Neutral Citation Number: [2021] EWHC 923 (Admin)

Case No: CO/254/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/04/2021

Before:

LADY JUSTICE CARR DBE
and
MRS JUSTICE CHEEMA-GRUBB DBE

- -

Between:

HEKRI DOMI	**Appellant**
- and -	
THE PUBLIC PROSECUTOR'S OFFICE, COURT OF UDINE (AN ITALIAN JUDICIAL AUTHORITY)	**Respondent**

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- -

Tom Hickman QC and Myles Grandison (instructed by **Lansbury Worthington Solicitors**) for the **Appellant**
David Perry QC and Catherine Brown (instructed by the **Extradition Unit, Crown Prosecution Service**) for the **Respondent**

Hearing date: 24 March 2021

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Approved Judgment

"Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.00am 19 April 2021."

Lady Justice Carr DBE:

Introduction

1. The Appellant, Mr Hekri Domi, is a 27 year old Albanian citizen. On 19 December 2018 the Respondent, the Public Prosecutor's Office at the Court of Udine, Italy, issued three European Arrest Warrants seeking his extradition ("the EAWs"). The EAWs are conviction warrants seeking the Appellant's return to Italy in order to serve an overall sentence of ten years and four months' imprisonment (of which nine years, nine months and 22 days remain to be served). Italy is a Part 1 territory for the purpose of the Extradition Act 2003 ("the 2003 Act").

2. On 20 January 2020 District Judge McGarva ("the District Judge") ordered the Appellant's extradition pursuant to s. 21(3) of the 2003 Act. This is the Appellant's appeal pursuant to s. 26 of the 2003 Act against that order. By s. 27(2) this court can allow the appeal if:

> "(a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
>
> (b) if he had decided that question in the way he ought to have done, he would have been required to order the person's discharge."

3. The appeal raises questions as to the circumstances in which, if at all, an individual who has been deported from a territory is to be treated as present at a subsequent criminal trial in that territory for the purpose of s. 20 of the 2003 Act ("s. 20") and the scope (and correctness) of the decision in *Cretu v Local Court of Suceava, Romania* [2016] EWHC 353 (Admin); [2016] 1 WLR 3344 ("*Cretu*"). The court is asked, amongst other things, to consider the interplay between the 2003 Act and the Council Framework Decision 2002/584/JHA (as amended by Council Framework Decision 2009/299/JHA ("the 2009 Framework Decision")) ("the 2002 Framework Decision") in the context of the District Judge's findings on the facts.

4. As set out more particularly below, the issues fall to be decided by reference to the law applicable before the end of the transition period governing the departure of the United Kingdom ("UK") from the European Union ("EU") on 31 December 2020. In order to resolve them the court has had the benefit of helpful submissions from Mr Hickman QC and Mr Grandison for the Appellant and Mr Perry QC and Ms Brown for the Respondent.

The Facts

5. The Appellant was born on 10 March 1994 in Albania. In September 2009, at the age of 15, he moved to Udine in Italy. He wanted a better life: to study and then to work. He reported to the Italian police on arrival and was sent to a college for unaccompanied immigrant children.

6. On 20 April 2011 the Appellant committed "robbery" and "bodily injury" offences ("the EAW 2 offences"). The offending involved a joint enterprise armed robbery on a

supermarket using a toy gun; the Appellant was armed with a knife. Violence was used against two female members of staff and €1,800 taken.

7. The Appellant was arrested on 21 April 2011 and placed in pre-trial custody on 23 April 2011. On that occasion the Appellant requested an "abbreviated" trial (*rito abbreviato*) (granting him a right to a one-third reduction in sentence in the event of conviction). On 4 October 2011, upon request by the Appellant's court-appointed lawyer, Avv. Petaryni, the Judge ordered that pre-trial custody be replaced with a community order. An order was made suspending the trial for a year in order for the Appellant to be placed on probation and monitored. That order, however, was subsequently revoked on the basis of non-compliance by the Appellant. After a further suspension was terminated for violation of conditions by the Appellant, the trial commenced and proceeded. On 18 May 2012 a sentence of three years' imprisonment was imposed. It was suspended at that stage ("the EAW 2 sentence"). The sentence became final on 4 July 2012.

8. On 11 October 2012 the Appellant is said to have committed "robbery", "unlawful carrying of arms and objects able to inflict injuries" and "bodily injury" ("the EAW 1 offences"). The offending involved the threatening of a shop assistant with a box cutter in order to steal €350. During the course of his escape, he was encountered by a man whom he pushed to the floor, causing injuries.

9. Between 20 and 22 January 2013 the Appellant committed offences of "extortion" (twice), "resisting a public official" and "unlawful possession and carrying of weapons ("the EAW 3 offences"). The Appellant robbed a man of money and jewellery and then sought money for return of the jewellery. When arrested, the Appellant used violence on police officers and was found to be in possession of a 27 cm knife. He was remanded in custody on these offences on 22 January 2013.

10. On 13 February 2013 the Appellant was served with a "notice of the end of the preliminary investigations" in respect of the EAW 1 offences and informed of his rights to appoint a lawyer of his choice and declare/elect domicile for service. He was also notified of the obligation to inform the Italian authorities of any change in the declared/elected domicile. At first, the Appellant did not appoint a lawyer of his choice to represent him in relation to the EAW 1 offences, so the Judicial Police confirmed the appointment of the court appointed lawyer, Avv. Cassina. However, on 27 April 2013 the Appellant instructed Avv. Crosilla to represent him in relation to the EAW 1 offences. He met her for the first time on 30 April 2013 when he attended court for a preliminary hearing. On his instructions, Avv. Crosilla sought and obtained an adjournment (of six weeks) until 11 June 2013 in order for her to take further instructions. The Appellant's case is that she never took any such instructions. The Appellant was returned to custody. Avv. Crosilla at no stage visited him prior to his deportation.

11. On 13 May 2013 the Appellant appeared in court in respect of the charges on the EAW 3 offences. He was represented by Avv. Cassina. Following another "abbreviated" trial procedure, he was sentenced to a term of two years and six months' imprisonment, suspended ("the EAW 3 sentence") and released on probation.

12. On 13 May 2013 the Appellant was served with a deportation order ("the deportation order") and deported to Albania on 15 May 2013. That deportation order was made not

by the courts but was an administrative order made by the Prefect of Udine on the basis that the Appellant had overstayed his expired residence permit for more than 60 days and not applied for a renewal. This was apparent on the face of the order. It had nothing to do with any of the EAW 1, 2 or 3 offences. The deportation order stated that it would be a criminal offence for him to return to Italy within a minimum period of five years "save obtaining specific authorisation from the Ministry of the Interior". Failure to abide by the deportation order would result in a sentence of up to four years.

13. The Appellant's position is that he (genuinely and reasonably) believed that his deportation brought all of the criminal proceedings in Italy to an end.

14. However, the criminal proceedings in Italy in relation to the EAW 1 offences continued. On 11 June 2013 the adjourned preliminary hearing took place, attended again by Avv. Crosilla for the Appellant. On 4 November 2014 the Appellant was convicted on the charges relating to the EAW 1 offences. Again, although he was not personally present, he was represented at the hearing by Avv. Crosilla. He was sentenced to four years and 10 months' imprisonment. This led to the activation by the court of the EAW 2 and 3 (suspended) sentences which were "included in the order of enforcement of concurring sentences". A total sentence of 10 years and four months' imprisonment was thus imposed. The judgment of 4 November 2014 ("the November 2014 judgment") became final on 18 February 2015. An order of enforcement of the amalgamated sentences was issued on 2 May 2016.

15. The Appellant points to the fact that the convictions for the EAW 1 offences (committed in October 2012) were relied on to justify activation of the EAW 3 sentence (as well as the EAW 2 sentence) (even though the EAW 1 offending pre-dated the operational period of the EAW 3 sentence). However, whilst this would not have been the approach of the English criminal courts, it was permitted as a matter of Italian law.

16. Following his deportation to Albania in 2013, the Appellant arrived in the United Kingdom in March 2015 with his then girlfriend, with whom he had been in a relationship since 2010. She obtained work as a receptionist and he worked in a restaurant and then as a gardener. They married in May 2016 and had a son in June 2017. The Appellant was able to obtain a residence card on the basis that he was a family member of an EEA national exercising Treaty rights in the United Kingdom. Once he had a full right to work he started as a labourer for Kilhan Construction. He has worked his way up to become a foreman. His wife works in customer services and is due to give birth to their second child imminently. He is the main breadwinner in the family. His parents have lived with him in the United Kingdom since December 2018. His mother has never worked and his father has an arm injury which prevents him from doing so. The Appellant has not committed any offences in this jurisdiction.

The EAWs

17. The EAWs were issued on 19 December 2018. The warrant in respect of the EAW 1 offences ("EAW 1") was certified by the National Crime Agency on 14 January 2019, and the Appellant was arrested on 17 February 2019. The warrants in respect of the EAW 2 and 3 offences ("EAW 2") ("EAW 3") were certified by the National Crime Agency on 15 July 2019 and the Appellant was arrested on them on 8 October 2019. The EAWs were supplemented by further information from the Italian authorities (in

documents dated 18 March 2019, 27 March 2019 and 19 August 2019 which are set out and/or the contents of which are reflected in the narrative below).

18. In EAW 1 the Respondent, having indicated that the Appellant did not appear in person at the trial resulting in the decision, marked Box D3.2. In so doing it was declared that:

> "Being aware of the date of trial, the person has instructed counsel, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsel at trial."

The Respondent continued in Box D.4 when asked "to specify how the relevant condition [3.2] was met":

> "During the criminal proceedings against him, [the Appellant] elected domicile with the law firm of lawyer Anna Maria Cassina practising in Udine for purposes of services of process, and he expressed his will to receive there any notice of the criminal proceedings pending against him. The service of any document including the decree for committal to trial - with an express notice that if he failed to appear in court without any justified reason the trial would take place in absentia - was carried out with the law firm of Anna Maria Cassina as requested by the person concerned.
>
> [The Appellant] also appointed a defence lawyer of his choice, lawyer Katia Crosilla practising in Udine who assisted him during the trial.
>
> [The Appellant] was deported from Italy on 15 May 2013 and he did not make any request to return to Italy to attend the trial although he would have been entitled to do so under Article 17 of the legislative Decree of 25 July 1998 no. 286. [A foreigner who is a victim or a person subjected to criminal proceedings shall be authorised to return to Italy or a period of time strictly necessary to exercise his/her defence rights for the sole purpose of attending a trial or the enforcement of a measure requiring his/her presence. The authorisation shall be made by the questore (head of a central police station) including through diplomatic or consular representation upon documented request by a victim, defendant or defence lawyer].
>
> Therefore [the Appellant] had knowledge of the proceedings against him that was concluded by a decision and it was his free choice not to attend the trial."

19. Further information dated 27 March 2019 stated that on 13 February 2013, while on remand for the EAW 3 offences, the Appellant was served with a "notice of the end of the preliminary investigations" in respect of the EAW 1 offences. He was also informed of his right to appoint a lawyer of his choice and declare/elect domicile for service. He was also notified of his obligation to inform the Italian authorities of any change in his

declared/elected domicile. The Appellant did not appoint a lawyer of his choice, so the Judicial Police confirmed the appointment of the lawyer previously appointed by the court, Avv. Cassina; the Appellant had therefore selected Avv. Cassina's offices as his address for service, "signing the relevant minutes". He later, on 27 April 2013, appointed a lawyer of his choice, Avv. Crosilla, thereby revoking the appointment of Avv. Cassina as his defence advocate. The preliminary hearing took place on 30 April 2013. The appellant was present at that hearing, along with Avv. Crosilla. Ms Crosilla sought an adjournment in order to prepare the Appellant's defence. The application was granted and the hearing was adjourned for six weeks to 11 June 2013:

> "Both Av. Crosilla and [the Appellant] thus had knowledge of the request made by the Public Prosecutor for his committal to stand trial before the Preliminary Hearing Judge. Since [the Appellant] was also present at the hearing of 30 April 2013, he was sure to know that that same hearing had been adjourned until 11 June 2013...
>
> As set forth above, [the Appellant] was aware of the request for committal for trial made against him by the Public Prosecutor he was present at the preliminary hearing of 30 April 2013 and had knowledge of the fact that the hearing had been adjourned, at the request of his defence counsel of choice, until 11 June 2013. It was thus impossible to imagine that [the Appellant] would not be prosecuted for the facts committed on 11 October 2012."

20. In EAW 2 the Respondent indicated that the Appellant did not personally appear at the trial resulting in the decision but, having been aware of the trial date, had instructed counsel to defend him and had been defended by that counsel at the trial.

21. Box D.4 stated that the Appellant was arrested on 21 April 2011 and was placed in pre-trial custody on 23 April 2011. On 11 May 2011 the Pre-trial Investigation Judge, issued a decree for immediate trial. In the aftermath, the Appellant requested to be tried on the basis of the abbreviated trial procedure. At a hearing on 4 October 2011, upon request by the Appellant's defence lawyer, Avv. Petaryni who was appointed by the court, the Judge ordered that pre-trial custody in prison ought to be replaced with a less severe measure and imposed a community order. On the same day, once the Appellant had been released from custody, an order suspending the trial for a year was issued for the defendant to be placed on probation on the basis of a project for supervision of minors. That order was revoked due to the Appellant's serious non-compliance with the terms. The trial commenced again. The Appellant participated in the first stage, and requested trial on an abbreviated basis. He obtained suspension of trial under a project of rehabilitation, but violated the directions and interrupted contact with the supervising office. The trial resumed in his absence on the basis of an abbreviated trial with the result that, upon his conviction, he received a reduction in sentence.

22. In EAW 3 the Respondent indicated that the Appellant appeared in person at the trial resulting in the decision.

The Appellant's attempts to appeal conviction and sentence on the EAW 1 offences

23. Shortly after his arrest in this country in February 2019, on 28 March 2019 an Italian lawyer for the Appellant filed an application requesting "non-execution of the [November 2014 judgment]" or, "subordinately" leave to file an out-of-time appeal against the November 2014 judgment under Article 175 of the Code of Criminal Procedure.

24. By order of 16 April 2019 the Court of Udine sitting as a panel of judges rejected the application for an out of time appeal, "holding unsubstantiated the grounds supporting the thesis that [the Appellant] did not have effective knowledge of the trial".

25. On 2 May 2019 the Appellant appealed the rejection of his application for leave to file an out of time appeal against the November 2014 judgment to the Supreme Court of Cassation. It appears that the Supreme Court of Cassation rejected that appeal.

26. The Appellant appealed to the European Court of Human Rights ("the ECHR"). On 8 October 2020 the ECHR, having examined the application (which was introduced on 16 March 2020), declared it inadmissible:

> "The Court finds in the light of all the material in its possession that the matters complained of do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto. Accordingly, these complaints are manifestly ill-founded within the meaning of Article 35 para 3(a)".

The decision to order extradition

27. The extradition hearing on all three EAWs took place before the District Judge on 18 December 2019. The Appellant, his wife and an expert witness on Italian criminal law, Avv. Benito Capellupo, gave evidence. Judgment was handed down in writing on 20 January 2020 ("the Judgment").

28. The District Judge rehearsed the evidence. In relation to the Appellant's evidence, he emphasised the Appellant's reliance on his youth (18 years old) at the time of deportation and that he thought that his deportation to Albania was "an end of it all". His evidence was described as "fairly vague". As for the evidence of Avv. Capellupo, the District Judge recorded the following (at [20]):

> "….In Italian law a defendant is deemed present if he is represented by a lawyer. There was nothing improper in Italian law with the court proceeding in the absence of [the Appellant]. There was a responsibility on the part of [the Appellant] to stay in touch with his Italian lawyer following his deportation. Avv. Capellupo emphasised that [the Appellant] had left his registered domicile as the duty lawyer Avv. Cassina not Avv. Crosilla. Avv. Cassina's appointment was rescinded by the appointment of Avv. Crosilla; Avv. Capellupo was unable to find any evidence of a change in domicile being recorded…."

29. The District Judge recorded that the deportation was not imposed by the court but by the Prefect of Udine (under Article 12 paragraph 2(b) of the Legislative Decree 286/1998) on the basis that the Appellant's leave to remain had expired.

30. The District Judge rejected the Appellant's evidence to the effect that the charges in relation to the EAW 1 offending were dropped in April 2013 because of a lack of evidence or that he was told by Avv. Cassina that the deportation order was an alternative to the continuation of criminal proceedings. The Appellant's evidence was vague and contradictory in this regard, and such advice would not have been accurate.

31. At [28] of the Judgment, the District Judge stated that, whist the Appellant was not told in the deportation order of his right to return to Italy for trial, the District Judge would have expected his lawyer to advise him of that right if he had asked her "which he did not. Such advice was not given because [the Appellant] did not contact his lawyer after his deportation."

32. The District Judge found that Avv. Crosilla, the Appellant's lawyer of choice, had only seen the Appellant once at court on 30 April 2013 and did not have instructions beyond what she was told at that hearing. She did not visit him in prison.

33. The District Judge went on (at [29]) to find that the Appellant had assumed that the criminal proceedings in relation to the EAW 1 offences were suspended or completed. However, this assumption was not reasonable:

> "[The Appellant] was not told by anyone that these proceedings were over or suspended; it was his assumption; based on that assumption he chose not to attend the hearing in June 2013 and also on the basis of that assumption made no inquiry of his lawyer as to the status of the proceedings or whether he would be allowed to return to Italy for the Court hearing. His assumption was not a reasonable one and was really a case of him "burying his head in the sand". He showed a distinct lack of diligence which cannot be excused by his relative youth."

34. At [30] the District Judge also held that the Appellant had not been voluntarily absent from his trial in November 2014; he had been deported from Italy:

> "He was not made aware of his right to return to Italy to take part in the trial, although even if he had been he would not have availed himself of it because he did not believe the matter was continuing. In these circumstances he cannot be regarded as a fugitive; he has not sought to put himself beyond justice. In Italian law he was deemed present at his trial because he was represented by the lawyer of his choice. [The Appellant] did not show due diligence by checking whether the proceedings were ongoing. I do not find that this lack of diligence allows me to conclude that he had chosen to put himself deliberately out of reach of the Requesting Judicial Authority."

35. At [33] the District Judge stated:

> "Whether Mr Domi has the status of a fugitive is very important in these proceedings. He was forcibly removed from Italy before his trial on EAW1 and was informed the penalty for returning was prison; he was not informed of the right to request to return for the trial, however he did not show due diligence he put his head in the sand and assumed it would all go away so long as he did not return to Italy. I cannot view him as a fugitive, that is someone who has chosen to put himself beyond the reach of the Italian court system but his lack of diligence is relevant to some of the bars to extradition which have been raised."

36. The District Judge went on to consider the passage of time (by reference to s. 14 of the 2003 Act), concluding that extradition would not be unjust or oppressive, and then s. 20 (at [38]). Given that he was bound by the decision in *Cretu*, the Appellant was deemed to be present by virtue of having instructed his lawyer of choice who was present at trial:

> "[The Appellant] did attend the preliminary hearing of his trial on EAW 1 in April 2013 and was represented by his lawyer of choice Avv. Crosilla, she requested an adjournment and the case was relisted for June 2013; he chose not to attend believing that he was barred from returning to Italy and more significantly because he wrongly believed the proceedings were in abeyance and would stay so provided he did not return to Italy. Under Italian law he was deemed present by the attendance of his lawyer of choice, she did not withdraw and continued to represent him in the case, he also has an obligation to stay in touch with his lawyer and give instructions which he failed to do. Having regard to the decision in Cretu Mr Grandison on behalf of [the Appellant] accepts that I am bound by the case and that only the High Court or Supreme Court can rule contrary to it so I am unable to find the bar under section 20 applies as he is deemed to be present by virtue of having instructed his lawyer of choice. She was present at the trial, although I accept she only had instructions given at the hearing on 30th April and I can infer she was not ready for trial because she asked for an adjournment to take further instructions. It is not possible for me to speculate on the adequacy of her instructions although I note she did not seek to withdraw from representing [the Appellant] in the Proceedings."

37. As for Article 6 (and Article 5), the hurdle for the Appellant to cross was high. The District Judge considered the domestic case of *R v Raymond Gavin* [2011] Cr App R (S) 126 and the decision of the European Court in *Othman v UK* [2012] 55 EHRR 1 ("*Othman*"). He concluded that there had been no flagrant breach of the Appellant's rights. At [41] he stated:

> "The Italian legal system allows for matters to proceed in the absence of the defendant where they are represented by the lawyer of their choice, a fact confirmed by…Avv. Capellupo and I have to presume applying the principle of mutual recognition

> and trust that steps are taken to ensure that the Requested Person's Article 6 rights are honoured. Avv. Capellupo also confirms that in the Italian legal system it is the obligation of the defendant to stay in contact with his lawyer. It is not the State's duty to ensure that the instructed advocate has adequate instructions and of course had the advocate withdrawn the position under section 20 would have warranted further consideration. I do not conclude that there has been a flagrant breach of [the Appellant's] rights under Article 6. Although he was rendered absent by an arm of the State albeit not the Court but the Prefect's office, he did have the right to request to return for his trial and I am sure he would have been informed of this had he spoken to his lawyer who would also have confirmed that contrary to his assumption that the proceedings were not at an end. His failure to attend was therefore in part due to the Italian State but also in part due to his lack of diligence and this distinguishes this case from *R v Gavin.* Whilst there may have been a breach of Article 6….[the Appellant's] lack of diligence means I can conclude that his conviction was not based on a flagrantly unfair and incompliant trial; it was not the State of Italy that was predominantly to blame but the Requested Person who "turned a blind eye to the obvious"."

38. The District Judge then carried out the *Celinski*[1] balancing exercise, concluding that the balance lay firmly in favour of extradition. He also rejected the submission for the Appellant that there had been an abuse of process such as to justify barring extradition.

39. He proceeded to make the order for extradition. It is common ground that the Appellant has no right to a retrial or rehearing if he is returned to Italy.

Grounds of appeal

40. Two overarching grounds of appeal are advanced:

i) Ground 1: The District Judge erred in concluding that the Appellant "deliberately absented himself from his trial" on the EAW 1 offences and so wrongly failed to discharge him under s. 20(5) of the 2003 Act:

a) The conditions of Article 4a(1)(b) of the 2002 Framework Decision ("Article 4a(1)(b)") were not satisfied because the Appellant was unaware of the trial on 4 November 2014 and had not given a mandate to Avv. Crosilla to defend him at that trial;

b) Even if the conditions of Article 4a(1)(b) were met, ss. 20(3) and (5) cannot be read as permitting the District Judge to do other than discharge the Appellant, given his clear findings of fact that the Appellant was not absent from his trial voluntarily (and had not waived his right to be present);

[1] *Polish Judicial Authority v Celinski and others* [2015] EWHC 1274 (Admin); [2016] 1 WLR 551 ("*Celinski"*).

ii) Ground 2: The District Judge erred in concluding for the purpose of s. 21 that the extradition of the Appellant would not be contrary to his rights under Article 5 and Article 8 of the European Convention on Human Rights ("Article 5") ("Article 8"):

a) There was no evidence capable of supporting the conclusion that it was unreasonable for the Appellant to believe, having been deported and told that he could not return for at least five years, that the criminal proceedings against him in Italy would not be continuing. This conclusion and the finding that this was the Appellant's genuine belief are mutually inconsistent;

b) In the facts and circumstances of this case, the extradition of the Appellant would result in his detention following a process which, viewed as a whole, was "flagrantly unfair" and/or would represent a disproportionate interference with his rights (and those of his wife and child) to private and family life.

41. The grounds were developed, in summary, as follows.

42. In support of Ground 1 it is said:

i) The District Judge's ruling that *Cretu* required him to hold that the Appellant was not absent from his trial for the purpose of s.20 since he was represented by a lawyer of his choosing at trial reflected the concession made before him to this effect on behalf of the Appellant. However, it was indicated at the time that the Appellant would argue before this court that it should, so far as necessary, depart from *Cretu* on this point. Amongst other things, it is said that Article 4a(1)(b) was not in issue in *Cretu*;

ii) Article 4a(1)(b) was not satisfied: the Appellant was not "aware of the scheduled trial" and had not "given a mandate…to [Avv. Crosilla] to defend him...at the trial";

iii) It is well established that when an EAW is ambiguous or confusing the court must determine on the evidence before it whether the conditions stipulated are satisfied. The EAW is ambiguous or confusing. (It is to be noted that, if this proposition were correct, the concession made on behalf of the Appellant (even on the basis that *Cretu* was correct) went too far);

iv) But ambiguity is not a pre-condition for the court exercising an independent judgment on the evidence before it. The concepts and conditions in Article 4a(1), unless expressed to be reflective of national law, are autonomous EU concepts: see *Dworzecki* Case C-108/16 PPU ("*Dworzecki*") at [30] and [32]; *Criminal Proceedings against Zdziaszek* Case C-271/17 PPU; [2017] 4 WLR 189 (CJEU) ("*Zdziaszek*") at [33] to [35] and *TR* Case C-416/20 PPU ("*TR*") at [48] to [50]. The fact that the Requesting Authority has ticked the relevant box to affirm satisfaction of conditions under Article 4a(1) is not determinative. Domestic courts must still reach an independent judgment on the facts and evidence before them;

v) The information and evidence before the Judge demonstrated that the Appellant was not aware of the scheduled date of trial. When he was deported, the trial had yet to be scheduled. He was never aware of the date (as opposed to being aware of the proceedings). Equally, there was no evidence to show that he had "mandated" an advocate to defend him at the trial (as opposed to merely appointing an advocate). Reliance is placed on Recital 10 to the 2009 Framework Decision: the mandate must be more than mere appointment. The mandate must be to defend the person at trial in a manner that is practical and effective and in a manner which represents a deliberate decision not to have appeared in person. The District Judge's findings are inconsistent with Avv. Crosilla having had such a mandate;

vi) In any event, even if the terms of Article 4a(1)(b) were met, it is not permissible to interpret s. 20 in a way that allows the court to hold that its conditions were met such as to permit surrender. Ss. 20(1) and (3) prohibit extradition on the facts found by the District Judge, notwithstanding the terms of Article 4a(1)(b). The District Judge found that the Appellant was not present in person when convicted and further that he had not deliberately absented himself - he was not even voluntarily absent - because of his deportation. Against these findings the District Judge had to conclude, given that it is common ground that there is no possibility of a retrial, that the Appellant fell to be discharged. Any other conclusion "would subvert Parliament's intention in s. 20";

vii) S. 20(1) raises a question of fact for the English court to decide: was the person there or not? There is no scope for deemed presence under s. 20(1). There would have to be an express legislative provision if deemed presence were to suffice (cf. s. 122 of the Magistrates' Court Act 1980);

viii) In this regard, the comments of Burnett LJ (as he then was) in *Cretu* at [34 (iii)] are obiter (and the decision in *Ticu v Romania* [2018] EWHC 269 (Admin) ("*Ticu*") was wrongly decided). If s. 20 is interpreted in a way that does not reflect a form of deliberate absenteeism, that interpretation does not correspond to s. 20(3). Whilst Burnett LJ was correct to state that the courts must ordinarily read s. 20 in the light of Article 4a(1), the courts are "bound to give precedence to the Act in circumstances where it cannot be read in conformity with the 2002 Framework Decision";

ix) Framework Decisions do not have direct effect and the principle of conforming interpretation has its limits (see *Assange v Swedish Prosecution Authority (Nos 1 & 2)* [2012] UKSC 22; [2012] 2 AC 471 at [203] per Lord Mance). The obligation on a national court to refer to the 2002 Framework Decision when interpreting domestic law cannot serve as the basis for an interpretation of national law *contra legem* (see *Criminal Proceedings against Poplawski* Case C-579/15; [2017] 4 WLR 173 ("*Poplawski*") at [33] and [34]).

43. In support of Ground 2 it is first said that the District Judge's finding that it was unreasonable for the Appellant to believe that the criminal proceedings on the EAW 1 offences would not proceed to trial following his deportation was wrong. The courts will overturn a decision on the reasonableness of a party's belief or diligence: see *Purcell and ors v The Public Prosecutor of Antwerp, Belgium* [2017] EWHC 1328

(Admin) ("*Purcell*") and *Penta v District Public Prosecutor's Office Zwolle-Lelystad, Netherlands* [2011] EWHC 992 (Admin) ("*Penta*").

44. It is said to be impossible (in circumstances where the Appellant was deported and told unequivocally that he would be committing an offence if he returned within five years and never informed that he could return to defend the criminal prosecution or that it was continuing) to see why it was unreasonable for the Appellant to believe that the criminal proceedings would be suspended. The District Judge identified no evidential basis for his finding that the Appellant's belief that the proceedings would be suspended was unreasonable.

45. As for Article 5, the District Judge should have concluded that the Appellant was convicted after a "flagrantly unfair trial", thereby breaching Article 5 (see *Othman* at [233]). Whatever the European Court of Human Rights may have decided, this court has to make its own judgment.

46. A flagrant denial of justice can occur when the State refuses to re-open proceedings conducted in absentia where the accused has not waived his/her right to be present (see *Sejdovic v Italy Application* No. 5681/00 ("*Sejdovic*") (at [84])). As a general principle, a defendant is entitled to be present and participate effectively in criminal proceedings. Any waiver must be unequivocal (see *Sejdovic* at [86], [91] and [92]).

47. The Appellant submits that the District Judge's conclusions that i) whilst there may have been a breach of Article 6, the Appellant's lack of diligence meant that he could conclude that his conviction was not based on a flagrantly unfair and uncompliant trial and ii) there were enough safeguards for him to conclude that there had been no nullification or destruction of the Appellant's Article 6 rights, were flawed:

    i) It was reasonable for the Appellant to believe that the criminal proceedings against him were not continuing;

    ii) Any lack of diligence on his part would not amount to an unequivocal waiver of his right to attend trial (see *JK v District Court of Lublin, Poland* [2018] EWHC 197 (Admin) ("*JK*") at [12] and *Azdajic v Slovenia* application no. 71872/12 at [57] and [58];

    iii) The Appellant's absence was caused by the Italian state's action in deporting him.

48. As for Article 8, if the District Judge was wrong to find that the Appellant's belief that the proceedings were at an end was unreasonable, the Appellant's case under Article 8 is said to be overwhelming. Reference is made to *JK* at [53] to [62]. The court here would need to reconsider the balancing exercise.

49. It is submitted that it would now be oppressive and/or disproportionate to order the Appellant's extradition to Italy:

    i) The actions of the Italian authorities gave the Appellant a sense of security that no further action would be taken;

ii) By deporting him the authorities must be seen to have been culpable for the ensuing delay;

iii) The offences for which extradition is sought are "of some age", the oldest one dating back eight years. The delay is more pronounced when considered as a proportion of the Appellant's age;

iv) Whilst the offences cannot be described as trivial, the custodial sentences for the EAW 2 and 3 offences were originally suspended;

v) The Appellant has lived openly in the UK since 2015;

vi) When the offences were committed he was an unaccompanied teenager in a foreign land. He is now married, a father and has progressed in his career. His family is heavily reliant on his income, and his second child is due imminently. The best interests of his children are a primary consideration. He has not re-offended.

50. In the event that the appeal against the District Judge's decision in relation to EAW 1 by reference to s. 20 and/or Article 5 alone were to succeed (but not by reference to Article 8), Mr Hickman submitted that this court should "remit[2]" the question of extradition under EAWs 2 and 3.

Grounds of resistance

51. The Respondent's essential position is that Box D of EAW 1 was completed properly. In line with *Cretu* (at [34(v)]) the burden of proof has been discharged and extradition should follow. The investigative exercise that the Appellant invites the court to take is precisely what the Divisional Court in *Cretu* (at [35]) cautioned against. The court should look at EAW 1 and any further information and take it at face value. In this case it should not speculate as to what passed between the Appellant and his lawyer, or as to the quality of any instructions. Nor should it impose English notions of instruction on the Italian criminal inquisitorial process. The court is not concerned with how Avv. Crosilla carried out her professional duties. The decision in *Cretu* was correct.

52. The District Judge's conclusion was that the Appellant was present at trial by virtue of his instructed counsel (as would be the position in England and Wales: see s. 122 of the Magistrates' Court Act 1980). Even if an individual is not personally present, an accused who has instructed ("mandated") a lawyer to represent him in the trial is not, for the purpose of s. 20, absent from his trial. Italian law, as Avv. Capellupo confirmed and as the District Judge recorded at [20] of the judgment, deemed the Appellant to be present via his instructed lawyer. The Appellant's construction of s. 20 is a "heresy". It is impermissible to interpret s. 20 so as to ignore a fundamental feature of civil common law systems which do not require a defendant to appear at his or her trial in person.

53. The "whole point" of s. 20 and the 2002 Framework Decision is to protect defendants from a violation of their Article 6 rights. It is not for this court to make value judgments as to the processes adopted in other legal systems, provided that there is compliance

[2] When it was pointed out that the court has no such power under s 27 of the 2003 Act, it was suggested that there might in such circumstances be alternative options, such as judicial review proceedings in relation to the decision to extradite under EAWs 2 and/or 3.

with Article 6. In this case, the Appellant was represented throughout and at all hearings; he was personally aware of the hearing that was adjourned to 11 June 2013; he was under an obligation to keep in touch with his Italian lawyer. There was no plausible violation of his Article 6 rights.

54. As for the District Judge's finding that the Appellant's belief that the criminal proceedings were at an end was unreasonable, there is no proper basis on which to interfere with his findings. The fact that the Appellant was not a fugitive from justice did not mean that he had not exhibited a "manifest lack of diligence". Finally, the District Judge's conclusions on Article 8 were unimpeachable.

The 2003 Act, the 2002 Framework Decision and *Cretu*

The 2003 Act

55. The 2003 Act was enacted against a background of domestic and European developments in international criminal law. In particular, the EU was to be established as an area of freedom, security and justice. Mutual recognition of judicial decisions was intended to become the cornerstone of judicial cooperation in both criminal and civil matters. The 2003 Act was intended to create a quick and effective domestic framework in which to extradite a person to the country where they are accused or have been convicted of a serious crime, providing that this does not breach their fundamental human rights.

56. The procedure established by the 2003 Act adopted the 2002 Framework Decision, creating a fast-track extradition arrangement within the EU and Gibraltar. In doing so, the 2003 Act provided for extradition, unless any of the prescribed statutory bars to extradition exist.

57. Part 1 of the 2003 Act applies as between Member States of the EU, described as "category 1 territories", and thus between Italy and the UK.

58. The obligation on the requested state, here the UK, arises on receipt of a Part 1 warrant in respect of a person: that is, of an EAW properly so described. The EAW, as defined in s. 2, may fall into one or other of two categories, depending on the statement and information which it contains. It may (see ss. 2(2)(a), (3), (4)) be a warrant issued with a view to a person's arrest and extradition to a category 1 territory for the purpose of his being prosecuted for an offence. Or it may (under s. 2(2)(b), (5)) as originally enacted and (6)) be issued where:

> "(5) (a) the person . . . is alleged to be unlawfully at large after conviction of an offence specified in the warrant by a court in the category 1 territory, and
>
> (b) the [EAW] is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence."

59. Part 1 of the 2003 Act provides for an extradition hearing (see s. 9) at which the court must decide (see s. 10) whether the EAW specifies an extradition offence. If not, the

person must be discharged. If so, the court must decide (see s. 11) whether the person's extradition is precluded by any of the bars there listed. If so, the person must be discharged. If the court decides that extradition is not precluded by any of those bars, it is required to proceed under either s. 20 or s. 21A of the Act. It must proceed under s. 20 (see s. 11(4)) if "the person is alleged to be unlawfully at large after conviction of the extradition offence". It must proceed under s. 21A (see s. 11(5)) if "the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it".

60. S. 20 provides a specific basis for refusing extradition. More particularly, it deals with trials in *absentia* which are commonplace in many civil law jurisdictions.

61. S. 20 provides materially:

> "20 Case where person has been convicted
>
> (1) If the judge is required to proceed under this section (by virtue of section 11) he must decide whether the person was convicted in his presence.
>
> (2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 21.
>
> (3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.
>
> (4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 21.
>
> (5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) a review amounting to a retrial.
>
> (6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 21.
>
> (7) If the judge decides that question in the negative he must order the person's discharge…"

62. Thus the s. 20 enquiry requires the court to address a series of questions. The first question is whether the requested person was convicted in his presence. If this question is answered in the negative, the court must then decide whether the requested person "deliberately" absented himself from his trial (see s. 20(3)). If this question is answered in the negative, the court must then decide whether the requested person would be entitled to a retrial or (on appeal) to a review amounting to a retrial. If any of the three questions is answered in the affirmative, the court must then proceed under s. 21 (see ss. 20(2) and (4)).

63. S. 21 provides materially:

> "21 Person unlawfully at large: human rights
>
> (1) If the judge is required to proceed under this section (by virtue of section 20) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).
>
> (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
>
> (3) If the judge decides that question in the affirmative he must order the person to be extradited to the category 1 territory in which the warrant was issued…."

The 2002 Framework Decision

64. The 2002 Framework Decision was enacted originally to produce a faster and simpler procedure for extradition within the EU and founded on Member States' confidence in the integrity of each other's legal and judicial systems.

65. Recitals 1, 5 to 7, and 10 read as follows:

> "(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.
>
> …
>
> (5) The objective set for the [European] Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.
>
> (6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.

> (7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.
>
> (10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof."

66. It suffices to note the following Articles at this stage:

i) The definition in Article 1(1) of a European Arrest Warrant as "a judicial decision issued by a member state with a view to the arrest and surrender by another member state of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order";

ii) The obligation of Member States under Article 1(2) to execute any EAW "on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision";

iii) The discretion accorded to Member States in Article 5(1) to require certain assurances where an EAW has been issued for the purpose of executing a sentence or a detention order imposed by a decision rendered in absentia and without proper notice to the defendant.

67. The clear purpose of the 2002 Framework Decision (apparent, in particular, from Article 1(2) and likewise from Recitals 5 and 7) was to replace the multilateral system of extradition based on the European Convention on Extradition, signed in Paris on 13 December 1957, with a system of surrender between judicial authorities of convicted or suspected persons for the purpose of enforcing judgments or of conducting prosecutions based on the principle of mutual recognition. Member States were required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the 2002 Framework Decision. They could refuse to execute such a warrant only in the cases of mandatory non-execution (provided for in Article 3) and in the cases of optional non-execution (listed in Article 4). Moreover, the executing judicial authority could impose conditions on execution only as set out in Article 5.

68. Accordingly, execution of the European arrest warrant constitutes the rule. A refusal to extradite is an exception to that rule and one to be made only by reference to criteria which are to be interpreted strictly (see *Minister for Justice and Equality (Deficiencies in the system of justice)* C 216/18 PPU, EU:C:2018:586 at [41]).

69. The 2009 Framework Decision amended the 2002 Framework Decision with the intention of enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial. The UK was one of its sponsors. Recital 10 reads as follows:

> "The recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused where the person concerned, being aware of the scheduled trial, was defended at the trial by a legal counsellor to whom he or she had given a mandate to do so, ensuring that legal assistance is practical and effective. In this context, it should not matter whether the legal counsellor was chosen, appointed and paid by the person concerned, or whether this legal counsellor was appointed and paid by the State, it being understood that the person concerned should deliberately have chosen to be represented by a legal counsellor instead of appearing in person at the trial. The appointment of the legal counsellor and related issues are a matter of national law."

70. Article 2 of the 2009 Framework Decision inserted Article 4a into the 2002 Framework Decision. Article 4a provides:

> "Decisions rendered following a trial at which the person did not appear in person
>
> 1. The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:
>
> (a) in due time:
>
> (i) either was summoned in person……
>
> and
>
> (ii) was informed that a decision may be handed down if he or she does not appear for the trial;
>
> or

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal…:

(i) expressly stated that he or she does not contest the decision;

or

(ii) did not request a retrial or appeal within the applicable time frame;

or

(d) was not personally served with the decision but:

(i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right ot a retrial, or an appeal….;

and

(ii) will be informed of the time frame within which he or she has to request such a retrial or appeal …"

71. Article 4a effects a harmonisation of the conditions of execution of a European arrest warrant in the event of a conviction rendered in absentia, reflecting the consensus reached by all Member States regarding the scope to be given under EU law to the procedural rights enjoyed by persons convicted in absentia who are the subject of a European arrest warrant. The executing judicial authority is entitled to refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that one (or more) of the conditions set out in subparagraphs (a) to (d) are met. Article 4a allows the executing authority to surrender the person concerned despite his personal absence at trial, whilst fully respecting his rights of defence.

72. The EU legislature therefore adopted the approach of providing an exhaustive list of the circumstances in which the execution of a European arrest warrant issued in order to enforce a decision rendered in absentia must be regarded as not infringing the rights of the defence. It follows that the executing judicial authority is obliged to execute a European arrest warrant, notwithstanding the personal absence of the person concerned at the trial resulting in the decision, where one of the situations referred to in Article 4a(1)(a), (b), (c) or (d) is verified.

73. Having exercised its right to opt-out of pre-Lisbon Treaty measures relating to Police and Judicial Cooperation in Criminal Matters, on 1 December 2014 the UK exercised

its right to opt back into both the 2002 and the 2009 Framework Decisions. This decision, combined with the change of status effected by the Lisbon Treaty, resulted in the Framework Decisions falling within the scope of the European Communities Act 1972. The domestic courts were then obliged to interpret domestic law consistently with EU law which applies to the UK, including by applying the principle of conforming interpretation ((see *Cretu* at [17]). The Supreme Court in *Goluchowski v Poland* [2016] UKSC 36; [2016] 1 WLR 2665 affirmed this position, holding that the doctrine of conforming interpretation was applicable after the UK's opt-in under Article 10(5) of Protocol 36 of the (amended) Treaty of the European Union (see [46] per Lord Mance).

74. No amendment to the 2003 Act has at any time been thought necessary as a result of the 2009 Framework Decision. S. 20 is consistent and can be applied in conformity with Article 4a. The 2002 Framework Decision and the 2003 Act thus provide for judicial cooperation between the UK and other Member States with differing procedural regimes. It is this relationship that calls for an internationalist, cosmopolitan approach when construing domestic extradition statutes and instruments (see *In re Ismail* [1999] AC 320 (at 326 per Lord Steyn); *Caldarelli v Court of Naples* [2008] UKHL 51; [2008] 1 WLR 1724 (at [7] and [23] per Lord Bingham)). These statutes and instruments do not fall to be viewed through a purely insular, common law domestic legal lens.

75. It is common ground between the parties that the combined effect of s.7A(1) of the European Union (Withdrawal) Act 2018 and Articles 4 and 62 of the Agreement on the Withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community (2019/C 384 I/01) ("the Withdrawal Agreement") require the Framework Decisions to be given the same legal effects as those which they produce within the Union and its Member States (see *Polakowski and others v Warsaw Regional Court, Poland* [2021] EWHC 53 (Admin) ("*Polakowski"*) at [21]).

76. It follows that:

    i) The Framework Decision is not applicable as if it had direct effect; but

    ii) There is an obligation on courts to apply UK law subject to a duty of conforming interpretation in respect of the 2002 Framework Decision.

77. Since the Appellant was arrested before the end of the transition period (at 11 pm on 31 December 2020 (per Article 62(1)(b) of the Withdrawal Agreement)), this is the law applicable in this appeal. The fact that the Appellant was not surrendered before 31 December 2020 does not affect the continued applicability of the 2003 Act (subject to the duty of conforming interpretation) to his position (see *Polakowski* at [19]-[20] and [23]). It is not necessary for this court to consider the position in relation to surrenders sought on the basis of post-exit arrests (ie those made after 31 December 2020).

Cretu

78. The leading authority in domestic law on the correct interpretation of s. 20 (in conformity with Article 4a) is *Cretu*. There the Divisional Court restated that domestic law was to be interpreted in accordance with the 2002 Framework Decision. *Cretu* has been further considered and applied many times since 2016, including in *Tomasz Stryjecki v. Distrcit Court in Lublin, Poland* [2016] EWHC 3309 (Admin); *Tyrakowski v. Regional Court in Poznan, Poland* [2017] EWHC 2675 (Admin); *Dziel v. District*

Court in Bydgoszcz, Poland [2019] EWHC 352 (Admin); *Szatkowski v. Regional Court in Opole, Poland* [2019] EWHC 883 (Admin) and *Bialkowski v. Poland* [2019] EWHC 1253 (Admin).

79. In *Cretu* Burnett LJ stated as follows:

> "34. In my judgment, when read in the light of article 4a, section 20 of the 2003 Act, by applying a *Pupino*[3] conforming interpretation, should be interpreted as follows:
>
> (i) "Trial" in section 20(3) of the 2003 Act must be read as meaning "trial which resulted in the decision" in conformity with article 4a(1)(a)(i). That suggests an event with a "scheduled date and place" and is not referring to a general prosecution process, Mitting J was right to foreshadow this in Bicioc's case.
>
> (ii) An accused must be taken to be deliberately absent from his trial if he has been summoned as envisaged by article 4a(1)(a)(i) in a manner which, even though he may have been unaware of the scheduled date and place, does not violate article 6 of the Convention.
>
> (iii) An accused who has instructed ("mandated") a lawyer to represent him in the trial is not, for the purposes of section 20, absent from his trial, however he may have become aware of it.
>
> (iv) The question whether an accused is entitled to a retrial or a review amounting to a retrial for the purposes of section 20(5), is to be determined by reference to article 4a(1)(d).
>
> (v) Whilst, by virtue of section 206 of the 2003 Act, it remains for the requesting state to satisfy the court conducting the extradition hearing in the United Kingdom to the criminal standard that one (or more) of the four exceptions found in article 4a applies, the burden of proof will be discharged to the requisite standard if the information required by article 4a is set out in the EAW.
>
> 35. It will not be appropriate for requesting judicial authorities to be pressed for further information relating to the statements made in an EAW pursuant to article 4a save in cases of ambiguity, confusion or possibly in connection with an argument that the warrant is an abuse of process. The issue at the extradition hearing will be whether the EAW contains the necessary statement. Article 4a is drafted to require surrender if the EAW states that the person, in accordance with the procedural law of the issuing member state, falls withing one of the four exceptions. It does not contemplate that the executing state will conduct an independent investigation into those

[3] *Criminal proceedings against Pupino* Case C-105/03; [2006] QB 83 ("*Pupino"*).

> matters. That is not surprising. The EAW system is based on mutual trust and confidence. Article 1 of the 2009 Framework Decision identifies improvement in mutual recognition of judicial decisions as one of its aims. It also contemplates surrender occurring very shortly after an EAW is issued and certified. To explore all the underlying facts would generate extensive satellite litigation and to be inconsistent with the scheme of the Framework Decision. Article 4a provides additional procedural safeguards for a requested person beyond the provision it replaced in the original version of the Framework Decision, but it does not call for one member state in any given case to explore the minutiae of what has occurred in the requesting member state or to receive evidence about whether the statement in the EAW is accurate. That is a process which might well entail a detailed examination of the conduct of the proceedings in that other state with a view to passing judgment on whether the foreign court had abided by its own domestic law, EU law and Convention. It might require the court in one state to rule on the meaning of the law in the other state. It would entail an examination of factual matters in this jurisdiction, on which the foreign court had already come to conclusions, but on partial or different evidence. None of that is consistent with article 4a of the Framework Decision.
>
> 36. Should a requested person be surrendered on what turns out to be a mistaken factual assertion contained in the EAW relating to article 4a, he will not be helpless. He would have the protections afforded by domestic, EU and Convention law in that jurisdiction. Furthermore, article 4a does not require the executing judicial authority to refuse to surrender if the person did not appear at his trial, even if none of the exceptions applies. No doubt that is because it can be assumed that whatever may be the circumstances of a requested person on his surrender, he will be treated in accordance with article 6 of the Convention in an EU state.
>
> 37. In the event that the requesting judicial authority does provide further information I can see no reason why that information should not be taken into account in seeking to understand what has been stated in the EAW."

80. In summary and simple terms for present purposes, the relevant principles can be identified as follows. Applying a *Pupino* conforming interpretation to s. 20:

i) The burden of proof on the requesting state to satisfy the court conducting the extradition hearing in the UK to the criminal standard that one (or more) of the four exceptions in Article 4a applies will be discharged to the requisite standard if the information required by Article 4a is set out in the European arrest warrant. S. 20 does not envisage a general evidential enquiry by the executing judicial authority. This would be inconsistent with the concept of mutual trust and confidence and the scheme of the 2002 Framework Decision;

ii) An accused who has instructed ("mandated") a lawyer to represent him in the trial is not, for the purposes of s. 20, absent from his trial, however he may have become aware of it;

iii) Requesting judicial authorities should only be pressed for further information relating to statements made in the European arrest warrant in cases of ambiguity, confusion or possibly in connection with an argument that the warrant is an abuse of process;

iv) If the requesting judicial authority has made a mistaken factual assertion in the European arrest warrant relating to article 4a, the requested person can rely on the protections afforded by domestic, EU and Convention law in that jurisdiction;

v) In the event that the requesting judicial authority does provide further information, that can be taken into account in seeking to understand what has been stated in the European arrest warrant.

Discussion and analysis

81. It is important to identify at the outset the real issues in this case. Whilst the District Judge considered and made findings in relation to matters which might be said to go to s. 20(3) of the 2003 Act, namely deliberate absence, the rationale for his decision under s. 20 turned not on s. 20(3) but on s. 20(1), and the question of whether or not the Appellant was "convicted in his presence". The District Judge concluded that he was, on the basis that he was "deemed to be present by virtue of having instructed his lawyer of choice".

Ground 1: Article 4a(1)(b)

Limb 1: The conditions in Article 4a(1)(b) were not satisfied on the facts and information before the Judge

82. In EAW 1 the Respondent stated at D3.2:

> " being aware of the date of the trial, the person has instructed counsel who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsel at the trial".

At D4 the Respondent set out further information as to the Appellant's appointment of Avv. Cassina as his domicile lawyer, and of Avv. Crossina as his defence lawyer on the EAW 1 offences.

83. As indicated, this ground of appeal proceeds on the assumption that it is for the executing judicial authority not to accept at face value the statement made by the Italian authorities (at D3.2 in EAW 1) but rather to examine for itself whether (in its opinion) the conditions of Article 4a(1)(b) were in fact satisfied. This argument was not advanced before the District Judge because of the concession made for the Appellant that the combined effect of [24], [34(iii)] and [35] of *Cretu* meant that it would be difficult for the Judge to find that the conditions in s. 20 were not satisfied. As will be seen below, this concession was in my judgment rightly made.

84. The opening submission for the Appellant is that it is well established that, when the contents of a European arrest warrant are ambiguous or confusing, the domestic court must determine on the evidence before it (and independently) whether the conditions stipulated are satisfied. When read together, the contents of Box D 3.2 and Box 4 in EAW 1 (which corresponds to Article 4a(1)(b)) are said to create ambiguity. More specifically, it is said that the assertions of fact in Box D4 do not support the statement at Box D 3.2.

85. Putting to one side the question of whether or not there is in fact any ambiguity as suggested, I do not accept the submission that it is trite law that in such circumstances it falls to the domestic court to carry out it its own determination on the evidence before it (which may be quite different to the facts and matters relied on by the requesting authority which would in any event fall to be assessed by reference to the national law of the requesting authority). The Appellant's contention misreads what Burnett LJ stated at [35] in *Cretu*: the solution in cases of ambiguity on the face of a European arrest warrant is to press the requesting judicial authority for further information. It is not for the executing court to conduct an independent investigation of its own or to revisit the facts stated. That would be wholly at odds with the system of mutual trust and confidence that underpins the domestic and European extradition framework. It would be to do precisely what the Divisional Court in *Cretu* counselled against, and for compelling reasons, to repeat (from [35]):

> "…Article 4a…does not call for one member state in any given case to explore the minutiae of what has occurred in the requesting member state or to receive evidence about the whether the statement in the EAW is accurate. That is a process which might well entail a detailed examination of the conduct of proceedings in that other state with a view to passing judgment on whether the foreign court had abided by its own domestic law, EU law and the Convention. It might require the court in one state to rule on the meaning of the law in the other state. I would entail an examination of factual matters in this jurisdiction, on which the foreign court has already come to conclusions, but on partial or different evidence. None of that is consistent with article 4a…."

86. Whether or not any of the four exceptions outlined in article 4a(1) applies is to be assessed *"in accordance with further procedural requirements defined in the national law of the issuing Member State"*. Under Italian law a person is deemed present if he is represented by a lawyer who is present at the trial (as Avv. Capellupo stated and as the District Judge accepted (at [20] of the Judgment)). There was *"nothing improper"* in Italian law with the Italian court proceeding without the physical presence of the Appellant in those circumstances. Further, under Italian law the Appellant was under an obligation to stay in touch with his Italian lawyer following his deportation.

87. Here the Respondent expressly considered the Appellant to be aware of the date of the trial for the purpose of Article 4a(1)(b). (As a side note, it would appear that that conclusion has been supported both by the Court of Udine and the ECHR). It was not for the District Judge to reconsider that question by receiving evidence as to whether the statement in the EAW (that he was so aware) was accurate or, for example, to speculate as to or explore the extent and nature of the Appellant's instructions to and communications with his lawyers.

88. In these circumstances, the burden of proof under s. 20(1) had been discharged and extradition should follow (subject to s. 21 considerations).

89. The Appellant's alternative submission does not assist him. It is suggested that, in the event of a clear mistaken assertion on the facts, the executing judicial authority has an obligation to exercise an independent judgment on the evidence before it. Again putting to one side whether it can be said that there was here any clear mistaken assertion on the facts, this amounts to an attempt to extend (or depart from) the decision in *Cretu* in a manner that is not justified on the basis of the EU authorities relied upon by the Appellant.

90. *Cretu* (at [36]) makes it clear that the protection for the requested person against what may turn out to be a mistaken factual assertion in relation to Article 4a is the protection provided by domestic, EU and Convention law in the requesting state's jurisdiction.

91. In *Dworzecki*, a request for a preliminary ruling was made by the District Court of Amsterdam concerning Article 4a(1)(a)(i) of the 2002 Framework Decision. ("the summons article"). *TR* was also a case concerning the summons article in which the requested person deliberately absconded from his address in order to evade the criminal proceedings brought against him in Romania. Romanian law stipulated that, upon the expiry of a period of 10 days, the summons was deemed to have been notified. Both cases can be distinguished. Neither case concerned Article 4a(1)(b). Each concerned a particular set of circumstances in which a requested person had deliberately absconded in order to evade service. Further, and in relation to *Dworzecki* more specifically, it has been confirmed in subsequent decisions that nothing said there altered or undermined the principles enunciated in *Cretu*. Rather, the authorities should be viewed consistently with one another (see *Romania v Zagrean* [2016] EWHC 2786 (Admin) at [77]-[81]; *Dziel v District Court in Bydgoszcz, Poland* [2019] EWHC 351 (Admin) at [16]; *Bialkowski v Regional Court of Kielsce, Poland* [2019] EWHC 1253 (Admin) at [20]).

92. *Zdziaszek* did not feature in the parties' oral submissions at all. It was a case dealing primarily with the question of sufficiency of information in a case where the European arrest warrant did not contain the necessary statement for the purpose of Article 4a at all.

Limb 2: Even if the conditions in Article 4a(1) were met (which they were not), it is not permissible to interpret s. 20 in a way that allows the Court to hold that the conditions of that section are met

93. The Appellant contends that:

i) S. 20(1) encompasses (only) presence in person and does not encompass "deemed presence" (through a lawyer). There is no suggestion that the Appellant was present in person at his trial on the EAW 1 offences;

ii) Thus, in this case, s. 20 is "all about" deliberate absence (and so s. 20(3)). In circumstances where the District Judge found (correctly and in terms) that the Appellant was not deliberately absent, he was obliged to discharge the Appellant.

94. The first of these contentions falls foul of [34(iii)] of the decision in *Cretu*, to repeat:

> "An accused who has instructed ("mandated") a lawyer to represent him in the trial is not, for the purposes of section 20, absent from his trial, however, he may have become aware of it."

95. Analysis as to whether or not that statement is strictly to be treated as *obiter dictum* (because the court in *Cretu* was considering Article 4a(1)(a) and not (b)) does not materially advance matters. On any view, it is a highly authoritative statement which has been adopted as correct without question by the domestic courts subsequently.

96. It is also suggested for the Appellant that the statement in [34(iii)] applies only to presence/absence for the purpose of s. 20(3) (and not s. 20(1)). It is right that [34] appears under the heading *"Argument and discussion on section 20(3)"* in *Cretu*. However, it is clear that Burnett LJ did not intend to confine his statement in [34(iii)] to s. 20(3). The opening sentence of paragraph 34 refers to s. 20 as a whole, and when the court did intend to confine its analysis to a specific subsection, it did so in terms (see for example [34(i)] and [34(iv)]). There is nothing in [34(iii)] to confine itself to the question of *"deliberate absenteeism"* under s. 20(3). It was a statement of general application to the question of presence/absence for the purpose of s. 20.

97. There is also force in the Respondent's submission that to limit the statement in [34(iii)] of *Cretu* to s. 20(3) as suggested would frustrate the proper operation of s. 20. On the Appellant's construction, a requested person could (perfectly legitimately) choose not to attend his or her trial in Italy and instead be represented through a lawyer. S. 20(1) of the enquiry would be answered in the negative (because the requested person was not physically present). The requested person would also not be found to have been "deliberately absent" for the purposes of s. 20(3) (because he or she was under no obligation to attend in person under Italian law and would be deemed present (through legal representation)). On this basis, a requested person could have a trial that was fully compliant with Article 6 and yet still be able to escape extradition.

98. The Appellant's construction would also lead to the paradoxical conclusion that a requested person who had chosen to instruct a lawyer for the purpose of s. 20(3) could not be *deliberately* absent, but could be absent for the purpose of s. 20(1). This seems absurd. Connectedly, and as a matter of ordinary principles of statutory construction, it would be odd if presence/absence meant one thing for the purpose of s. 20(3), but another for s. 20(1). It is to be presumed that, since a statute is to be read as a whole, words and phrases are intended to have a consistent meaning throughout (see *Understanding Legislation, Lowe and Potter* at 3.22).

99. Thus, far from being at the heart of the debate on the facts of this case, the question of deliberate absence does not arise.

100. The Appellant further submits that Article 4a (and [34] of *Cretu*) are to be disregarded because, on the facts of this case, a *Pupino* conforming interpretation to s. 20 cannot be applied. He relies on *Polakowski* (at [15]) in support of his submission that s. 20 must first be construed through the eyes of the domestic legal order, divorced from Article 4a(1). However, *Polakowski* was a case dealing with the retrospective effect of provisions dealing with the UK's departure from EU, an entirely different context. It can be readily understood why, in that context, the correct starting point for legal

analysis must be the domestic Act of Parliament. Here the legal context is the international framework of mutual trust and confidence, respecting the autonomy, laws and practices of fellow Member States.

101. The Appellant's argument was not easy to follow. However, certainly once the question of presence/absence for the purpose of s. 20(1) is properly understood, as set out above, there is nothing about the facts of this case that prevents the court from applying s. 20 in conformity with a *Pupino* interpretation.

102. Whilst s. 20 represents the domestic legislature's reflection of Article 4a(1), its terms are not entirely congruent. This brings into play the principle of conforming interpretation. It is the obligation of the English courts to interpret section 20, so far as possible, consistently with the wording and purpose of the 2002 Framework Decision. A useful summary of the obligation can be found in *Vodafone 2 v Revenue and Customs Commrs* [2009] EWCA Civ 446; [2010] Ch 77 at [37]-[38]:

> "37…In summary, the obligation on the English courts to construe domestic legislation consistently with Community law obligations is both broad and far reaching. In particular: (a) it is not constrained by conventional rules of construction … (b) it does not require ambiguity in the legislative language… (c) it is not an exercise in semantics or linguistics…(d) it permits departure from the strict and literal application of the words which the legislature has elected to use…(e) it permits the implication of words necessary to comply with Community law obligations…and (f) the precise form of the words to be implied does not matter…
>
> 38…The only constraints on the broad and far reaching mature of the interpretative obligation are that: (a) the meaning should go with the grain of the legislation and be compatible with the underlying thrust of the legislation being construed…An interpretation should not be adopted which is inconsistent with a fundamental or cardinal feature of the legislation since this would cross the boundary between interpretation and amendment…and (b) the exercise of the interpretative obligation cannot require the courts to make decision for which they are not equipped or give rise to important practical repercussions which the court is not equipped to evaluate".

103. It has been held consistently that the clear intent of s. 20 is to give proper protection to the requested person's Article 6 rights (see for example *Szatkowski v Poland* [2019] EWHC 883 (Admin); [2019] 1 WLR 4528 at [33]). There is no reason why that intent is not fulfilled by an interpretation which allows a person to be extradited in circumstances where that person was neither physically present at his trial on the offences which form the basis of EAW 1 nor deliberately absent (but was represented by a defence lawyer). That accords with the "grain" and the "underlying thrust" of s. 20 and with an approach to the construction of Article 4a(1) that is narrow and designed

to facilitate the expeditious surrender of requested persons (see for example *TR v Generalstaatsanwaltschaft Hamburg* C-416/20 PPU at [36]-[42]).

104. Nor, so far as relevant, is there anything offensive in the notion of "deemed presence" under English criminal law. Proceedings in the Magistrates' Courts may be conducted in a defendant's absence (so long as the defendant is legally represented (see s. 122 of the Magistrates' Court Act 1980)). Mr Hickman points to the fact that s. 20 does not have such an express statutory deeming provision. The short answer is that s. 20(1) does not need one, not least given the obligation to interpret it consistently with the 2002 Framework Decision. Further, as confirmed in *R v Jones (Anthony)* [2003] 1 AC 1 (at [7], [13] and [15]), proceedings in the Crown Court may continue in the absence of the defendant, all the more so, if he or she is legally represented.

105. For these reasons, I would dismiss the challenge by reference to s. 20. The construction of s. 20 advanced by the Respondent and adopted by the District Judge is a non-controversial application of *Cretu*, which represents good law.

106. I would emphasise that the 2003 Act and the 2002 Framework Decision are there to provide a speedy and effective framework in which to extradite a requested person, reflecting increasing international cooperation in the fight against crime. It is not for the English courts to go behind the relevant statement in a European arrest warrant with a view to assessing the facts independently for the purpose of the exercise to be carried out under s. 20. It may be that evidence of the chronology and/or background relating to the requested person's dealings with the authorities is relevant to Article 8 considerations (such as the question of fugitive status). However, that does not mean that the courts should be side-tracked for the purposes of s. 20.

Ground 2

107. It is convenient to address at the outset the Appellant's challenge to the District Judge's finding that the Appellant's belief that the criminal proceedings against him in Italy for the EAW 1 offences were at an end (or at least suspended) was not reasonable. The result informs the analysis of the issues raised by reference to Articles 5 and 6, and Article 8.

108. This court will be slow to interfere with what was an evaluative finding made by the District Judge after having seen and heard all the evidence, including from the Appellant.

109. The Appellant was aware of the criminal proceedings in relation to the EAW 1 offences, which were serious alleged offences. He had nominated Avv. Cassina as his lawyer of domicile. He had also mandated a lawyer (Avv. Crosilla) to represent him in those proceedings. He attended court with her on 30 April 2013 and, at her request, secured an adjourned hearing date of 11 June 2013. He was under an obligation to keep in touch with his lawyer (to whom he had ready access).

110. No-one had informed him that his deportation between 30 April and 11 June 2013 meant that the criminal proceedings were at an end. That was merely his assumption. The deportation order was made very obviously for reasons unconnected with any criminal proceedings (and also indicated that there was at least a mechanism for return

to Italy within the five year period (via specific authorisation from the Ministry of the Interior)).

111. Against this background, the District Judge was fully entitled to find that the Appellant's assumption was not a reasonable one – because he ought to have verified it with his lawyers (whereupon he would have been disabused), but chose not to. This was a case of him "burying his head in the sand". He showed a lack of due diligence which his relative youth could not excuse. Contrary to the Appellant's submissions, there was a sound evidential basis for these findings.

112. Comparison with the facts of other cases is unlikely to assist. However, it is to be noted that the facts of *Purcell* were very different. There the requested person's extradition was sought by the Belgian authorities. The Divisional Court held (at [16]) that his subsequent extradition to the United Kingdom constituted "a very strong indication that the prosecution [in Belgium] would not be pursued". However, the requested person had been extradited from Germany to Belgium for the very purpose of prosecution (on trafficking charges) there. He does not appear to have been represented by any Belgian lawyer at the time, or to have appointed any equivalent of an Italian lawyer of domicile. Nor had any future hearing date in the Belgian criminal proceedings, to the appellant's knowledge, been set at the time of deportation. *Penta* was a case addressing the question of non-return by a requested person who had been convicted and sentenced before deportation.

113. I turn then to the Appellant's challenge based on Articles 5 (right to liberty and security) and 6 (right to a fair trial). The test is whether or not there is a risk of the Appellant suffering a "flagrant denial of justice", namely having to serve a custodial sentence following a conviction after a "flagrantly unfair trial" (see *Soering v United Kingdom* [1989] 11 E.H.R.R 439 at [113]; *Othman* at [233] and *Mohammed Elashmawy v Court of Bresica, Italy* [2015] EWHC 28 (Admin) at [38]). So the threshold is not mere contravention of Article 6. What is required is a breach of Article 6 "so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article" (see *Othman* at [260] and *Kapri (AP) v the Lord Advocate representing the Government of the Republic of Albania (Scotland)* [2013] UKSC 48 at [32] per Lord Hope).

114. The District Judge correctly identified the law, commenting that the hurdle is a "high" one to cross. His application of the law to the specific facts of this case cannot be impugned[4].

115. The District Judge recognised at the outset of his analysis that the reason for the Appellant's absence at trial was (at least in part) his deportation. The Appellant had, however, been represented throughout and his lawyer did not withdraw. The Appellant chose not to contact his lawyer due to a lack of diligence. The Italian legal system allows for matters to proceed in the absence a defendant when represented by a lawyer of his/her choice. Further, it was the obligation of the defendant to stay in contact with his lawyer. It was not the State's duty to ensure that his lawyer had adequate instructions. There was no flagrant breach of the Appellant's Article 6 rights: although he was rendered absent by an arm of the State, he had the right to request to return for

[4] Every case will be fact-dependent. In cases such as *Stoichkov v Bulgaria* no 9808/02 (referred to in *Sejdovic* at [84]), the applicant had not been notified of the criminal proceedings in question at all.

trial, a right of which he would undoubtedly have been informed had he exercised due diligence and spoken to his lawyer. His conviction was thus not based on a flagrantly unfair trial. Even if the Appellant was not present in person at trial, there were sufficient safeguards, including the requirement for there to be an instructed lawyer, for the District Judge to conclude that there had been no nullification or destruction of the Appellant's rights under Article 6.

116. As for Article 8, the general principles in relation to the application of Article 8 in the context of extradition proceedings are set out in two decisions of the Supreme Court: *Norris v Government of the United States of America* (No. 2) [2010] UKSC 9 and *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25. In deciding whether a person's extradition would be compatible with his/her Article 8 rights, 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 very high public interest in extradition. The question is whether the consequence of interference with the Article 8 rights would be "exceptionally severe" so as to outweigh the importance of extradition. There is no test of exceptionality; however, given the constant and weighty public interest in extradition, cases where it is held that extradition would involve a disproportionate interference with Article 8 rights are likely to be exceptional on their facts. Self-evidently those convicted of crimes should serve their sentences and the United Kingdom should honour its international obligations and not become a safe haven. The weight of the public interest will vary according to the nature and seriousness of the crime involved. In cases in which the rights of a child are involved, the best interests of the child must be a primary consideration, even though they may be outweighed by countervailing factors. The nature of the "balancing exercise" that needs to be carried out was explored further in *Celinski*: the court should list the factors for and against extradition and then set out its conclusion as the result of balancing those factors with reasoning.

117. Again, the District Judge here correctly identified the law. He carefully set out factors for and against extradition as follows:

i) For: the weighty public interest in the United Kingdom honouring its international treaty obligations and treating fellow member states with mutual recognition and respect; the strong interest in the United Kingdom not becoming a safe haven for criminals; the EAWs relate to serious offending carrying a total sentence of 10 years and 4 months' imprisonment. Although there had been some delay, the seriousness of the offending was a compelling factor;

ii) Against: the Appellant had lived an industrious life in this country, securing a good job and raising a family. He had paid his tax and national insurance and not re-offended; he believed that the criminal proceedings in Italy were in abeyance and would stay provided that he did not return. This engendered a false sense of security. It was due to his own lack of diligence; extradition would have a serious effect on the Appellant and his family. He would be separated from his son[5] for up to ten years and would miss the formative years of his life, though this was due to the serious and large number of his offences. The Appellant's wife would be devastated. His wife and child were innocent in all

[5] As noted above, the Appellant and his wife are expecting (or now have) a second child.

this; there had been some delay and the oldest offences dated back to 2011; the Appellant was not a fugitive.

118. He then concluded that the balance lay "firmly" in favour of extradition. The impact of extradition would be heavy but this was because of the very serious nature of the offences and the sentence to be served. It should not be forgotten that the Appellant was convicted in Italy of multiple offences of robbery involving significant violence.

119. It is not for this court to second-guess or carry out the balancing exercise afresh (in the absence of any material error of fact or approach in principle). There is no proper basis on which to interfere with the District Judge's conclusion, one which he was entitled to reach having faithfully carried out the necessary balancing exercise. In reality, without at least a successful challenge to the District Judge's finding as to the (un)reasonableness of the Appellant's belief that the criminal proceedings in Italy were at an end, neither challenge by reference to Article 5/6 or Article 8 stands any real prospect of success.

Conclusion

120. For all these reasons, the District Judge ought not to have decided a question before him at the extradition hearing differently. I would dismiss the appeal.

Mrs Justice Cheema-Grubb DBE:

121. I agree.