Neutral Citation Number: [2019] EWHC 883 (Admin)

Case No: CO/4547/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/04/2019

Before :

LORD JUSTICE IRWIN
MR JUSTICE STUART-SMITH

- -

Between :

DAWID SZATKOWSKI	**Appellant**
- and -	
REGIONAL COURT IN OPOLE (POLAND)	**Respondent**

- -
- -

Kate O'Raghallaigh (instructed by **Lansbury Worthington**) for the **Appellant**
Alex Tinsley (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 28 March

- -

Approved Judgment

Lord Justice Irwin:

Introduction

1. This is the judgment of the Court, to which we have both contributed.

2. The appellant appeals against the decision of District Judge Devas made in the Westminster Magistrates Court on 27 September 2017. The District Judge ordered the extradition of the appellant to Poland pursuant to a request by the respondent, based on and made by a European Arrest Warrant ("EAW") dated 18 April 2017.

3. In the Court below, extradition was resisted on two grounds, identified by the District Judge as follows:

> "firstly, he was not deliberately absent from his trial and there is no right to retrial under s. 20 of the Act and secondly, that extradition would not be compatible with his Article 8 rights under s. 21 of the Act."

4. The District Judge found against the appellant on both grounds. The Article 8 challenge is not renewed before this court and we need say no more about it. The appeal was originally listed to be heard on 31 January 2019. Shortly before that hearing, the respondent raised new arguments as a result of which May J adjourned the hearing to this Court.

The Background Facts

5. The appellant was involved in a fight in 2007 when he was 17. According to his evidence, he made admissions to the police; and the next he knew of that incident was several months later when he received a letter informing him that he had been convicted of an offence of robbery and sentenced to 2 years imprisonment suspended for 5 years. Having taken advice from a lawyer, the appellant decided not to challenge his conviction. He accepted in cross examination that he could have appealed the decision but did not do so.

6. His evidence was that in 2009 he was involved in another fight. He said that he attended court on numerous occasions arising out of this second incident. He was charged with an offence of assault to which he pleaded guilty and was sentenced to 10 months in custody suspended for three years. Because of this further offence, his earlier suspended sentence was activated and he was in custody from 1 November 2012 to February 2013. He then obtained a 6-month break in the sentence because his father was very ill. He subsequently managed to obtain a further 6-month extension, during which time he decided to come to the United Kingdom.

7. According to his witness statement, in 2014 he wrote from the United Kingdom to the Court in Poland asking for his sentence to be re-suspended. He did not provide his United Kingdom address. Instead, he gave a correspondence address in Poland, which was his mother's address until she left it to come to England shortly after. He said that he believed the suspension had been granted; but this belief was not based on any communication from the respondent or any other source.

The EAW and further information

8. The EAW is a "conviction" EAW which was issued on 18 April 2017 and certified by the National Crime Agency on 17 May 2017. It is based upon the enforceable judgment of the Polish Court dated 10 March 2008.

9. In answer to the question "Indicate if the person appeared in person at the trial resulting in the decision", the text in Box D reads:

> "No, the person did not appear at the trial resulting in the decision.
>
> (…)
>
> a. the person was summoned in person on … (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear at the trial;
>
> b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

We note in passing that the date of the summons is not included in (a) and that (a) and (b) are inconsistent with each other since (a) says that the appellant was summoned in person while (b) says that he was not.

10. Box D in the original Polish version also states that the Appellant did not appear, but does affirm that he was served with the decision on 18 March 2008 and was expressly informed about the right to a retrial or appeal. It is recited that he or she had the right to participate, allowing the merits of the case, including fresh evidence, to be re-examined, 'which may lead to the original decision being reversed'; and further affirms that the appellant did not request a retrial or appeal within the applicable time frame. The English translation omits the date of service of the decision on the appellant.

11. Box E states that the EAW relates to two offences, one of assault and one of robbery of a small sum of money. Further information provided by the Respondent confirms that the appellant pleaded guilty to the offences; and that he was served with a certified copy of the judgment.

12. This information is consistent with the appellant's evidence that he was notified of the decision and chose not to exercise his known right to challenge the decision.

13. It is common ground that the sentence of the court was originally suspended but was activated before the appellant's imprisonment on 1 November 2012. The further information provided by the Respondent also confirms the granting of prison leave

covering the period to 12 February 2014 and that he did not return when that period of leave expired but left to go abroad. The Respondent's further information provided to the court was that the appellant was under an obligation to report back to his prison when his leave expired and that he was aware of that obligation; and that "he deliberately left abroad so as to evade his obligation to serve the remaining part of his custodial sentence." A wanted notice was issued on 14 April 2014 and the EAW was issued after the Respondent learned that he was in the UK.

The issues on this appeal

14. There are two issues on this appeal:

    i) Whether the respondent has proved that the appellant deliberately absented himself from his trial, within the meaning of s. 20 of the Act; and

    ii) If the answer to the first issue is that the respondent did not prove that the appellant deliberately absented himself from his trial, then the question is whether the appellant falls to be discharged pursuant to s. 20(7) of the Act because he will not be entitled to a retrial if he is now extradited.

15. The appellant submits:

    i) On issue 1, that the evidence in support of a finding that he deliberately absented from his trial himself is weak, that the Judge's finding (as set out in [24] of his judgment) is weak and without any proper evidential foundation, and that it cannot stand;

    ii) On issue 2, that the requirements of s. 20(5) are clear and that there is no prospect of a retrial or a review amounting to a retrial if he is extradited. He submits that the fact that he chose not to exercise his known right of appeal or retrial within the time limited after the decision is irrelevant, notwithstanding the terms of Article 4a(1)(c) of the 2002 Framework Decision, which we set out below.

16. The respondent submits:

    i) On issue 1, that the statements in Box D should be considered determinative as they correspond in substance with the requirements of Article 4a(1)(a)(i) and (ii). On that basis the Judge was entitled to reject the appellant's evidence that he did not receive a summons;

    ii) On issue 2, that the statement in Box D and the appellant's own evidence determine that the exception in Article 4a(1)(c) applied, as the appellant was served with the decision, could have appealed but chose not to.

The Legal Framework

The 2002 Framework Decision

17. Article 4a of Framework Decision 2002/584/JHA on the European Arrest Warrant and Surrender Procedures between Member States, inserted in 2009, provides as follows:

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 thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;

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, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

(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 to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;
>
> and
>
> (ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.

18. The Court of Justice of the European Union has consistently held that the executing judicial authority may refuse to execute an EAW issued for the purpose of executing a custodial sentence if the person did not appear in person at the trial resulting in the decision, unless the EAW states that one of the conditions set out in subparagraph (a), (b), (c) or (d) of Article 4a(1) are satisfied: see *Dworzecki* (C-108/16 PPU) at [34]-[42], *Tupikas* (C-270/17 PPU) at [55]-[57], *Melloni* (C-399/11) at [40], [45] and [52]. *Melloni* goes further in making clear that Article 4a(1) does not allow Member States to refuse to execute an EAW when the person is in one of the situations provided for in the Article: see [59], [61].

19. Adopting this approach would lead to the conclusion that, whether or not the appellant's non-attendance at trial was deliberate, he comes within Article 4a(1)(c) because the EAW states that he was served with the decision, informed about the right to an effective retrial, but did not request a retrial or appeal within the applicable time frame. On that factual basis and adopting this approach, the executing judicial authority should order his extradition.

Domestic United Kingdom Law

20. S. 20 of the Act provides as follows (with emphasis added):

> **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) to 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.***
>
> (8) The judge must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights—
>
> (a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required;
>
> (b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

21. It is common ground that the principle of conforming interpretation applies when interpreting the 2003 Act. It is accordingly the obligation of the Court when interpreting the 2003 Act to give effect to the 2002 Framework Decision so as far as possible in the light of its wording and purpose in order to attain the result which it pursues *provided* that such an interpretation does not contradict the clear intent of the Act. A useful summary of the obligation was provided by the Court of Appeal in *Vodafone 2 v Commissioners for HMRC* [2009] EWCA Civ 446 at [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 … .

..

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. …."

22. In *Stryjecki / District Court in Lublin, Poland* [2016] EWHC 3309 (Admin), Hickinbottom J (as he then was) stated the following principles as applicable to s. 20(3) of the Act, which we respectfully endorse and adopt:

i) It is for the requesting judicial authority to prove, to the criminal standard, that the requested person has "deliberately absented himself from his trial".

ii) "Trial" is not a reference to the general prosecution process, but rather the trial as an event with a scheduled time and venue which resulted in the decision.

iii) The EAW system is based on trust and confidence as between territories. Consequently, where the EAW contains a statement from the requesting judicial authority as required by paragraph 4A(1)(a) of the Framework Decision, that will be respected and accepted by the court considering the extradition request, unless the statement is ambiguous (or, possibly, if there is an argument that the warrant is an abuse of process). If the statement is unambiguous, the court will not conduct its own examination into those matters, nor will it press the requesting authority for further information.

iv) If the statement in the EAW is ambiguous or confused (*a fortiori* , if there is no statement at all), then it is open to the court considering the request to conduct its own assessment of whether the requested person was summoned in person or, by other means, actually received official information of the scheduled date and place of that trial, on the evidence before it, the burden being born by the requesting authority to the criminal standard.

v) "Summoned in person" means personally served with the relevant information. If there has not been such service,

> generally the requesting authority must unequivocally establish to the criminal standard that the person actually received the relevant information as to time and place. It is insufficient for the requesting authority to show merely that the domestic rules as to service of such a summons were satisfied, if it is not established that the person actually received the trial information.
>
> vi) Establishment of the fact that the requested person has taken steps which make it difficult or impossible for the requesting state to serve the requested person with documents which would have notified him of the fact, date and place of the trial is not in itself proof that the requested person has deliberately absented himself from his trial.
>
> vii) However, where the requesting authority cannot establish that the person actually received that information because of "a manifest lack of diligence" on the part of the requested person, notably where the person concerned has sought to avoid service of the information so that his own fault led the person to be unaware of the time and place of his trial, the court may nevertheless be satisfied that the surrender of the person concerned would not breach his rights of defence.

23. The Divisional Court has considered the interpretation of s. 20 of the Act in the light of Article 4a(1) in *Cretu v Local Court of Suceava* [2016] EWHC 353 (Admin). The Court gave guidance on the approach to Article 4a(1) and its relationship with s. 20 at [32]-[35], which we respectfully endorse and adopt:

> 32. However, in the context of a request to surrender a convicted person to a Part 1 country to serve a sentence, in my judgment no such inquiry is called for. The requesting judicial authority is expected to convey the relevant information in the EAW itself. If the information meets the requirements of article 4a that would provide the evidence upon which the executing Judicial authority would act. The trial has, of course, already taken place. The decision whether to proceed in the accused's absence has been made. It may have involved a conclusion that a trial *in absentia* is compliant with article 6 or (as is the case in some jurisdictions) have proceeded in the full knowledge that if the accused were convicted but was later found, he would be entitled to a retrial. The Framework Decisions do not contemplate an investigation by the courts of one Member State into the circumstances in which a court of another Member State decided to proceed in the absence of an accused. Still less could it be consistent with the concept of mutual confidence that courts in one Member State should be making findings on past compliance with article 6 ECHR in the courts of the other Member States.

33. The United Kingdom was one of the co-sponsors of the 2009 Framework Decision . The view of the Government was that it was unnecessary to amend the 2003 Act to implement the 2009 Framework Decision because " section 20 deals with convictions in absence" – See "Decision pursuant to Article 10 of Protocol 36 to the Treaty on the Functioning of the European Union , July 2013" Cm 8671 at para 95.

34. In my judgment, when read in the light of article 4a section 20 of the 2003 Act, by applying a Pupino 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 paragraph 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 .

ii) An accused must be taken to be deliberately absent from his trial if he has been summoned as envisaged by article 4a paragraph 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 ECHR ;

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 paragraph 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 European arrest warrant states that the person, in accordance with the procedural law of the issuing Member State, falls within one of the four exceptions. It does not

> contemplate that the executing state will conduct an independent investigation into those matters. That is not surprising. The EAW system is based on mutual trust and confidence.

Analysis – Ground 1

24. We have set out the District Judge's summary of the issues at [3] above. In a judgment that was short on detail or reasoning, he set out the competing submissions of the parties as follows:

> "10. [Counsel on behalf of the appellant] submits that the [appellant] is not a fugitive. In further oral submissions, [she] asks the court to consider the case of *Cretu v Romania* … and in particular paragraph 34 which shows that it is not sufficient for Box D of the EAW to simply state that the [appellant] was summoned. It does not state how he was notified. The [appellant] was 17 years old at the time and deliberate absence simply cannot be made out in the circumstances. She submits that s. 20 of the Act is engaged and the RP is not guaranteed a retrial."

and

> "[Counsel for the Respondent] submits that "the further information makes it clear the requested person pleaded guilty. Whilst not present for the judgment he personally collected the decision and did not appeal the decision. Further more, he served part of the sentence impose." [He] therefore submits that the EAW is s. 20 compliant."

25. The District Judge's ruling on the s. 20 point was as follows:

> "24. I find the argument put forward on behalf of the [appellant] under s. 20 of the Act to have little or no merit. I find so that I am sure that the [appellant] accepted his guilt, personally received details of the court's decision and subsequently failed to appear at the correctional institution on 12 February 2014 from which date he became a fugitive. If follows from this that I do not accept the evidence of the RP on the points relevant to this issue as truthful and the s. 20 argument must fail."

26. In our judgment, this ruling is both confused and confusing. The relevant trial was the first criminal trial which led to the enforceable judgment of the Polish Court dated 10 March 2008. It is common ground that, at that trial, he was convicted in his absence. It is not entirely clear from the judgment what the District Judge considered to be the "points relevant to this issue" on which he did not accept that the appellant to have been truthful. In particular, it is not clear whether the District Judge's findings that the appellant "accepted his guilt, personally received details of the court's decision and subsequently failed to appear at the correctional institution" were

findings that went to credibility or were intended to be findings that were directly relevant to whether or not the appellant was absent from his 2008 trial deliberately.

27. It is clear from the District Judge's judgment that the appellant's submissions had concentrated on whether the prosecution had proved to the criminal standard that he had been summonsed. We are unable to identify in the judgment a point where the District Judge sets out the evidential basis for a finding that, in accordance with the passage from *Cretu* that he cited, "the appellant had been summoned as envisaged by article 4a paragraph 1(a)(i) in a manner which, even though he may have been unaware of the scheduled date and place, did not violate Article 6 ECHR". There is no evidence recorded in the judgment to prove that anything qualifying as a summons in these terms was sent to the appellant, and no express finding that it was. Similarly, there is no recorded evidence to support a finding that the appellant received the summons, and no express finding that he did. Because there were two passages in Box D that gave mutually contradictory information about whether the appellant was summoned or not, no reliance could properly be placed upon either of them; yet this difficulty is neither addressed nor resolved in the judgment. Before us the respondent accepted that the appellant's "guilty plea" was equivocal and could not be relied upon to prove that the appellant was deliberately absent.

28. We do not exclude the possibility that there may have been material before the court below that could have justified a finding that the appellant had deliberately absented himself from his trial; but, if there was, it does not appear in the judgment and the judgment does not demonstrate any sustainable basis for a finding that he did so. We therefore conclude, in agreement with the submissions of the appellant, that the District Judge's finding that the appellant deliberately absented himself from his trial cannot stand.

Analysis – Ground 2

29. It was and is common ground that the appellant received notice of the 2008 trial decision, knew that he could appeal it, and chose not to do so. That places him squarely within the terms of Article 4a(1)(c). The question is whether, in those circumstances, the English Court should refuse to order his extradition because of the terms of s. 20 of the Act. This raises a short point of interpretation on which there is no direct prior authority.

30. S. 20 of the Act represents the domestic legislature's reflection of Article 4a(1). That said, it is plain that the terms of s. 20, and in particular the terms of s. 20(5) and (7) of the Act are not congruent with the terms of Article 4a(1). That brings into play the principle of conforming interpretation. It is therefore the obligation of the English Court, to interpret s. 20 so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues.

31. In our judgment the result that is pursued by Article 4a(1) is self-evident: it is to make provision to ensure that the Article 6 rights of a person who is potentially subject to extradition because of a trial at which he was not present are protected. This is replicated to a substantial extent by the terms of s. 20. The first question under both the Article and the Act is whether the appellant was present at his trial. If he was not, there are potential Article 6 concerns. Those concerns are met if he was deliberately absent and the procedure then follows that laid down by s. 21. If he was not

deliberately absent then there are potential Article 6 concerns unless there has been or will be provision for a retrial. Article 4a(1)(c) deals expressly with the position where there was past provision for an effective retrial; Article 4a(1)(d) separately makes express provision for a future effective retrial. S. 20 does not expressly distinguish or discriminate between past and future effective retrials: in other words, it does not expressly replicate the separate provisions of Article 4a(1)(c) and (d).

32. It is therefore plain that the obligation to interpret s. 20 so as far as possible in the light of the wording and purpose of the framework decision, in order to attain the result which it pursues, should lead to an interpretation that gives effect to both Article 4a(1)(c) and Article 4a(1)(d) unless such in interpretation contradicts the clear intent of the Act. In submissions that were notably sustained and clear, Ms O'Raghallaigh pointed to a number of cases involving consideration of s. 20 which, she submitted, showed that s. 20(5) is "forward looking", meaning that it is concerned with the prospect of a retrial or appeal if and after the requested person is extradited. However, the cases she mentioned were all cases where the factual dispute was about whether the requested person's Article 6 rights would be protected by an appeal or a retrial in the event of extradition; no reported case has addressed the position where there had been a prior opportunity for the protection of the requested person's Article 6 rights which the requested person had chosen not to exercise. That being so, we do not find the cases cited by Ms O'Raghallaigh to be persuasive on the issue we have to decide and need spend no further time on them.

33. The clear intent s. 20 of the Act is to give proper protection to the appellant's Article 6 rights. That intent cannot reasonably be said to be "contradicted" by an interpretation which allows a person to be extradited, when the only reason that he will not have the opportunity of a retrial on his return is that he had such an opportunity previously and chose not to take it. Nor is any guidance on this point to be gained from the fact that Parliament has not seen fit to amend s. 20 in the light of Article 4a. On the basis that our conforming interpretation is correct, there was no need for amendment and it would be idle and irrelevant to investigate whether and if so why a decision not to amend was taken. In our judgment, for the reasons we have set out, the intent of Article 4a and Section 20 are essentially the same, so that an interpretation which leads to extradition on the facts of the present case goes with the grain of the legislation and does not contradict it. Indeed, the contrary reading would involve the absurd proposition that a potential extraditee can be returned if he has a right of appeal which he might waive, but cannot be returned if he has already waived it.

34. We recognise that our proposed interpretation involves departure from the strict, literal or narrow interpretation of the words that the legislature has elected to use; and that it involves the implication of words necessary to comply with Community law obligations. But these are not impediments to conforming interpretation, as *Vodafone 2* makes clear: see [21] above. The necessary sense can be achieved economically, as Ms O'Raghallaigh herself recognised in her written submissions, so that the subsection can be taken by implication to read '…whether the person *was or* would be entitled to a retrial..'

35. We are strengthened in our view that this is the proper interpretation of s. 20 by the consistent and strong emphasis in decisions of the European Court to the effect that

Article 4a(1) does not allow Member States to refuse to execute an EAW when the person is in one of the situations provided for in the Article: see [18] above.

36. We therefore decide that s. 20(5) of the Act should be interpreted to cover the factual situations provided for by Article 4a(1)(c) and by Article 4a(1)(d). It follows that the District Judge was right to order the extradition of the appellant, though not for the reasons he gave.

Conclusion

37. This appeal is dismissed.