not been engaged. The court may, depending on its evaluation of factors, conclude that "extradition would be disproportionate" if (i) the conduct is not serious and/or (ii) a custodial penalty is unlikely and/or (iii) less coercive measures to ensure attendance are reasonably available to the requesting state in the circumstances.

[I interpolate here that [17A.2] referred to is now [12.2.1] of the Criminal Practice Directions 2023, set out below]

32. Mr Summers QC argued that paragraphs (a) – (c) create a hierarchy of importance. He reasoned that only seriousness was capable of measurement against a standard. Since the Lord Chief Justice had issued guidance that defined triviality, the fact that an offence came within its ambit would be enough to meet the test of disproportionality. I agree that the guidance identifies offences that are trivial but I do not agree that the guidance defines triviality or that the statutory test is triviality. As I have said, the guidance sets the threshold at which the NCA can assume the judge would be required to discharge the requested person, whatever the paragraph (b) and (c) factors may be. An offence outside the categories listed in the guidance may also be identified as non-serious (or trivial) but that finding will not necessarily be conclusive. The bracketed words in subsection (2) make clear that it is the task of the judge to place weight where he assesses it is due. Since I do not accept that only those offences identified in the Lord Chief Justice's guidance could be treated by the judge as non-serious, other subsection (3) factors (such as a likely custodial sentence or the availability of other means of coercion) might become determinative. I do not accept that the draftsman created a predetermined rank of importance although I do accept that in most cases the seriousness of the offence will be determinative of the likely sentence and, for that reason, of proportionality.

33. Mr Fitzgerald QC did not in opening the appeal address the court upon the significance of the bracketed words in subsection (2) whose full context I repeat for convenience:

‘(2) In deciding whether the extradition would be disproportionate, the judge must take into account the specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); ...’

In writing it was suggested on behalf of the appellants that, if the judge does not give consideration to a subsection (3) factor, reasons should be given. The question arises whether the bracketed words mean that the judge has a complete discretion whether to consider all or any of the subsection (3)(a) – (c) factors or that the judge must consider them all but is free to make an assessment of their comparative weight. In my opinion, the breadth of the expression used within brackets is such that the judge may decline to give consideration to the subsection (3) factors at all but, since section 21A(1)(b) requires the proportionality decision to be made, it is a decision that must be made judicially. For example, there may be a concession made on behalf of the requested person that upon considered advice no point on

proportionality is taken; or the answer to the proportionality issue may be so obviously apparent on the face of the EAW that no analysis of the subsection (3) factors is necessary. However, in the overwhelming number of cases in which the point is taken it seems to me that the statutory function could not be performed unless the judge expressly addresses the subsection (3) issues. I also consider that the bracketed words enable the judge to give differential weight to subsection (3) factors depending upon the circumstances of the case. For example, the judge may not be able to reach a conclusion as to the likely sentence. If the judge cannot resolve the issue one way or the other, necessarily the weight to be given to the paragraph (b) factor will be reduced. I accept the submission that the judge should give reasons both when he examines the subsection (3) factors and when he finds it inappropriate to do so.

29. The reference to the Lord (now Lady) Chief Justice's Guidance is to the guidance mentioned in s 2(7C) (see above), which is now to be found in the Criminal Practice Directions 2023 (as amended). (The Lady Chief Justice has power, including power under the Courts Act 2003 and the Constitutional Reform Act 2005, to make directions as to the practice and procedure of the criminal courts.)

30. Paragraphs 1.1.3 and 1.1.4 provide:

“1.1.3 The Criminal Procedure Rules and the Criminal Practice Directions are the law.

1.1.4 They provide a code of current practice that is binding on the courts to which they are directed.”

31. The relevant paragraphs in [12.2] provide:

“12.2.1 When considering under s 21A(3)(a) of the Act the seriousness of conduct alleged to constitute the extradition offence, the judge will determine the issue on the facts of each case as set out in the warrant, subject to paragraph 12.2.2 below.

12.2.2 Where the conduct alleged to constitute the offence falls into one of the categories in the table at paragraph 12.2.4 below, unless there are exceptional circumstances, the judge should generally determine that extradition would be disproportionate. It follows under the terms of s.21A(4)(b) of the Act that the judge must order the person's discharge.

12.2.3 The exceptional circumstances referred to above in paragraph 12.2.2 include:

- a. vulnerable victim;
- b. crime committed against someone because of their disability, gender-identity, race, religion or belief, or sexual orientation;
- c. significant premeditation;
- d. multiple counts;
- e. extradition also sought for another offence;
- f. previous offending history.”

32. The Table at [12.2.4] is:

Category of offence	Examples
Minor theft – (not robbery/burglary or theft from the person)	<p>Where the theft is of a low monetary value and there is a low impact on the victim or indirect harm to others, for example:</p> <ul style="list-style-type: none"> (a) theft of an item of food from a supermarket; (b) theft of a small amount of scrap metal from company premises; (c) theft of a very small sum of money.
Minor financial offences (forgery, fraud and tax offences)	<p>Where the sums involved are small and there is a low impact on the victim and/or low indirect harm to others, for example:</p> <ul style="list-style-type: none"> (a) failure to file a tax return or invoices on time; (b) making a false statement in a tax return; (c) dishonestly applying for a tax refund;

	<p>(d) obtaining a bank loan using a forged or falsified document;</p> <p>(e) non-payment of child maintenance.</p>
Minor public order offences	<p>Where there is no suggestion the person started the trouble and the offending behaviour was, for example:</p> <p>(a) non-threatening verbal abuse of a law enforcement officer or government official;</p> <p>(b) shouting or causing a disturbance, without threats;</p> <p>(c) quarrelling in the street, without threats.</p>
Minor criminal damage (other than by fire)	For example, breaking a window.
Possession of a controlled substance (other than one with a high capacity for harm such as heroin, cocaine, LSD or crystal meth)	Where it was possession of a very small quantity and intended for personal use.

33. At [35] Pitchford LJ said:

“35. Mr Fitzgerald QC made two submissions as to the practical approach to assessment of proportionality between which, at first sight, there may be some tension. The first was that in making the assessment of seriousness and the likely penalty on conviction the judge should first consider whether a custodial sentence would be imposed for the extradition offence by a court in England and Wales. This, he argued, is the approach taken when considering the compatibility of extradition with the requested person's Convention rights under Article 8. Mr Fitzgerald relied on passages in the judgment of Lord Judge CJ in *H (H) v Deputy Prosecutor of the Italian Republic* [2012] UKSC 25; [2012] 1 AC 338 at paragraphs 131 - 132. At issue in *H (H)* was the degree to which the interests of children dependent upon the care of a requested person should weigh in the decision as to whether extradition would be a

proportionate performance of the UK's international obligations, having regard to the consequential interference with the requested person's right to respect for his family life under Article 8 ECHR. The court accepted that delay was a material consideration in the judgment of proportionality for Article 8 purposes because, during that period of delay, family ties and the nature of the dependency may have changed to such an extent that the effects of interference would have become exceptionally severe. However, in the passage to which the court was referred, Lord Judge did not suggest that sentencing decisions in England and Wales were the primary measure of seriousness or penalty; he said that it would be in very rare cases that extradition could properly be avoided if the sentencing courts in this country would, despite the interests of dependent children, impose an immediate sentence of imprisonment. At the same time the UK should be careful not to impose its own standards on the requesting state, particularly when informed that the requesting state was likely to impose such a sentence. When, however, the courts of England and Wales would either not impose a sentence of imprisonment or would suspend a sentence of imprisonment, that knowledge remained a relevant consideration to be weighed against the degree of interference with family life established, including the interests of dependent children. Secondly, Mr Fitzgerald QC argued that, "where appropriate" the judge should seek information from the requesting state as to the likely penalty in that state. The issue of practical importance for judges raised by these submissions is whether they are obliged to require advice upon the seriousness of the conduct alleged and/or the likelihood of a custodial sentence on conviction. I shall confront this issue in the following paragraphs."

34. The two paragraphs referred to from Lord Judge CJ's judgment in *H(H)* were these:

"131. ... the starting point in the sentencing decision involves an evaluation of the seriousness of the crime or crimes and the criminality of the offender who committed them or participated in their commission and a balanced assessment of the countless variety of aggravating and mitigating features which almost invariably arise in each case. In this context the interests of the children of the offender have for many years commanded principled attention, not for the sake of the offender, but for their own sakes, and the broader interests of society in their welfare, within the context of the overall objectives served by the domestic criminal justice system. Sadly the application of

this principle cannot eradicate distressing cases where the interests even of very young children cannot prevail.

132. The extradition process involves the proper fulfilment of our international obligations rather than domestic sentencing principles. So far as the interests of dependent children are concerned, perhaps the crucial difference between extradition and imprisonment in our own sentencing structures is that extradition involves the removal of a parent or parents out of the jurisdiction and the service of any sentence abroad, whereas, to the extent that with prison overcrowding the prison authorities can manage it, the family links of the defendants are firmly in mind when decisions are made about the establishment where the sentence should be served. Nevertheless for the reasons explained in *Norris* the fulfilment of our international obligations remains an imperative. *ZH (Tanzania)* did not diminish that imperative. When resistance to extradition is advanced, as in effect it is in each of these appeals, on the basis of the article 8 entitlements of dependent children and the interests of society in their welfare, it should only be in very rare cases that extradition may properly be avoided if, given the same broadly similar facts, and after making proportionate allowance as we do for the interests of dependent children, the sentencing courts here would nevertheless be likely to impose an immediate custodial sentence: any other approach would be inconsistent with the principles of international comity. At the same time, we must exercise caution not to impose our views about the seriousness of the offence or offences under consideration or the level of sentences or the arrangements for prisoner release which we are informed are likely to operate in the country seeking extradition. It certainly does not follow that extradition should be refused just because the sentencing court in this country would not order an immediate custodial sentence: however it would become relevant to the decision if the interests of a child or children might tip the sentencing scale here so as to reduce what would otherwise be an immediate custodial sentence in favour of a non-custodial sentence (including a suspended sentence).”

35. Going back to *Miraszewski*, Pitchford LJ said as follows about the statutory criteria in s 21A(3):

“Subsection (3)(a) – seriousness of the conduct alleged

36. I have already considered the general approach to seriousness in paragraphs 30 – 33 above. Section 21A(3)(a) requires consideration of ‘the seriousness of the conduct

alleged to constitute the extradition. I agree that, as Mr Fitzgerald QC argued, paragraphs (a), (b) and (c) of subsection (3) all assume an approximate parity between criminal justice regimes in member states that embrace the principles of Articles 3, 5 and 6 of the ECHR and Article 49(3) of the Charter of Fundamental Rights of the European Union. In my view, the seriousness of conduct alleged to constitute the offence is to be judged, in the first instance, against domestic standards although, as in all cases of extradition, the court will respect the views of the requesting state if they are offered. I accept Mr Summers QC's submission that the maximum penalty for the offence is a relevant consideration but it is of limited assistance because it is the seriousness of the requested person's conduct that must be assessed. Mr Fitzgerald QC's identification of 7 years imprisonment as the maximum sentence for theft in England and Wales makes the point. Some offences of theft are trivial (see the Lord Chief Justice's Guidance); others are not. In my view, the main components of the seriousness of conduct are the nature and quality of the acts alleged, the requested person's culpability for those acts and the harm caused to the victim. I would not expect a judge to adjourn to seek the requesting state's views on the subject.

Section 21A(3)(b) – the likely penalty on conviction

37. Section 21A(3)(b) requires consideration of 'the likely penalty that would be imposed if D was found guilty of the extradition offence'. Since what is being measured is the proportionality of a decision to extradite the requested person under compulsion of arrest, I consider that the principal focus of subsection (3)(b) is on the question whether it would be proportionate to order the extradition of a person who is not likely to receive a custodial sentence in the requesting state. The foundation stone for the Framework Decision is mutual respect and trust between member states. The courts of England and Wales do not treat as objectionable the possibility that sentence in the requesting state may be more severe than it would be in the UK. Raised in the course of argument was the case of a member state that imposed minimum terms of imprisonment for certain offences by reason of the particular exigencies of the crime in the territory of that state. Appropriate respect for the sentencing regime of a member state is required under subsection (3)(b); the UK has itself imposed minimum terms of custody as a matter of policy. However, in the extremely rare case when a particular penalty would be offensive to a domestic court in the circumstances of particular criminal conduct, it is in my

view within the power of the judge to adjust the weight to be given to ‘the likely penalty’ as a factor in the judgement of proportionality.

38. It would be contrary to the objectives of the Framework Decision to bring mutual respect and reasonable expedition to the extradition process if in every case the judge had to require evidence of the likely penalty from the issuing state. Furthermore, the more borderline the case for a custodial sentence the less likely it is that the answer would be of any assistance to the domestic court. Article 49(3) of the Charter of Fundamental Rights of the European Union requires that the severity of penalties must not be disproportionate to the criminal offence. The EAW procedure has since 2009, when the Charter came into effect, been the common standard for members of the Union. In my judgment, the broad terms of subsection (3)(b) permit the judge to make the assessment on the information provided and, when specific information from the requesting state is absent, he is entitled to draw inferences from the contents of the EAW and to apply domestic sentencing practice as a measure of likelihood. In a case in which the likelihood of a custodial penalty is impossible to predict the judge would be justified in placing weight on other subsection (3) factors. However, I do not exclude the possibility that in particular and unusual circumstances the judge may require further assistance before making the proportionality decision.

39. While the focus of subsection (3)(b) is upon the likelihood of a custodial penalty it does not follow that the likelihood of a non-custodial penalty precludes the judge from deciding that extradition would be proportionate. If an offence is serious the court will recognise and give effect to the public interest in prosecution. While, for example, an offence against the environment might be unlikely to attract a sentence of immediate custody the public interest in prosecution and the imposition of a fine may be a weighty consideration. The case of a fugitive with a history of disobeying court orders may require increased weight to be afforded to subsection (3)(c): it would be less likely that the requesting state would take alternative measures to secure the requested person's attendance.

Section 21A(3)(c) – less coercive measures

40. Section 21B of the Extradition Act 2003, inserted by section 159 of the Anti-Social Behaviour, Crime and Policing Act 2014, enables either the requesting state or the requested person to apply to the court for the requested person's return to the requesting state temporarily or for

communication to take place between the parties and their representatives. Section 21A(3)(c) is concerned with an examination whether less coercive measures of securing the requested person's attendance in the court of the requesting state may be available and appropriate. His attendance may be needed in pre-trial proceedings that could be conducted through a video link, the telephone or mutual legal assistance. The requested person may undertake to attend on issue of a summons or on bail under the Euro Bail scheme (if and when the scheme is in force) or the judge may be satisfied that the requested person will attend voluntarily and that extradition is not required.

41. It would be a reasonable assumption in most cases that the requesting state has, pursuant to its obligation under Article 5 (3) ECHR, already considered the taking of less coercive measures. I accept the submission made by Mr Summers QC that there is an evidential burden on the requested person to identify less coercive measures that would be appropriate in the circumstances. Where the requested person has left the requesting state with knowledge of his obligations to the requesting state's authorities but in breach of them, it seems to me unlikely that the judge will find less coercive methods appropriate. On the other hand, as the Scott Baker report recognised at paragraph 5.153 there may be occasions when the less coercive procedure is appropriate. If the requested person fails to respond to those alternative measures the issue of a further warrant and extradition could hardly be resisted.”

The district judge's judgment

21. The relevant parts of the judgment are as follows.
22. The judge set out the evidence about the Appellant's private and family life at [14]-[15]. The Appellant's proof explained that he had lived in the UK since 2019, when he arrived to take up work. He lives in Bradford with his brother, his brother's wife and their three young children. He worked with his brother in an abattoir in Bradford and then on a sheep farm. He has a settled life in the UK.
23. At [20] the judge noted the Appellant's concession that he was a fugitive.
24. At [22] the judge said that the statutory proportionality bar in s 21A had been conceded, and that it was accepted that extradition was not defeated by it.
25. At [23]-[32] the judge dealt with the Appellant's challenge under Article 8.
26. In particular he referred at [25] of his judgment to [29] of *Celinski*, where it was said that in cases in which the defendant is found to be a fugitive, the public

interest in extradition would require very strong counter-balancing factors before extradition would be disproportionate.

27. The judge listed the factors for and against extradition, as required by *Celinski*. He listed the factors against extradition as follows: (a) the Appellant has been in the UK since 2019 and has started a new and now settled work and personal life with a wife, stepson and his brother and family in the UK; (b) the loss of the Appellant as the main source of financial and emotional support for his wife and her child will plainly be difficult; (c) the Appellant has not offended in the three years he has been in the UK.

28. The judge concluded:

“28. The balancing exercise is not a numerical one and different factors have different weights. The weight to be attached to the factors tending to militate against extradition is in my judgment diminished for a number of reasons. Firstly, while the RP is a Slovakian by birth he was living in the Czech Republic from the age of thirteen to his departure at the age of 45 and lived and worked there during that time. He appears to be in good physical and mental health. There is therefore no significant evidence that he could not withstand the rigours of extradition and custody. He has established a life in the UK which was built upon precarious foundations given his fugitive status. He must have known that he might be required at some point to return to the Czech Republic to face the allegations and if convicted serve a sentence.

29. The hardship which his wife and her child will undoubtedly suffer is mitigated by a number of factors. There are no known health issues affecting the RP's wife or child. His wife may potentially enjoy support from the RP's brother and his family in the UK.

30. The reality is that the difficulties that the family left behind will suffer are not insurmountable. It would not be correct in my judgment to characterise them as ‘exceptionally severe’ (per Baroness Hale in *H(H)*).

31. There is an overwhelming public interest in ensuring that those wanted for criminal offences and who have become fugitives to avoid facing a trial and penalties upon conviction should be required to do so and the UK should not become known as a safe haven for them. Having anxiously considered and weighed the factors in favour and against extradition, I have reached the conclusion that the balance falls decisively in favour of the RP's extradition.”

Submissions

36. In relation to Article 8, Mr Joyes submitted as follows.

37. At [22] of his judgment the district judge said:

“22. No other statutory bars have been raised and I am satisfied none exist. Accordingly, and in accordance with s.11 (5) EA 2003, I must proceed under s.21A and decide whether the RP's extradition would be compatible with his ECHR rights within the meaning of the Human Rights Act 1998 and whether extradition would be disproportionate. As set out above Mr Green [then representing the Appellant] realistically does not advance an argument that extradition would be disproportionate given these are not trivial offences and carry an inevitable sentence of imprisonment, of at least six months and up to three years. Accordingly I must focus on the challenge under Article 8 ECHR.”

38. At [26(c)] the judge repeated his view that the offences were not ‘trivial’.

39. Mr Joyes said the judge had been wrong in this conclusion. He had failed to recognise the low value of the items involved. He had been wrong in [22] to refer to the likely sentence as the sole matter of relevance to the seriousness assessment.

40. As at the date of the hearing before me (July 2024), the Appellant had served the equivalent of just over six months' imprisonment. Mr Joyes said it was inconceivable that he would receive such a sentence for his offending in this country under the Sentencing Guidelines for Theft and Fraud; in neither case would custody be imposed. Had these circumstances been available to the district judge, he would have discharged the Applicant.

41. But in any event, conducting the Article 8 *Celinski* balancing exercise for myself, as Mr Joyes said I should, he said the balance came down against extradition as being a disproportionate interference with the Appellant's Article 8(1) rights. He put it thus at [25] of his Skeleton Argument:

“25. Ultimately, the Appellant has a settled private and family life in the UK, having lived here for an uninterrupted c. 5-year period. Given the very significant time he has already served in custody and the trivial nature of the underlying offending, extradition would amount to a disproportionate interference with his rights under Article 8.”

42. In relation to statutory proportionality under s 21A, Mr Joyes submitted that the judge had been wrong not to consider proportionality in a reasoned way, notwithstanding counsel's concession.

43. I can say at once I disagree with Mr Joyes on this point. As Ms Beatty pointed out, Mr Joyes' submission runs directly contrary to what Pitchford LJ said in *Miraszewski*, [33] ('... the judge may decline to give consideration to the subsection (3) factors at all, but since section 21A(1)(b) requires the proportionality decision to be made, it is a decision that must be made judicially. For example, there may be a concession made on behalf of the requested person that upon considered advice no point on proportionality is taken ...').
44. More substantially, Mr Joyes couched his submissions in terms of the judge having 'failed' to consider various things in relation to proportionality. In fairness to the judge, given the concession that had been made, it would be more accurate to couch the submissions in terms of what the judge should have decided had he been asked to do so.
45. Mr Joyes said that applying the Lady Chief Justice's guidance in [12.2] of the Criminal Practice Directions, the theft and (attempted) fraud was of a very low monetary value and there was a low impact on the victim or indirect harm to others. The Appellant's conduct could properly be characterised as 'theft of an item of food from a supermarket'. The Appellant's previous convictions were old (dating back to between 1996-2007). He has not offended since 2018 and has led a blameless life in the UK. None of the exceptional circumstances apply. As such, had he been asked to do so, the district judge should have determined that extradition would be disproportionate.
46. Additionally, Mr Joyes said having regard to the specified matters in section 21A(3), extradition would be disproportionate. He said the Appellant's offences were trivial. As to likely sentence, the fact that the offences carry a maximum sentence of three years is of little assistance in determining the likely sentence on conviction. There was little or nothing from the Czech Republic about the likely sentence; this Court should therefore look to domestic sentencing practice; that, as already submitted, no custodial sentence would be imposed here; and in any event the Appellant has served six months (so in English sentencing terms, the equivalent of a 12 month sentence).
47. Mr Joyes relied on the judgment of Dove J in *Kozak v Buda District Court, Hungary* [2023] EWHC 149 (Admin). He said at [4] of his judgment:

"4. There is no dispute between the parties that the District Judge's consideration of the question of proportionality under section 21A of the 2003 Act was insufficient and inadequate, and therefore this aspect needs to be readdressed through remaking the decision in the context of this appeal. In any event, the time that has passed with the Appellant being on remand presents a very different picture to that which was before the District Judge. Again, it is common ground that if the Appellant succeeds in relation to his argument under section 21A of the 2003 Act then there will be no need for the court to go on to deal with the article 8 points. I propose therefore to address the arguments related to section 21A first. That the question of

proportionality under section 21A requires separate assessment under the terms of the Extradition Act 2003 in relation to an accusation warrant is confirmed in the case of *Miraszewski v Poland* [2014] EWAC 4261 at paragraph 29.”

48. At [10] he said:

“10. Turning to the second issue it is a key plank of the Appellant’s submissions that he has now, in effect, served a sentence far in excess of that which would be likely if he were to be convicted in Hungary. In that latter connection it is to be noted that whilst the Appellant did not give evidence, and only provided a proof of evidence to which he did not speak, nonetheless it is admitted on his behalf that he accepts his guilt in relation to this offence. Returning to the question of the likely penalty in this case the Appellant submits that he has already served more than the maximum sentence for the equivalent offence in this jurisdiction of Forgery of a Passport. The Appellant draws attention to other authorities in England and Wales which demonstrate that in relation to like offences such as Use of a False Passport all of the sentences imposed and considered appropriate by the Court of Appeal Criminal Division were well short of 2 years.”

49. The appellant in *Kozak* was accused of a passport offence which Dove J said at [18] was not trivial. He said it was a ‘potentially serious offence, although obviously in the entire spectrum of criminal offending some way from the top end.’ However, Mr Joyes relied in particular on [22] of Dove J’s judgment:

“22. In the absence of any very clear evidence as to what Hungarian sentencing practice would be in relation to this offence beyond the provision of a maximum sentence, and some very general material on the opportunity to obtain parole, in my view very significant weight has to attach to the fact that the Appellant has already served time on remand which in my judgment greatly exceeds any sentence which might be imposed in a domestic context. In short in relation to the question posed by section 21A(3)(b) I am confident that I am entitled to conclude on the basis of the available evidence, giving particular attention in the circumstances to the position were he to be sentenced for an offence of this kind before a court in this jurisdiction, that this Appellant has served in excess of a sentence were he to be found guilty of the extradition offence.”

50. Whilst emphasising that each case on statutory proportionality is fact-specific, Dove J allowed the appeal and discharged the appellant:

“24. It is, of course, important to emphasise that in relation to assessments of proportionality of this kind no two cases are alike, and the decision in this case depends critically upon the specific circumstances which it involves. Drawing the threads together, for the reasons set out above the seriousness of the conduct in this case is a factor which clearly weighs in favour of extradition to a significant extent, together with further weight in support of extradition on the basis that less coercive measures are not a possibility. That said, for the reasons which I have set out above, in my judgment particularly significant weight in the specific circumstances of this case must be given to the lengthy period which the Appellant has already spent incarcerated on remand, and the fact that this period on remand is very likely to exceed any sentence of imprisonment which might be imposed for the extradition offence. Balancing these factors out I have concluded that it would not be proportionate for the Appellant to be extradited. Plainly, each of these cases depends very critically on the particular factual framework within which they arise. Bearing in mind the particular factual framework and the availability of evidence on relevant issues in this case, I have reached the conclusion on the basis of the evidence that extradition would be disproportionate.”

51. On behalf of the Respondent, Ms Beatty submitted as follows. Overall, she said the judge had not been wrong to reject the Appellant’s Article 8 challenge; and that extradition would not be statutorily disproportionate and so not barred by s 21A(4).
52. In relation to Article 8, she noted that there was no suggestion that the judge had applied incorrect legal principles. In relation to the issue of seriousness, the district judge fully and correctly summarised the alleged offending and rightly characterised it as not trivial. The Appellant has a number of previous convictions, and the offending in question was committed during the suspension period of the offences on AW2. She said that the fact that the Appellant had spent six months in custody on AW1 was of very limited relevance, given the further information as to possible sentence in the Czech Republic (between six months and three years).
53. Ms Beatty submitted that sentencing is a matter falling within the sole competence of the Respondent, and that I ought not to speculate as to what the eventual sentence may be. She said I should not conduct a ‘a proxy sentencing exercise’ and referred to *Swiatek v Polish Judicial Authority* [2024] EWHC 726 (Admin), [24] and [28]; and *Grigorie v Romanian Judicial Authority* [2024] EWHC 1436 (Admin), [6].
54. Overall, she said that the judge had conducted the Article 8 exercise correctly; had considered all of the relevant factors; and had not erred.

55. In relation to statutory proportionality, Ms Beatty emphasised the ‘exceptional circumstances’ aspect of the Lady Chief Justice’s guidance, including the presence of multiple counts; extradition having been sought for another offence (on AW2); and the Appellant’s previous offending. She said the presence of these factors meant the judge was right not to treat the Appellant’s alleged offending as trivial or as falling within the category of case where generally a finding of disproportionality should be made.
56. Of the factors in s 21A(3), she said that if the district judge had been asked to do so, he would have been entitled and right to reject the argument that the Appellant’s offending was of such a character so that that extradition would be disproportionate.

Discussion

57. I begin my discussion with two preliminary points. Firstly, I propose to adopt the approach of Dove J in *Kozak* and deal with statutory proportionality under s 21A first. If I find for the Appellant in relation to that bar then it will be unnecessary for me to consider Article 8. Second, because the district judge in this case did not deal with statutory proportionality in any detail given the concession which was made, it is for me to make my own assessment by reference to the statutory criteria in s 21A(3).
58. In *Swiatek*, [23]-[24], Bennathan J said as follows, with which I broadly agree:

“23. The Divisional Court considered the effect of section 21A of the Act in *Miraszewski v Poland* [2014] EWHC 4261 (Admin). From that decision I extract the following principles as being of relevance to this appeal [with paragraph references being to the Divisional Court’s judgement]:

(1) Section 21A creates two separate bars to extradition in an accusation case, whether extradition would be incompatible with a Convention right *and* whether extradition would be disproportionate. While the factors influencing those decisions may overlap, they require separate consideration [paragraph 29].

(2) The words in brackets in section 21A (2) [‘*so far as the judge thinks it appropriate to do so*’] mean that the judge is permitted to arrive at their conclusion without regard to one or more of the specified matters in subsection 3 [seriousness, likely penalty, less coercive measures] but should explain their reasons for proceeding in that way [paragraph 33].

(3) The Court referred to the District Judge considering domestic criminal law, stating that in the assessment of seriousness [for subsection 3a] the conduct is initially to be

judged against domestic standards [paragraph 36], and in the assessment of the likely penalty [for subsection 3b] the judge was "*entitled*" to have regard to domestic sentencing practice [paragraph 38]. The Court reached those conclusions after hearing submissions founded on Lord Judge's judgment in *HH*, as extracted above.

24. In my view it is a mistake to treat the judgments of Lord Judge in *HH* and Lord Justice Pitchford in *Miraszewski* as laying down an immutable procedure whereby a District Judge considering section 21A (3) will fall into error and be liable to being overturned on appeal if they choose not to embark on a detailed analysis of domestic sentencing guidelines. I do not think Lord Justice Pitchford's reference to an initial assessment of seriousness need amount to any more than a Judge making clear [possibly based, explicitly or implicitly, on no more than their everyday experience of the criminal courts] that allegations such as drug dealing over a prolonged period of time are clearly "serious". The use of the word "*entitled*" makes clear that in assessing "*likely penalty*" a judge can look at domestic sentencing policy only if he or she thinks fit to do so. Neither judgment suggests any more prescriptive approach."

59. Turning to the criteria in s 21A(3), I do consider that the judge was wrong to label the offences on AW1 as not 'trivial'. Ms Beatty was right to point out that they fall outside the categories of offence in the Criminal Practice Directions where the judge should generally find the proportionality bar to be made out because of the presence of what are called 'exceptional factors', including that there is more than one offence on AW1, and the offending was committed during the suspension period of a suspended sentence (which is not a specific listed factor, but plainly relevant). On the other hand, as [28] and [32] of *Miraszewski* make clear, 'non-serious' or trivial offences are not limited to those in the table in [12.2.4]. Mr Fitzgerald KC's description in *Miraszewski* of the table as having established 'a floor rather than a ceiling' has passed into the extradition lexicon.
60. It seems to me that no-one could reasonably dispute that the shoplifting of two bottles of wine and the attempted and unsuccessful use of a credit card are not serious, even when the other factors are taken into account. This is a subjective assessment. However, it is a conclusion which is reinforced by reference to the relevant domestic Sentencing Guidelines, which I am entitled to take into account, as *Miraszewski* makes clear. I agree with Mr Joyes' domestic sentencing analysis in footnotes 1 and 2 of his Skeleton Argument. The Sentencing Guideline for Theft does not contemplate a prison sentence for thefts of low value goods (up to £500 and little or no significant additional harm to the victim or others) unless one or more of the following factors are present: (a) leading role where offending is part of a group activity; (b) involvement of others through coercion, intimidation or exploitation; (c) breach of a high degree of trust or responsibility; (d) sophisticated nature of offence/significant

planning; (e) theft involving intimidation or the use or threat of force; (f) deliberately targeting victim on basis of vulnerability. In relation to Fraud, under the Guideline the Appellant's offence would be one of lesser culpability (opportunistic 'one-off' offence; very little or no planning) and lowest level financial harm (less than £5,000; starting point based on £2,500). As such, the sentencing category range would be 'Discharge – Medium level community order' with a starting point of 'Band B fine'. That is even assuming the use of the credit card were separately charged: as Mr Joyes pointed out, I think rightly, in reality this was all one course of conduct.

61. I turn to the second factor in s 21A(3), namely 'the likely penalty that would be imposed if D was found guilty of the extradition offence'. The assessment needs to commence with the consideration of what is known about the likely outcome in the Czech Republic, and what information there is before the court as to Czech sentencing practice. True it is that the Respondent has served further information indicating that the minimum sentence would be six months, and the maximum sentence three years. However, given it is common ground that the Appellant has served at least this minimum sentence (plus a little more besides), where this leaves me is simply with what the maximum sentence is. However, the maximum sentence is designed to cover a wide range of offending and culpability and a broad spectrum of the circumstances of offenders, as Dove J said in *Kozak* at [19]. Applying the observations contained in [36] of *Miraszewski* the maximum sentence, whilst relevant, is of limited assistance because the question posed relates to Appellant's specific conduct. No other information is available to me. The Czech judicial authority specifically declined to provide any further information as to likely sentence based on the concrete facts of this case. I am not being critical in saying that, but it leaves me with limited information to assist me with Czech sentencing practice. I would also add that the reason for a minimum sentence of six months was not explained. The relevant provision of Czech law was cited, but in the absence of further explanation of what that provides I cannot make anything of it. I am not a Czech lawyer.
62. As set out in *Miraszewski*, [38], in circumstances where information from the requesting judicial authority is absent I am 'entitled to draw inferences from the contents of the EAW and to apply domestic sentencing practice as a measure of likelihood'. When undertaking this assessment, the evidence as to likely sentence in a domestic context is clear, as I have explained already. It is obvious that the Appellant has already served on remand a sentence in excess of any sentence that might be imposed by a domestic court for offending of this kind even in the vanishingly unlikely event that a custodial sentence would somehow be imposed.
63. In the absence of any clear evidence as to what Czech sentencing practice would be in relation to the Appellant's conduct, beyond the provision of a three year maximum sentence, in my view, as in *Kozak*, significant weight must be attached to the fact that the Appellant has already served time on remand which unarguably exceeds any sentence which might be imposed in a domestic context. In short, in relation to the question posed by s 21A(3)(b), I am confident that I am entitled to conclude on the basis of the available evidence,

giving particular attention in the circumstances to the position were he to be sentenced for an offence or offences of this kind before a court in this jurisdiction, that this Appellant has served in excess of a sentence were he to be found guilty of the extradition offence.

64. I am aided in that conclusion by the offences on AW2. I set these out earlier. On any view, the theft of a mobile phone and an ID card and €100 cash is more serious the offences on AW1 and yet that offending only resulted in a (suspended) sentence of five months' imprisonment. Whilst I cannot go behind what the Respondent has said in terms of range of penalty for the AW1 offences, I do feel able to say with some confidence that any sentence would very likely be much further towards the lower end of that range than towards the three year maximum.
65. Turning to the third question, namely that of less coercive measures, in response to a direct query the Respondent has made clear its wish to proceed with the request for the Appellant's extradition. I am bound to attach weight to this as being in favour of extradition in my proportionality assessment.
66. Taking matters together, despite Ms Beatty's clear and helpful submissions, I have concluded that extradition in this case would be disproportionate because of the plain lack of seriousness and what I have found to be the high likelihood that the Appellant has served any sentence which likely would be imposed in the Czech Republic. In my judgment the theft of two bottles of wine is exactly the sort of offence which s 21A was designed to weed out of the extradition system as a disproportionate use of resources and, more importantly, a disproportionate restriction of liberty.
67. In reaching this conclusion I have also had regard to the emphasis which, post-Brexit, the Trade and Cooperation Agreement between the UK and the EU, Treaty Series No 8, 2021, places on proportionality as compared with the previous intra-EU European arrest warrant arrangements. In *Dujka v Czech Judicial Authority* [2023] EWHC 1842 (Admin), [22], Sir Ross Cranston (sitting as a judge of the High Court) described proportionality as having 'pride of place' at the beginning of Title VII, in Article 597, which provides:

"Cooperation through the arrest warrant shall be necessary and proportionate, taking into account the rights of the requested person and the interests of the victims, and having regard to the seriousness of the act, the likely penalty that would be imposed and the possibility of a State taking measures less coercive than the surrender of the requested person particularly with a view to avoiding unnecessarily long periods of pre-trial detention."

Conclusion

68. I therefore allow the appeal and quash the order for the Appellant's extradition. This makes it unnecessary to consider the Appellant's Article 8 challenge.