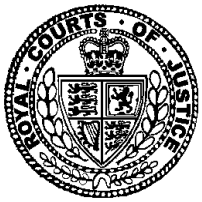

Neutral Citation Number: [2020] EWHC 602 (Admin)

Case No: CO/1911/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2020

Before:

LORD JUSTICE DAVIS
and
MR JUSTICE SWIFT

- -

Between:

VADIMS JASVINS	**Appellant**
- and -	
GENERAL PROSECUTOR'S OFFICE LATVIA	**Respondent**

- -
- -

ALUN JONES QC and MARTIN HENLEY (instructed by **Freemans Solicitors**) for the **Claimant**
NICHOLAS HEARN (instructed by **Crown Prosecution Service**) for the **Defendant**

Hearing: 27th February 2020

- -

Approved Judgment

LORD JUSTICE DAVIS and MR JUSTICE SWIFT:

A. Introduction

1. Vadims Jasvins appeals against an extradition order made on 8 May 2019. The order was made in respect of a European Arrest Warrant ("EAW") issued by the General Prosecutor's Office, Latvia ("the Prosecutor") on 16 May 2017 and certified by the National Crime Agency ("NCA") on 24 September 2018. The warrant is a conviction warrant. On 13 November 2010 Mr Jasvins's home had been searched by the police who found 6.499 grams of cannabis. Under Latvian law cannabis is a prohibited narcotic drug. Making an agreement with another person to store cannabis is an offence under paragraph 2 of section 253 of the Latvian Criminal Code. Mr Jasvins pleaded guilty at trial to an offence of agreeing with another person (Karina Nagle) to store cannabis.

2. Mr Jasvins was sentenced to five years imprisonment, suspended for five years (referred to under Latvian law as a term of probation). The sentence came into effect on 26 November 2012; the period of probation started then and was due to continue until 25 November 2017. During the probation period, Mr Jasvins was required to take part in such programmes as specified by the probation service, and also required not to change his place of residence without consent of the probation service. In July 2012 Mr Jasvins left Latvia and came to the United Kingdom.

3. In June 2013 at the Daugavpils Court, the court where Mr Jasvins had originally been sentenced, further proceedings took place, this time in respect of his failure to comply with the terms of his probation. Mr Jasvins had failed to register with the probation service and was not living at his declared place of residence. The court concluded that Mr Jasvins was "evading execution of the Court judgment" by not complying with the terms of his probation. The court decided to revoke the suspended sentence and implement the five-year sentence of imprisonment, subject to allowance for a short period Mr Jasvins had already spent in detention between 13 and 15 November 2010.

4. The EAW in issue in this appeal is not the first warrant issued by the Prosecutor in respect of Mr Jasvins's sentence for the offence under paragraph 2 of section 253 of the Criminal Code. An EAW was first issued on 28 July 2014 (the "July 2014 warrant"). That warrant was certified by the NCA on 16 May 2016. On the same day Mr Jasvins was arrested pursuant to that warrant and he remained on remand throughout the proceedings on that warrant. On 12 August 2016 District Judge Goldspring made an extradition order.

5. Mr Jasvins appealed. The application for permission to appeal came before Collins J on 8 November 2016. He granted permission to appeal stating the following, as set out in the note of judgment which he approved:

> "Note of judgment – Tuesday 8 November 2016
>
> This is a renewed application to appeal the decision given by DJ Goldspring that the appellant should be extradited to Latvia to serve a 5 year sentence for possession of 6.5g of herbal cannabis.

> The DJ accepted that the Appellant had been beaten up by the police and badly injured with a broken rib perforated eardrum.
>
> With regard to the ground s13 extraneous circumstances, Mr Henley argued that there been political interference, that argument was properly rejected by the District Judge.
>
> In my judgment there is some real concern about the way this was dealt with in Latvia. The Appellant was arrested in Latvia on 13 November 2010, there is an arrest report of that date. Subsequently, what is headed "Decision in administrative offence case", records that after examining the case documentation no mitigating or aggregating circumstances relating to the Appellant were identified. There was a fine of 50 Lats and a 52 Lat fee for drug tests a total of over 102 Lats which is the equivalent of about £120.
>
> He was then prosecuted for the more serious offence set out in EAW [that charge having been brought by the same police officer on 6 January 2011], there is no explanation as to why the Appellant was convicted of the more serious case, having already been fined for the less serious administrative offence case. Albeit that it was not put in this way to the DJ, he refers to the decision as a decision of a prosecutor but it was not being the decision of the Police Department.
>
> There is an argument to be raised if it is an abuse of process, it may be the prosecutor was unaware of the police action. There is a real concern raised and it is essential that the Latvian authorities explain the procedure followed. There may also be a double jeopardy argument whilst 5 years for what is a very small quantity of herbal cannabis is very harsh indeed.
>
> I grant permission to appeal and a summary of this judgment should be included in the order."

In short, Mr Jasvins's response to the July 2014 warrant was to say that he had only been prosecuted under paragraph 2 of section 253 of the Criminal Code because he had complained about being assaulted by the police when his home was searched on 13 November 2010. He said that immediately after the search he had been told he would be charged with an administrative offence under section 46 of the Administrative Offences Code. It is a breach of section 46 to use cannabis other than in accordance with a doctor's prescription. On 6 December 2010 Mr Jasvins was fined and ordered to pay an amount in respect of costs, pursuant to section 46 of the Administrative Offences Code. Mr Jasvins said that it was only after his complaint about the police that he was charged with an offence under paragraph 2 of section 253. When granting permission to appeal Collins J directed that the Prosecutor should, by 7 December 2016:

> "… file any further information with regard to the procedure where by the prosecution was instituted despite the administrative offence case issued by the Latvian police on 6 December 2010".

This was the Prosecutor's opportunity to rebut Mr Jasvins's contention that the charge against him had been laid for an improper reason.

6. The hearing of the appeal came before Dingemans J on 24 January 2017. Paragraphs 23-25 of his Judgment set out the next part of the narrative:

> "23. Collins J directed that the respondent was to file any further information with regard to the procedure whereby the prosecution was instituted, despite the administrative offence case issued by the Latvian police on 6 December 2010, by 7 December 2016. Provision was made for the appellant to file further evidence in reply.
>
> 24. It is apparent from the materials before me that no further information has been filed. Miss Bostock explains that, although the order came to the attention of the Crown Prosecution Service who were acting on behalf of the requesting prosecuting authority, the request was not sent. It appears to have then been discovered by the Crown Prosecution Service that the request had not been sent on 10 January and it was then sent, but there is as yet no document from Latvia. I was told this morning that a letter had been sent from Latvia but it was not emailed and attempts to get the information by email failed.
>
> 25. Towards the very end of the hearing, Miss Bostock applied for an adjournment, so that the materials could be obtained from Latvia. I refused that application for an adjournment. The application was made at the end of the hearing at a time when it became apparent that the absence of evidence might cause difficulties for the requesting authority rather than for the Appellant. The application should have been made at the beginning at the hearing, rather than after waiting to see how the point developed. Further there does not appear to have been any good reason for the failure to comply with the order of Collins J. This is because overlooking an order is not a good reason. Unnecessary delay would be caused by the adjournment."

7. Having refused the application to adjourn, Dingemans J determined the appeal. He dismissed grounds of appeal based on ECHR Article 3 and ECHR Article 8. In respect of the abuse of process ground (i.e. the submission that the charge under paragraph 2 of section 253 of the Criminal Code had been made only in response to Mr Jasvins's complaint against the police), Dingemans J applied the approach specified by the Divisional Court in *R(United States of America) v Bow Street Magistrate's Court* [2007] 1WLR 1157 (the case of *Tollman*). He concluded first that the conduct alleged by Mr Jasvins, if established, was capable of amounting to an abuse of process. Next, based on the information available he concluded that there were reasonable grounds for concluding that the conduct had occurred. Based on the judgment in *Tollman* the final

matter to consider was whether he was satisfied that the abuse had not occurred. Dingemans J stated as follows at paragraph 34 -38 of his Judgment.

> "34. In those circumstances, I need to consider whether I am satisfied that the abuse has not occurred. Miss Bostock, who has made every proper point that could be made on behalf of the Latvian authorities, disadvantaged as they are by the absence of further evidence, has pointed out that there were different offence numbers disclosed on the papers for what had occurred. That is simply a way of saying that obviously having cannabis in the bloodstream is different from the offence of possession of cannabis. However, everything arose out of the same circumstances and the evidence before me does not show that there were any other separate arrests for separate offending on different occasions, and the point about different crime numbers does not take me very much further.
>
> 35. It was suggested that there was some inconsistency in the appellant's own evidence. If there was, I have not been able to discern it. As far as I can see the appellant has consistently complained that he was only prosecuted after he had been told that the administrative proceedings would be an end of the matter subject to a formal decision, in the presence of his lawyer. He had then complained about the police misconduct and been prosecuted. In those circumstances, there are reasonable grounds for believing such conduct may have occurred.
>
> 36. I should just say what also features in this particular analysis is that the district judge who heard the requested person give evidence, albeit in relation to other matters, said and found that he accepted that the allegations made by the requested person were most likely to be true in so far as he said he was caused injury by the police during arrest. The District Judge said he was unable to make any positive findings against the requested person. All that shows is that the requested person's evidence might well be true. That is not saying that it is true, but that the district judge who heard him was unable to say that it was untrue. In those circumstances, then, according to *Tollman* 'the judge should not accede to the request for extradition unless he has satisfied himself that such abuse has not occurred.'
>
> 37. On the material before me, Miss Bostock says I can be satisfied that such abuse has not occurred because the point was not raised before the Latvian court, and repeating the other submissions that she made in relation to the offence numbers and the fact that there were inconsistencies in the statement. I have already dealt with the alleged inconsistencies in the statement and the different offence numbers. It is true that the appellant was taken before the courts in Latvia, he was represented and he did plead guilty. However, on the information before me that is because he was guilty. But that was not the abuse; the abuse was

> prosecuting him because he made the complaint about the mistreatment by the police officers when he had been told that an administrative penalty would be sufficient to deal with his wrongdoing.
>
> 38. I should make it clear that I am not finding that the Appellant's claims have been proved, and it would be unfair to make any such finding against the Latvian authorities given the circumstances I have outlined. However, I am unable to say that I am satisfied that such abuse has not occurred on the information before me. In those circumstances, my duty is plain, which is to allow the appeal, which I do."

Dingemans J's conclusion went no further than that there were reasonable grounds for believing that the conduct alleged may have occurred, and those reasonable grounds had not been rebutted by evidence from the Prosecutor. Dingemans J allowed the appeal and the extradition order was discharged. Mr. Jasvins was released from custody. The Prosecutor made no attempt to appeal against Dingemans J's Order.

8. Five months later on 16 May 2017 the Prosecutor issued the second EAW ("the May 2017 warrant"), which is the subject of appeal before us. For reasons which have not been explained that warrant was not certified by the NCA until 24 September 2018, some 16 months later. On 15 November 2018 Mr Jasvins was arrested for the second time. This time he was granted bail pending determination of the proceedings.

9. The extradition hearing took place on 8 May 2019 before District Judge Baraitser. She considered and dismissed grounds of appeal under section 21 of the Extradition Act 2003 ("the 2003 Act") that extradition would amount to a breach of Mr Jasvins's rights under ECHR Articles 3 and/or 8.

10. She also considered and dismissed a ground of appeal to the effect that the request to make an extradition order was an abuse of process: see her judgment between paragraphs 68 and 81. Her reasons focus on whether it would be an abuse of process to order Mr Jasvins's extradition if the charges against him had been made in response to his complaint about police conduct on 13 November 2010. Three matters emerge from her reasoning. First, the District Judge concluded that she would consider information about the charging decision that had not been made available to Dingemans J but which was available to her. She said, at paragraph 70, that it would be "perverse" to ignore those documents. Second, she noted that Dingemans J had not concluded that Mr Jasvins's claims had been proved, only that the evidence provided reasonable grounds to believe his claims that had not been rebutted. Third, she stated that she rejected Mr Jasvins's complaint that he had been prosecuted because he had complained about the police. In this regard she: (a) stated that the mere fact that two charges had arisen from the same search 13 November 2010 did not *per se* suggest impropriety; (b) noted the Latvian authorities' denial of Mr Jasvins's allegations; (c) stated that any allegation of abuse of process of the Latvian court was a matter for the Latvian court; (d) stated that she did not have sufficient information to determine the truth of Mr. Jasvins's complaints; and (e) in the alternative, concluded that she was "not satisfied that there are reasonable grounds for believing that such conduct may have occurred".

B. Decision

11. We have before us Mr Jasvins's appeal on the abuse of process ground, and his renewed application for permission to appeal on section 21 grounds, i.e. his contention that his extradition would be contrary to ECHR Article 3 and/or Article 8.

(1) Abuse of process

12. Two aspects of the District Judge's reasons are notable: her conclusion that the court should consider information that had not been served in accordance with the terms set out in the order made by Collins J on 9 November 2016, and which had not been available to Dingemans J; and her conclusion, in reliance on that information, that there were not reasonable grounds to believe that Mr Jasvins's complaint against the police. That second conclusion is the polar opposite of the conclusion reached by Dingemans J. It depends entirely on her first conclusion to permit the Prosecutor to rely on information he had been prevented from relying on in the proceedings on the July 2014 warrant because of his failure to comply with the Order of Collins J, and Dingemans J's decision to refuse the application to adjourn those proceedings. These matters illustrate the high-water mark of the argument in favour of allowing this appeal. They make it clear that the consequence of the proceedings on the May 2017 warrant has been an undermining of a conclusion reached in the proceedings on the July 2014 warrant – i.e. that there was no sufficient reason to adjourn the January 2017 appeal hearing. Mr Jasvins's case is that this state of affairs has come about through means that are properly classified as an abuse of the process of this court.

13. Mr Jones QC for Mr Jasvins relies on a number of authorities starting with *Connelly v DPP* [1964] AC 1254, continuing through *Hunter v Chief Constable of West Midlands Police* [1982] AC 529 and ending with *Johnson v Gore-Wood & Co.* [2002] 2 AC 1. All are cases where in one shape or form the courts have considered the rule in *Henderson v Henderson* (1843) 3 Hare 100. That rule is an expression of the public interest in the finality of litigation. In *Gore-Wood* Lord Bingham stated at page 31B that

> "… the bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied… that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all."

In *Hunter*, Lord Diplock at page 541B identified as an abuse of process

> "… the initiation of proceedings in a court of justice for the purposes of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made."

Thus, submits Mr Jones QC, the proceedings on the May 2017 warrant have been (and were necessarily) pursued as a collateral attack on conclusions reached by Dingemans J and for that reason, are an abuse of process.

14. So far as concerns authority, our preference is to focus attention on a small number of more recent decisions made in the context of extradition proceedings. At the forefront is the judgment of Lord Burnett CJ and Dingemans J in *Giese v Government of the United States of America* [2018] 4 WLR 103. In that case the court confirmed that the rule in *Henderson's* case did apply in extradition proceedings. However, the court was clear that any application of that rule had to be sympathetic to the specific public interests served by extradition proceedings. The most obvious point of difference between extradition proceedings and the civil proceedings in which the rule in *Henderson's* case has been fashioned and developed is the specific public interests that exist in the effective operation of arrangements made by the United Kingdom, such as the EAW system, for the purpose of delivering for trial or punishment persons who have been charged with offences overseas or have been convicted overseas. Those public interests mean that mechanistic application of the rule in *Henderson's* case is not appropriate; rather it is necessary to have well in mind that any application of that rule must serve the purpose of protecting the integrity of the scheme set out in the 2003 Act and the integrity of the EAW system.

15. Yet there is no contradiction between these purposes and the object that any requested person be protected from oppression and unfair prejudice. Paragraphs 32 and 33 of the judgment in *Giese* provide a summary of the approach required:

> "32. The key, in our judgment, to cases where it is said that the requesting state failed in the first set of proceedings such that the second set are an abuse of process is to make a "broad, merits-based judgment which takes account of the public and private interest involved and also takes account of all the facts of the case": see *Johnson v Gore Wood & Co* [2002] 2 AC 1, para 31 and *Arranz v Spain* [2016] EWHC 3029 (Admin) at [32]–[33]; [2017] ACD 12. Such a broad, merits-based judgment should take account of the fact that there is no doctrine of res judicata or issue estoppel in extradition proceedings.
>
> 33. Underlying extradition are important public interests in upholding the treaty obligations of the United Kingdom; of ensuring that those convicted of crimes abroad are returned to serve their sentences; of returning those suspected of crime for trial; and of avoiding the United Kingdom becoming (or being seen as) a safe haven for fugitives from justice. The 2003 Act provides wide protections to requested persons through the multiple bars to extradition, Parliament originally and through amendment, has enacted. There are likely to be few instances where a requested person fails to substantiate a bar but can succeed in an abuse argument."

In the context of extradition proceedings, the abuse jurisdiction is a line of defence of last resort, and a line of defence that in any event, should not be allowed to subvert any of the statutory bars to extradition set out on the face of the 2003 Act.

16. Like the Court in *Giese*, and for that matter also like the Divisional Court (Burnett LJ and Cranston J) in *Auzins v Prosecutor General's Office of the Republic of Latvia* [2016] 4 WLR 75, we readily acknowledge the existence of the abuse jurisdiction. The comments of Ouseley J at paragraph 34 in *Camaras v Baia Mare Local Court, Romania* [2018] 1 WLR 1174 to the effect that the role of the abuse jurisdiction went no further than informing the way in which in the bars to extradition on the face of the 2003 Act could be interpreted and applied should now be read subject to these two judgments.

17. It is clear from the outcomes reached in *Giese* and *Auzins* that there is no necessary conclusion that proceedings on a second (or later), warrant will amount to an abuse of process with the consequence that those proceedings will be dismissed. Far from it. In *Auzins* the second warrant was consequent on improvement in prison facilities in Latvia, which meant that appropriate medical treatment could be available for the requested person. In *Giese* the second request for extradition was accompanied by improved assurances as to the form of detention order to which the requested person would be subject if convicted. In each instance, considering the circumstances in the round, pursuit of a further extradition request could not be characterised as any form of subversion of the statutory provisions, let alone oppression of the requested person. These two cases alone make it clear that any application of the rule in *Henderson's* case must be measured in specifics and the circumstances of the case in hand. There can be no one-size-fits-all approach.

18. The key feature of the present case is the apparent contradiction between the Prosecutor's reliance in the proceedings on the May 2017 warrant on material to explain why the charge against Mr Jasvins was not brought in response to his complaint against the police, and the decision of Dingemans J to refuse the request to adjourn the hearing on 24 January 2017 (in substance refusing to extend time for compliance with the direction Collins J had made on 9 November 2016). Dingemans J's decision had the effect of excluding from the first proceedings precisely the material that in these proceedings was an important part of the Prosecutor's case before the District Judge.

19. Any situation in which a second extradition request might permit a requesting authority to circumvent a ruling that had gone against it in proceedings on an earlier materially identical extradition request is problematic. In *Camaras* Ouseley J said this:

> "31 The principle in *Henderson v Henderson* represents an aspect of the public interest in giving effect to international extradition arrangements. As *Fenyvesi's* case [2009] 4 All ER 324 points out, the broad public interest in the finality of proceedings and fairness to both sides, requires further evidence generally not to be admitted on appeal unless the specific conditions are satisfied. The magistrates' court also has to manage its cases with a view to enabling the issues to be disposed of fairly but also with the sort of expedition required by the Framework Decision and the 2003 Act, and this also involves making effective use of judge time. A court has to make orders for the delineation of the issues, for the production of evidence, and directions for the hearing, including the grant or refusal of adjournments, all to that end.

> 32. It would be neither fair nor consonant with that public interest for the issuing judicial authority, failing to comply with the district judge's directions, or unable to produce the further evidence it wanted, simply to issue a further EAW, to reverse the effect of its non-compliance with court orders, or its failure to put its case forward. This is not an option open to defendants, though they have some more constricted routes to the same end. A court must be able to give effect to its own procedural directions, and to prevent their being circumvented on appeal or by a further EAW. That furthers rather than undermines the statutory scheme. Whether the attempted enforcement of a further EAW, in circumstances falling short of *Belbin* abuse of process, so undermines the interest of the statutory scheme in speed finality, and in upholding the decisions and orders of the courts, that enforcement should be denied, cannot be answered without consideration of all the circumstances."

In *Giese*, the court returned to this theme (at paragraph 31)

> "31. There will be cases where a judicial authority has, for example, failed to comply with court orders in the first extradition proceedings, where a question of abuse of process may arise for consideration in connection with a second set. Similarly, where in the first set of proceedings the requesting state has abjectly failed to get its evidential house in order. But a mechanistic approach to abuse is inappropriate …"

before expressly approving Ouseley J's caution (at paragraph 32 of his judgment in *Camaras*) that the circumstances of each case must be considered.

20. Mr Jones's submission in this case is that wherever proceedings on a subsequent EAW amount to collateral attack on decisions taken in proceedings on an earlier materially identical EAW, the second proceedings must amount to an abuse of process and must be dismissed. We do not agree that the matter can be put in such absolute terms. Where there are successive warrants or successive extradition requests, if proceedings on the subsequent warrants can properly be characterised as a collateral attack on a decision in proceedings on the first warrant, the latter proceedings are capable of amounting to an abuse of process. It may be possible to go further and say that ordinarily this will be the case. But the outcome in any given situation must depend on the overall merits-based assessment of public interests and careful evaluation of the facts, referred to at paragraph 32 in judgment of *Giese*.

21. There is a particularly important public interest that the system of enforcement of EAWs is not undermined. That public interest covers a number of objectives. One objective, plainly, is that those who are charged with criminal offences overseas or have been convicted overseas and are wanted for punishment are provided to requesting authorities. But maintaining the integrity of the EAW system includes ensuring that decisions can be made expeditiously and that courts are able to exercise effective case

management powers. Put bluntly, if such orders are made, the starting presumption is that they will be complied with. Where, as in this appeal, the claim of abuse of process arises from a failure in earlier proceedings to comply with a court order, the court in the later proceedings must assess the significance of permitting the Requesting Authority to avoid the consequences of the earlier decision, while also taking account of the public interest in that particular extradition. This will also include considering the gravity of the alleged or actual offending, and the prejudice (if any) to the requested person arising from pursuit of the further warrant. In other words, a *Giese*-style broad, merits-based judgment taking account of the public and private interests as they are manifest on the facts of the particular case.

22. On the facts of this case we are satisfied that it is not acceptable that the Prosecutor should, through proceedings to enforce the May 2017 warrant, be able to do precisely what he was prevented from doing by Dingemans J's decision in January 2017 to refuse the application that the proceedings on the July 2014 warrant be adjourned.

23. In the proceedings before us, the Prosecutor relies (as he did before the District Judge) on two documents that respond to the conclusion reached by Dingemans J that there were reasonable grounds to believe that the conduct alleged by Mr Jasvins (that the charge against him was brought in consequence of his complaint against the police) may have occurred. The first is a document dated 16 January 2017 from Judge J Baufale of the Daugavpils Court. This explains the difference between the offence under section 46 of the Administrative Violations Code and the offence under paragraph 2 of section 253 of the Criminal Code. The latter concerns storage of illegal narcotics, while the former can include personal use of narcotics. If this information is read with the arrest report dated 13 November 2010, which was available to the court in the proceedings on the July 2014 warrant and which states that when arrested Mr Jasvins admitted he had smoked cannabis that day, it provides support for the conclusions (a) that the administrative fine imposed under section 46 of the Administrative Violation Code was imposed because of Mr Jasvins's use of cannabis on 13 November 2010, and (b) that the charge under paragraph 2 of Section 253 of the Criminal Code related to possession of the 6.499 grams of cannabis that had been found in his possession on the same day. The second document is a further letter from Judge Baufale dated 8 February 2019. In this letter the Judge states that the court has *"neither information nor evidence that would support or could support that the criminal prosecution against Vadims Jasvins was instituted for revenge for him having made a complaint about police brutality*".

24. Taken together, this is precisely the sort of evidence that should have been filed in accordance with Collins J order of 9 November 2016. The consequence of Dingemans J's decision on 24 January 2017 to refuse the Prosecutor's application to adjourn the appeal proceedings on the July 2014 warrant was to prevent the Prosecutor responding to Mr Jasvins's submission about the reason for his prosecution. Dingemans J considered the explanation given for the Prosecutor's default. Notwithstanding Collins J's order, it appeared that the Crown Prosecution Service (who acted for the Prosecutor) had not asked the Prosecutor to provide information until 10 January 2017. By time of the hearing on 24 January 2017 the Prosecutor had not provided any information to address Collins J's concerns. As Dingemans J recognised, it might have been that the fault lay with the CPS rather with the Prosecutor, and in the present proceedings this was a point to which the District Judge attached significant weight. But that was not

really to the point. What was to the point is that Dingemans J did not consider the explanation to be sufficient. In that regard nothing has changed between then and now. It seems to us to be plain beyond argument that if the EAW system is to operate effectively and fairly, Requesting Authorities and those who act on their behalf in this jurisdiction ought to comply with court orders, or at least should have very good reason for any non-compliance. On the facts of this case, it is clear that pursuit of the proceedings on the May 2017 warrant are in substance simply an attempt to circumvent Dingemans J's refusal to adjourn the proceedings that were before him in January 2017.

25. Applying the test in *Giese*, we consider the District Judge reached the wrong conclusion. At paragraph 70 of her judgment she stated the conclusion that it would be "perverse" to ignore the information now relied on by the Prosecutor – i.e. the documents described at paragraph 22 above. With respect, that was wrong. Given what had gone before, the District Judge ought to have relied on this information only if the Prosecutor could justify why he should be able to rely on it in the proceedings on the May 2017 warrant, notwithstanding his failure to comply with Collins J's order, and the order then made by Dingemans J in the earlier proceedings.

26. On the facts of this case there are also other important matters relevant to the merits-based judgment of the public and private interests that are in play. There has been no explanation at all for the 16 months taken before the May 2017 warrant was certified. No doubt following the decision of Dingemans J in January 2017, Mr Jasvins would have been aware that further efforts might be made to extradite him. But the passage of time between then and his arrest on 15 November 2018 could only have lulled him into a false sense of security. Given the nature and extent of the offending that is the cause of the extradition request – an offence of possessing 6.499 grams of cannabis committed as long ago as 2010 – there was every reason why Mr Jasvins might have thought, as time passed, that further proceedings against him were ever less likely rather than more likely. Thus, he has been unfairly prejudiced by the Prosecutor's attempt to rely on the May 2017 warrant. Further, in reaching our conclusion that the extradition order made by the District Judge should be discharged, we have had regard to the nature and extent of Mr. Jasvins's offending.

27. The public interest in the return of offenders in accordance with agreed extradition arrangements to serve punishments imposed on them overseas is an important public interest. However, in the circumstances of this particular case it yields to the public interest in compliance with court orders and the finality of the decisions consequent on failures to comply with them. As we have made clear, both these interests support the integrity of the scheme contained in the 2003 Act and the EAW system.

(2) The section 21 Argument: ECHR Articles 3 and 8

28. The reasons set out above are dispositive of this appeal. For sake of completeness only we will address, very briefly, Ms Jasvins's other grounds of appeal.

29. Julian Knowles J refused permission to appeal on each of these grounds. His decision was plainly right. So far as concerns Article 3, Mr Jasvins's case rests on his complaint that he had been assaulted by the police on 13 November 2010. Even if for present purposes that complaint is assumed to be correct, it is not sufficient to make good the submission that if returned to Latvia to serve his sentence he would be at real risk of Article 3 ill – treatment. In his judgment Dingemans J dealt with this point in this way.

> "27. … The third ground of appeal related to Article 3 of the ECHR. Mr Henley relied on section 21 of the 2003 Act which bars extradition if there will be any infringement of rights guaranteed by the European Convention on Human Rights. An extradition will be barred if there is a risk of inhuman and degrading treatment. Mr Henley said that because inhuman and degrading treatment may have occurred in the past there is a risk of it occurring in the future. There is, in my judgment, simply no evidence to support that submission. The District Judge made a finding about injury suffered by the appellant, but there are no findings to suggest that there would not be any proper compliance with Article 3 ECHR in the future, particularly having regard to principles of comity. So the Article 3 ground fails."

We see no basis for an argument that any different conclusion could be reached now. Before us, Mr Jones accepted that no further information in support of the Article 3 claim had come to light since January 2017.

30. The Article 8 claim is also unarguable. Mr Jasvins has lived in the in the United Kingdom since July 2012. He is single and works as a contractor in the construction industry; he has an ex-wife who lives in Reading (they were divorced in either 2004 or 2005, and apparently came to the United Kingdom independently of each other); he has a son aged 17 who also lives in the United Kingdom; it appears that Mr. Jasvins's contact with his ex-wife and his son is minimal. We accept that extradition from the United Kingdom would amount to an interference with Mr. Jasvins's right to private life guaranteed by Article 8. But, it is unarguable that that interference with Mr Jasvins's Article 8 rights was not justified by the usual, well-known public interests in the efficient and effect operation of extradition arrangements made by the United Kingdom.

C. Disposal

31. For the reasons given above, this appeal is allowed. The extradition order made by the District Judge is quashed, and Mr Jasvins is discharged.