



Neutral Citation Number: [2021] EWHC 2283 (Admin)

Case No: CO/1736/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/08/2021

Before :

LORD JUSTICE BEAN
MR JUSTICE WILLIAM DAVIS

Between :

ZAHER AL HAJJEH	<u>Claimant</u>
- and -	
WESTMINSTER MAGISTRATES' COURT	<u>Defendant</u>
- and -	
COMMISSIONER OF POLICE OF THE METROPOLIS	<u>1st Interested Party</u>
CHRISTIE'S INTERNATIONAL PLC	<u>2nd Interested Party</u>

Matthew Butt QC (instructed by Burgess Okoh Saunders Solicitors) for the **Claimant**
Neil Sheldon QC and Catherine Collins (instructed by the **Metropolitan Police Service Directorate of Legal Services**) for the **1st Interested Party**

Hearing date: 21st July 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, released to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30am on 13th August 2021

Mr Justice William Davis:

Introduction

1. On 12 February 2020 District Judge Goldspring (as he then was) sitting at the Westminster Magistrates' Court issued a warrant to enter and search the premises of Christie's at 8 King Street, London SW1Y 6QT. The warrant authorised an officer of the Metropolitan Police to seize a Qu'ran which had been placed for auction with Christie's on behalf of the Claimant. The warrant was issued under Section 16 of the Crime (International Co-operation) Act 2003 and Section 8 of the Police and Criminal Evidence Act 1984, the Metropolitan Police acting in response to a letter of request from the judicial authority in Turkey.
2. With permission granted by Mr Justice Swift the Claimant now applies for judicial review of the decision of the District Judge. Neither the Westminster Magistrates' Court as Defendant nor Christie's as Second Interested Party have participated in these proceedings. The First Interested Party whose officer applied for the warrant opposes the application for judicial review.
3. The Claimant's case has two limbs which are interlinked. First, the Qu'ran was obtained for a purpose other than that provided for under the Police and Criminal Evidence Act and the Crime (International Co-operation) Act. Second, the District Judge was materially misled as to what passed between the Claimant, the police and Christie's in 2017 and in relation to the progress of the investigation by the Turkish authorities. Had the District Judge known the true position, he might not have issued the warrant. Moreover, there was a serious breach of the duty of candour which lay on the police which on its own was sufficient to infect the issue of the warrant.
4. The First Interested Party accepts that errors were made in the provision of information to the District Judge. Her case is that any errors were immaterial to the issue of the warrant and that the District Judge would have issued the warrant in any event. There was no lack of candour on her part. Insofar as she was misled by information provided by the Turkish authorities, this did not infect the issue of the warrant.

The factual background prior to the application for the warrant

5. On 24 February 2015 a man named Mehmet Çir was the victim of a robbery in Turkey. He was the owner of a Qu'ran of considerable antiquity. It was said to date from the 16th century and was signed by Mustafa Dede, a celebrated calligrapher of the time. Mr Çir was contacted by two men who gave false names and who expressed an interest in purchasing the artefact. They came to Çir's office in Istanbul. One man (whose true name was Gök) pretended to be an expert in relation to Qu'rans whilst the other (a man named Sigirci) pretended to be carrying a bag containing a very large sum in cash. The man pretending to be in possession of the cash left the office saying that he was short of the overall sum agreed as the sale price and that he needed to go to a bank to obtain more funds. Whilst that man was away, two other men (one of whom was named Özbey) burst into Çir's office. They used pepper spray to disable Çir and then wrapped tape around his face and head. Gök, Özbey and the man who had arrived with Özbey (who remains unidentified) ran off taking the Qu'ran belonging to Çir with them.

6. The Turkish authorities began an investigation into the robbery. It was given the investigation number 2015/29157. How the authorities in the short term proceeded with the investigation is not clear. It was not until early 2018 that arrests were made. In 2017 the Turkish authorities began an investigation with the number 2017/192047. This investigation concerned an alleged offence of exporting a cultural item. The authorities had received information that the Qu'ran stolen from Çir had been smuggled out of Turkey. There was an associated allegation that the Qu'ran in fact did not belong to Çir but that cannot have been relevant to the allegation of illegal exportation of a cultural item.

7. On 7 June 2017 the Claimant entered into a seller's agreement with Christie's to sell a Qu'ran. On 11 August 2017 he provided a signed declaration as to the provenance of the artefact. The handwritten declaration was as follows:

I bought this item in UK from UK Company and the Saler (sic) confirm that he bough (sic) it among of 8 items from auction room in Sydney Australia and it was part of item belong (sic) to a collector. The Saler (sic) confirm the entry date to the UK 11.5.17.

On or about 19 September 2017 Christie's were provided by the Claimant with a letter from a Mr Al Akhoann. He described himself as a director of The Oriental Rug Gallery Ltd based at a shop in Haslemere in Surrey. The letter stated:

This is to confirm and certify that Mr Zaher Mohammed El Hajje has purchased an antique Quran by the writer Mostafa Dada over 100 years old...he paid in full for this item as it's shown in TORG invoice 2652 dated 02-06-2017. This is to confirm that we have purchased this from Australia 2nd April 2017 among 8 items and all have entered UK on 11-05-2017.

Accompanying this letter was a document apparently showing that Mr Al Akhoann had imported a set of 8 Qurans on 11 May 2017.

8. The Qu'ran was delivered to Christie's by a man named Kassem. Kassem lived in West London. The Claimant lived in Lebanon. Christie's placed the Qu'ran in an auction sale due to take place on 26 October 2017. The artefact was given the lot number 203. Photographs of the artefact were published in the brochure for the auction. On 23 October 2017 Christie's were notified in a letter from the Turkish Embassy in London that the Qu'ran belonged originally to Turkey. As such it should not have been taken out of Turkey by reference to Turkish Law numbered 2863. Its removal from Turkey amounted to a criminal offence. Christie's were asked to stop the sale of the artefact and to return it immediately to Turkey. On the same day Interpol Ankara contacted Interpol Manchester requesting that the competent authorities in the UK stop the sale of the artefact in order that it could be returned to Turkey.

9. Christie's did withdraw the Qu'ran in question from the auction sale. The Claimant was informed of the position. He was told that he should contact the police which he did. The Qu'ran was retained by Christie's.

10. On 22 January 2018 an International Letter of Request (ILOR) was issued by the Public Prosecutor in Istanbul. It stated that investigation was underway both in relation to the Qu'ran having been stolen in February 2015 in an armed robbery and in respect of its removal from Turkey contrary to the law relating to cultural items. The person from

whom the Qu'ran had been stolen had identified it from the photographs with which Christie's had advertised the artefact in their catalogue. The request was limited to the provision of information as to the circumstances in which the Qu'ran had come to be offered for sale. This request led DC Hayes, an officer in the Metropolitan Police Art and Antiques unit, to make enquiries in this jurisdiction.

11. DC Hayes obtained the documents provided to Christie's prior to October 2017. As a result she met Mr Al Akhoann, the owner of the Oriental Rug Gallery. He confirmed that the document relating to the importation of Qu'rans was his. He knew the Claimant as a business contact. He had purchased the Qu'rans as a single lot for £12,000 at an auction in Australia. He did so after taking advice from the Claimant. Having imported them into the UK, Mr Al Akhoann had sold one of the Qu'rans to the Claimant for £4,000. This was in August 2017. After this transaction the Claimant had told him that the Qu'ran was by "Mostafa Dada". This meant nothing to Mr Al Akhoann but, at the Claimant's request, he had written the letter of 19 September 2017. DC Hayes was able to establish that the Qu'ran sold by Mr Akhoann was different in colour and appearance to the one submitted to Christie's by the Claimant.
12. In August and October 2018 DC Hayes made three separate requests to the solicitors then acting for the Claimant for the Claimant to attend for an interview under caution. Save for an acknowledgment of the request and an indication that instructions would be taken, DC Hayes received no response to those requests. She had no means of contacting the Claimant directly. In early November 2018 the Claimant instructed new solicitors. DC Hayes wrote to those solicitors on 8 November 2018. She explained in some detail why she wished to interview the Claimant. In particular, she stated that the allegation was that the provenance documents provided to Christie's were false. The intention had been to conceal the fact that the Qu'ran had been stolen in an armed robbery in 2015 in Turkey. She indicated that she was concerned both with a fraud investigation in the UK and the investigation in Turkey into the armed robbery.
13. On 12 November 2018 the newly instructed solicitors replied. They said that they had asked the Claimant to confirm his availability for an interview. They also said that the Claimant was "preparing several documents that prove his ownership of the Qu'ran in question". The solicitors wrote again on 1 December 2018. They said that they had asked the Claimant to make arrangements to travel to London for an interview. On 4 December the solicitors sent to DC Hayes a statement from a lady named Derya Unal. The statement was dated 28 November 2018. It was said to have been signed in Istanbul. It was witnessed by a lawyer named Güney. Ms Unal said that she lived in Germany but also had an address in Istanbul. In 1993 her father had bought a Qu'ran scripted by Mustafa Dede for 12,000 DM. He had given her the Qu'ran in November 2014 as a 40th birthday present. The following year she was in need of money. She entered into a commission agreement with a man named Simsek whereby Simsek would sell the Qu'ran on her behalf. The Qu'ran was sold to the Claimant via Simsek. Ms Unal said that she hand delivered the Qu'ran to Kassem Mohammed, a friend of the Claimant, in London. Her account was that the price of the Qu'ran was \$100,000. This was paid to Simsek in Istanbul with Ms Unal receiving that sum less Simsek's commission a month later. DC Hayes's response on 9 January 2019 was to inform the Claimant's solicitors that she had concluded that any offences relating to the Qu'ran would be more effectively investigated by other countries. Thus, she no longer wished to interview the Claimant.

14. Five days before the issue of the ILOR in January 2018 Gök was arrested in Turkey. His presence at the scene of the robbery had been established from his DNA being on a cigarette butt found at Çir's premises. Once he had been connected to the robbery, the involvement of Sigirci and Özbey was apparent from their links to him. All three men were tried in the Criminal Court in Istanbul. They were convicted of robbery as set out in Article 149 of the Turkish criminal code. On 20 November 2018 they were sentenced to long terms of imprisonment. Gök's sentence was 12 ½ years' imprisonment. The sentences of the other two defendants were reduced to 10 years 5 months to take account of their good character. No confiscation or other ancillary order was made.
15. On 17 April 2019 a second ILOR was issued by the Public Prosecutor in Istanbul. The request referred to the offence of armed robbery in February 2015. It stated that a suspect (identified as Gök) had been arrested and imprisoned for his involvement in the offence and that the trial was "ongoing". In relation to the Qu'ran placed for sale with Christie's, it was said that Mr Çir had positively identified it as the one stolen from him. Expert evidence regarding the Qu'ran was appended to the ILOR. The request asserted that it was necessary for the proper investigation and prosecution of crime in Turkey that the Qu'ran was seized and provided to the prosecuting authority in Turkey.
16. This second ILOR formed the basis of a request for mutual legal assistance made by Judge Altintas, the Turkish liaison judge to the UK. He was based in the Turkish embassy in London. The request was directed to the UK Central Authority, the agency within the Home Office with responsibility for dealing with such requests. On 30 September 2019 a lawyer at the UK Central Authority wrote to Judge Altintas as follows:

In the letter of 17 April 2019 the prosecutors state that an investigation has been instigated by the Public Prosecution Office for robbery. The suspect appears to have been arrested and is imprisoned in Istanbul.

A later paragraph seems to confirm that the "trial is ongoing" but then the final paragraph refers to the need for the original item for the investigation.

Would you be able to confirm the current status of the investigation? Has the individual been charged and a trial pending? Or are your investigators still at the pre-trial investigation stage?

17. Judge Altintas made enquiries in Turkey. On 2 December 2019 (by which time Gök and the other two men had been sentenced) Judge Altintas replied as follows:

This is to confirm that the 17th High Criminal Court of Istanbul made a judgment re some part of this matter on...10/11/2018 (Case no. 2018/2017)...that judgment has not become final and absolute as of yet....there is still an ongoing investigation conducted by the Chief Public Prosecution Office of Istanbul re the same matter (investigation number 2018/92716). I can also add and confirm that the mentioned judgment of 10/11/2018 made reference to that criminal investigation...I will try my best to keep you advised of any new developments re the judgment of 10/11/2018.

18. Judge Altintas went on to explain that the subject matter of the ILOR, namely the Qu'ran, was a cultural heritage and fell within the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property 1970. Both the UK and Turkey are parties to this UNESCO convention. Because the Qu'ran had been illicitly exported from Turkey to the UK, the judge formally requested the return of the Qu'ran in accordance with Article 7(b)(ii) which provides an undertaking by contracting states as follows:

(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

19. In the light of the information provided by Judge Altintas the UK Central Authority consulted with the police about the best course of action. On 4 February 2020 in an e-mail to Judge Altintas the Authority said it was a matter operationally for the police how best to proceed. In an exchange of e-mails on that day Judge Altintas confirmed that the Turkish authorities were content for the ILORs to be disclosed to any UK judicial authority.
20. On 29 January 2020 solicitors acting for the Claimant sent a letter before action to Christie's. It demanded delivery up of the Qu'ran within 14 days failing which proceedings would be taken for delivery up of the Qu'ran or, in the alternative, damages for the current value of the item said to be £750,000. Enclosed with the letter was the statement dated 28 November 2018 from Unal i.e. the document provided in December 2019 to DC Hayes. There were further enclosures: a statement from Kassem Mohammed dated 27 November 2018; a document headed Contrat dated 23/3/2016. Kassem Mohammed (who lived in West London) stated that the Claimant was a close family friend who in the spring of 2016 had asked him to collect an antique Qu'ran which he already purchased. He said that he had received a call from Derya Unal and that they had agreed to meet near a hotel in Green Park. At the meeting she had handed over the Qu'ran. Kaseem said that he had telephoned the Claimant asking what the Claimant would like him to do with it. The Claimant told Kaseem that he wished to sell it at auction and asked Kaseem to hold on to it. It was not until August 2017 that the Claimant asked Kaseem to submit the Qu'ran for auction at Christie's which is what he then did. The Contrat was a document apparently signed by Simsek and the Claimant. It recorded that Simsek had received \$100,000 in cash from the Claimant and "his partner Samer Ali" for a Qu'ran written by Mustafa Dede. It further recorded that this sum was received on behalf of the owner, Derya Unal, and that Unal agreed to hand over the Qu'ran to Kaseem by 23/3/2016 at the latest, this to be in London. The Contrat recorded that both Simsek and the Claimant were in Istanbul where Unal also had an address and where she (according to her statement) collected the proceeds of sale.

21. Christie's informed the police of the letter before action they had received. The documents provided to Christie's with that letter in relation to the provenance of the Qu'ran were forwarded to the police. It was in the light of these developments that on 11 February 2020 application was made by DC Hayes to the Westminster Magistrates' Court for a warrant to enter and search Christie's.

The application for the warrant and the District Judge's decision

22. When DC Hayes on 11 February 2020 attended the Westminster Magistrates' Court she supplied the court with a bundle containing inter alia: the application for a search warrant on the appropriate form as required by the Criminal Procedure Rules; a supplement to that application due to the application being made in response to a request for assistance from a foreign jurisdiction, the supplement also being on the form required by the Criminal Procedure Rules; the two ILORs issued by the Public Prosecutor in Istanbul; colour photographs of the Qu'ran; the letter before action dated 29 January 2020 together with the enclosures relating to the provenance of the Qu'ran; the provenance documents provided to Christie's in 2017 when the Qu'ran was submitted to them for sale.
23. The application for the warrant identified the offence under investigation under Turkish law as Armed Seizure and referred to Article 149 of the Turkish Criminal Law. Under the heading "Investigation" the application stated:

The Turkish Authorities are investigating and prosecuting a gunpoint robbery which occurred on 24th February 2015 in Istanbul. The circumstances of the offence in Istanbul are that during the sale of a 16th Century Qur'an, worth \$500,000, the seller was attacked and the manuscript was stolen. The Turkish authorities have requested seizure of the stolen property, currently in the hands of Christie's, as physical evidence in the criminal proceedings which are currently before the court. A suspect, Nurettin GOK has been arrested and imprisoned for his involvement in the theft, and the trial is ongoing.

The application referred the District Judge to the supplement to the application for further details. The supplement set out the circumstances of the offence in Turkey. It stated that, by reference to the photographs of the Qu'ran, it had been identified as the one stolen from Mr Çir (so far as was possible based on photographs alone). The supplement went on:

The Turkish Authorities have subsequently requested seizure of the Qur'an as evidence in their ongoing criminal investigation, which is being conducted by the Chief Public Prosecution Office of Istanbul (investigation no: 2018/92716).

24. In the application DC Hayes identified the material being sought i.e. the Qu'ran put up for sale by auction with the lot number 203. It was described as "a crucial exhibit in the Turkish case". DC Hayes stated that she had been informed by the Turkish authorities that it was necessary for the proper investigation and prosecution of crime in Turkey that the Qu'ran be seized and provided to the prosecuting authorities there. Accompanying the application were the documents provided at various points by the Claimant to establish his right to sell the Qu'ran and his genuine ownership thereof. DC Hayes stated that the Metropolitan Police had "serious concerns" in relation to the accounts given by the Claimant in support of his claim to be the lawful owner of the

Qu'ran. She set out the documents provided by the Claimant and pointed out the inconsistency between the material submitted to Christie's in 2017 and the material provided thereafter. In relation to the Claimant's ability to establish his ownership of the Qu'ran, DC Hayes stated that she had been informed by a judge based at the Turkish Embassy in London (presumably a reference to Judge Altintas) that there was a legal process in Turkey whereby the Claimant would be able to assert his claim to ownership of the Qu'ran.

25. District Judge Goldspring was identified as the judge who would deal with the application. He declined to deal with it on 11 February 2020. Because of the amount of material supplied with the application, he required time to read all of it. After hearing from DC Hayes the following day the District Judge issued the warrant. He noted the following on the relevant pro forma as his reasons in relation to Section 8 of the Police and Criminal Evidence Act 1984:

I have reasonable grounds to believe: An indictable offence has been committed namely theft contrary to S1 TA 1968 or HS Goods contrary to S2 TA 1968.

And the evidence of that offence being committed is the information in the application sets out that the artefacts were stolen in a robbery in Turkey by gunpoint, the artefacts are for sale by auction at Christies in London they are clearly identified.

The Artefacts (or at least pictures thereof) have been examined by experts and they say the items are those stolen - they are clearly on the premises as they are advertised for sale. The items are said to be the stolen evidence and therefore "real evidence" the access condition was satisfied as Christies have indicated they cannot resolve the dispute + will therefore not handover to anyone w/out a warrant.

The District Judge went on to deal with the statutory criteria in the Crime (International Co-operation) Act 2003. In particular, he said that he was satisfied that the application contained a full description of the criminal conduct concerned which established dual criminality.

Further background following the decision to issue the warrant

26. On 12 February 2020 DC Hayes went to Christie's and seized the Qu'ran. The Claimant's solicitors were informed of the position. They requested the warrant application and material supplied in support. This was provided on 27 February 2020. The Metropolitan Police undertook that they would retain possession of the Qu'ran pending any proceedings.
27. The Claimant's solicitors instructed a Turkish lawyer based in Istanbul, Fatih Güney, to advise on various aspects of Turkish legal procedure. This is the same lawyer who witnessed the statement of Unal. On 30 June 2020 Mr Güney made a witness statement. He identified three case file numbers in relation to the Qu'ran. Case number 2015/29157 was the investigation by the Chief Public Prosecutor in Istanbul launched in 2015 following the robbery. This led to the arrest of two men, one of them being Gök. Case file 2018/207E was the number given to the trial of Gök and his two co-accused which led to their convictions in November 2018. Case number 2018/92716 (to which reference had been made in the application for the warrant) was the investigation by the Chief Public Prosecutor in Istanbul into other suspects after the

arrest of Gök and the other men. Mr Güney said that the investigation was “ongoing” but that there had been no developments in the file for 2 years. He said that he could see no request for the return of the Qu’ran in relation to any of those files.

28. Mr Güney also said that there would be no legal requirement in Turkey for alleged stolen property to be in the hands of the prosecution for the purpose of instituting or continuing proceedings. Finally, Mr Güney considered the possibility of the Claimant establishing his ownership of or rights to the Qu’ran in a Turkish legal procedure as referred to by DC Hayes in the application for the warrant. His view was that, because of the significant historical value of the Qu’ran, it would be regarded as cultural property and a protected artefact. As such, it would be very unlikely that the Claimant would be able to enforce the return of the Qu’ran to him and that, even if that were to occur, he would not be able to remove the artefact from Turkey or to sell it.
29. Mr Güney’s witness statement was sent to the Turkish authorities for comment. On 5 October 2020 the Public Prosecutor of Istanbul responded. He referred to Investigation number 2017/192047 which was said to refer to the crime of “abduction of historical artefacts abroad by seizing them with weapons”. This was described as being in violation of the law on protection of cultural and natural assets number 2863, the statutory basis being Article 68 of law number 2863 and Article 149 of the Turkish Criminal Law. Mr Güney was given permission to review the file with the number 2017/192047.
30. The Public Prosecutor then referred to the continuing investigations as follows:

Investigations related to some of the suspects who could not be arrested in relation to the crime of seizure are still pending in the file of our Prosecution Office with the number 2018/91716. (This must be a typographical error.) Since it is obligatory to prepare a report by making a scientific examination on the main subject of the investigation It was not possible to make any decision related to the crime of opposition to the Law numbered 2863 because the main artifact was not delivered physically. So this artifact as evidence is essentially needed.

In addition, in order to be able to examine the artifact in terms of fingerprints or biological remains belonging to the suspects, it is also necessary to receive the artifact work physically.

The Public Prosecutor asserted that private individuals in Turkey were able to keep historical artefacts in their property so long as they had the necessary permits. (By implication he accepted that an individual would not be able to remove the artefact from Turkey and/or to sell it.)

31. Mr Güney took advantage of the permission given to review the file 2017/192047. He provided a further witness statement dated 28 June 2021 dealing with his inspection of this file. It was an investigation initiated independently of the investigation into the robbery and resulted from the information received from a third party about the removal of the Qu’ran from Turkey. The crime alleged was contrary to Law number 2863. Mr Güney said that no progress had been made in identifying who had been responsible for the smuggling of the Qu’ran out of Turkey. He expressed the view that the Turkish authorities sought the return of the Qu’ran “due to its cultural significance in addition to (their) goal to proceed with the criminal proceedings”.

The legal framework

32. DC Hayes's application was for a warrant pursuant to Section 8(1) of the Police and Criminal Evidence Act 1984:

If on an application made by a constable a justice of the peace is satisfied that there are reasonable grounds for believing—

(a) that an indictable offence has been committed; and

(b) that there is material on premises...which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and

(c) that the material is likely to be relevant evidence; and

(d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and

(e) that any of the conditions specified in subsection (3) below applies, he may issue a warrant authorising a constable to enter and search the premises...

The condition specified in sub-section (3) which applied in this case was that Christie's would not grant entry to their premises without a warrant. For the purposes of this case the District Judge had to be satisfied that there were reasonable grounds to believe (a) that an indictable offence had been committed, (b) the Qu'ran was likely to be of substantial value to the investigation of the offence and (c) the Qu'ran was likely to be relevant evidence. Section 8(1) was available to be utilised by reason of the provisions of the Crime (International Co-operation) Act 2003.

33. Section 13 of the 2003 Act, insofar as is relevant, is as follows:

(1) Where a request for assistance in obtaining evidence in a part of the United Kingdom is received by the territorial authority for that part, the authority may—

.....(b) direct that a search warrant be applied for under or by virtue of section 16 or 17 or, in relation to evidence in Scotland, 18.

(2) The request for assistance may be made only by—

(a) a court exercising criminal jurisdiction, or a prosecuting authority, in a country outside the United Kingdom....

The "authority" to which reference is made in Section 13(1) is the UK Central Authority.

34. Section 16 of the 2003 Act is in these terms:

(1) Part 2 of the Police and Criminal Evidence Act 1984 (c. 60) (powers of entry, search and seizure) is to have effect as if references to indictable offences in section 8 of, and Schedule 1 to, that Act included any conduct which—

(a) constitutes an offence under the law of a country outside the United Kingdom, and

(b) would, if it occurred in England and Wales, constitute an indictable offence

2) But an application for a warrant or order by virtue of subsection (1) may be made only—

(a) in pursuance of a direction given under section 13....

Thus, there is a dual criminality requirement. The conduct must constitute an offence under the law of the country making the request for assistance. Also, if the conduct occurred in England and Wales, it would amount to an indictable offence.

35. The principles to be applied by a judge to whom application is made for a warrant under Section 8(1) of the 1984 Act were summarised in *R(Mills) v Sussex Police* [2015] 1 WLR 2199 at [26]:

The legal principles relating to the grant of warrants are not in dispute and, insofar as they are material to this application, they can be summarised as follows:-

i) The courts have frequently emphasised that search warrants confer a "draconian power": R (Faisaltext) v Preston Crown Court [2009] 1 WLR 1687 para 29 per Keene LJ. They were even described as a "nuclear weapon" in the court's armoury which, unless properly justified, involve a gross infringement of civil liberties: see R (Mercury Tax Group) v HMRC [2008] EWHC 2721 at para 71 per Underhill J. It does not perhaps need the use of such hyperbolic language to emphasise they should only be sought as a last resort and should not be employed where other less draconian powers can achieve the relevant objective.

ii) Given that the warrant permits the interference with private property and is obtained ex parte, it is incumbent on the applicant to make full and frank disclosure to the court and to ensure in particular that any material which is potentially adverse to the application is brought to the attention of the judge: see, for example the observations of Bingham LJ in R v Crown Court at Lewes [1991] 93 Cr. App. Rep 60, 69. As Hughes LJ put it in In re Stanford International Bank Limited [2010] 3 WLR 941 at para 191, the applicant must "put on his defence hat and ask himself, what, if he were representing the defendant or a third party with a relevant interest, he would be saying to the judge"

iii) This obligation of full and frank disclosure necessarily includes a duty not to mislead the judge in any material way: see the Mercury Tax Group case, para 48.

iv) The power to grant the warrant is conferred on a judge. He or she must bring a "rigorous and critical analysis" to the application and satisfy himself or herself that the material provided justifies the grant of the warrant: see R (Rawlinson & Hunter Trustees) v Central Criminal Court [2012] EWHC 2254 (Admin); [2013] 1 WLR 1634, paras 83-84 per Sir John Thomas P, where earlier authorities are cited. The judge has the obligation to protect the subject of an application (who, of course, is not before the court) against speculative or unsubstantiated assertion: R (B Sky B) v Chelmsford Crown Court [2012] EWHC 1295 (Admin) [2012] 2 Cr.App.R. 33, paras 33-34 per Moses LJ. It is critical, therefore, that the judge is provided with the information

necessary to enable him to comply with that obligation and is given the time properly to discharge it: see Rawlinson paras.83-90.

v) The judge ought to give reasons for his decision. They need not be elaborate but they ought to be sufficient to enable the subject of the warrant to understand why the judge was satisfied that the evidence justified issuing it: see R v Lewes Crown Court ex parte Weller, unreported 12 May 1999 per Kennedy LJ, para 6; and more recently, R (Wood) v North Avon Magistrates' Court [2009] EWHC 3614 (Admin) para 26, and Rawlinson, para 89.

vi) The application must be made in good faith and it must be for a purpose for which the power is granted. Using a statutory power for a collateral purpose involves a misuse of the power: see, specifically in the context of police powers, R v Inland Revenue Commissioners ex parte Preston [1985] AC 835. These are well established principles of administrative law and are as applicable in this field as in any other.

In *Mills* it was determined that, in judicial review proceedings challenging the validity of a warrant on the basis of non-disclosure, the question for this court is whether the information that it is alleged should have been put before the magistrate or District Judge might reasonably have led him to refuse to issue the warrant. In *Rawlinson* Sir John Thomas P (as he then was) had said that the question was whether the non-disclosure would in fact have made a difference to the decision to issue the warrant. If the court were uncertain what the outcome would have been, the warrant should be considered as lawfully issued. On this point Sir John Thomas's comments were obiter. For the purposes of the case it is appropriate to apply the test in *Mills*. No party to these proceedings argues otherwise.

The competing submissions

36. Matthew Butt QC on behalf of the Claimant argues that District Judge Goldspring was misled in a number of material respects. Most important, the District Judge was led to believe that there was an ongoing trial in Turkey in which a man called Gök was a defendant and that the Qu'ran was required in order to allow that trial to proceed. In fact, Gök had already been convicted. Thus, the return of the Qu'ran cannot have been required for any purpose relating to his trial. He submits further that the true purpose behind the request from the Turkish authorities was to obtain the return of the Qu'ran because it was an artefact of cultural and historical significance. This is apparent from the e-mail of 2 December 2019 from Judge Altintas, an e-mail with which the District Judge was not provided. By reference to the criteria in *Mills* Mr Butt says that there was not full and frank disclosure and that the application was for a collateral purpose. The lack of candour involved in the application means that, for this reason alone, the issue of the warrant should be quashed. It may be that DC Hayes and the Metropolitan Police were unaware of the true position, the misleading of the District Judge being the result of insufficient disclosure on the part of the Turkish authorities. However, the Metropolitan Police must bear responsibility for the failures of the Turkish authorities.
37. Mr Butt goes on to submit that, had the District Judge been made aware of the true position, he might not have issued the warrant. Certainly he would have considered the prospect of some less draconian option being available. Since there had been convictions in Turkey, it is likely that the provisions of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 would have been available to the UK

Central Authority had the Turkish authorities made a relevant request. Alternatively, the District Judge might have concluded that the return of the Qu'ran would best be sought via the 1970 UNESCO Convention.

38. Mr Butt argues that it would not be appropriate for this court to go behind the misleading information provided to the District Judge and to ask whether he would have issued the warrant if in possession of the full facts. That would be to engage in a merits based assessment of the evidential position rather than to conduct a review of the decision made by the District Judge.
39. On behalf of the Metropolitan Police Commissioner Neil Sheldon QC accepts that at least some of the information given to the District Judge was misleading. The application said that "the trial is ongoing" in such a way as to suggest that it was Gök's trial that was still in progress in February 2020. The District Judge was not told that three men had been convicted of robbery and that their trial had not required the Qu'ran to be available in court. These were errors. However, Mr Sheldon submits that the errors were not material to the issue of the warrant.
40. Mr Sheldon argues that the true factual position as at the date of the application for the warrant was that there were continuing criminal investigations in Turkey into offences arising out of the robbery i.e. the investigation with file number 2018/92716 and into the illegal exportation of a stolen Qu'ran. The fact that the Qu'ran was stolen was a feature of the latter investigation. Had the District Judge known of these facts, his decision inevitably would have been the same. Mr Sheldon's case is that this is apparent from the reasons given by the District Judge. The judge said that he had reasonable grounds to believe that an offence of theft or handling had been committed and that the Qu'ran was the item that had been stolen. It is not disputed that there were reasonable grounds to suspect those matters. The District Judge said that this meant that the Qu'ran was real evidence. None of that reasoning would have been affected by disclosure of the convictions of Gök and his co-accused and/or of the cultural and historical significance of the Qu'ran. The District Judge was aware of the latter issue from the letter of 23 October sent by the Turkish Embassy to Christie's which was part of the material enclosed with the application for the warrant.
41. Further, according to Mr Sheldon, the material now available would have reinforced the District Judge in his conclusion. The convictions in 2018 prove that the Qu'ran was stolen property. The investigation with the file number 2018/92716 shows that the Turkish authorities are seeking to identify and prosecute others involved in the robbery. The statement made by the Public Prosecutor on 5 October 2020 demonstrates that the Qu'ran was needed to see if fingerprints or DNA "belonging to the suspects" could be recovered from it.
42. Mr Sheldon submits that this court can properly consider the materiality of any error made in the submission of material to a District Judge when applying for a warrant. This does not amount to a merits based assessment.
43. Finally, it is said on behalf of the Commissioner that the option of an application pursuant to the Proceeds of Crime Act 2002 and the 2005 Order was not available. No order was made in the proceedings involving Gök which enabled this statutory regime to be invoked. Whilst an order in personam against a particular person is not required

to allow the regime to be used, an order of some kind in the foreign jurisdiction is necessary. There was none in this case.

Discussion

44. The first point to note is that the references in the authorities to the “draconian power” of a search warrant with the risk of “a gross infringement of civil liberties” are generally made in the context of a warrant permitting the invasion of someone’s home or at least a workplace to which the person concerned attaches a degree of privacy. In this case the property which was the subject matter of the warrant was in the possession of a third party, Christie’s, which co-operated with the process and which was aware that the warrant was to be obtained. The power exercised by DC Hayes was anything but draconian in relation to Christie’s. There was an interference with the asserted property rights of the Claimant. However, Christie’s had had custody of the Qu’ran for over 2 years when the application for a warrant was made. In January 2019 the Claimant’s solicitors had written to Christie’s requiring release of the Qu’ran to the Claimant failing which injunctive relief would be sought. That letter was written when the Qu’ran already had been in the possession of Christie’s for over a year. No further action was taken by the solicitors following that letter until the letter before action dated 29 January 2020. In the context of that chronology, the actual interference with property rights as a result of the warrant was modest. Moreover, the Metropolitan Police informed the Claimant of the position as soon as the warrant had been executed thereby enabling him to make such challenge as he saw fit. Prior to the issue of the warrant the Qu’ran was in the hands of Christie’s. It is now in the hands of the police who will not take any action in relation to the Qu’ran unless and until the challenge to the lawfulness of the warrant has been determined. In reality the Claimant’s rights have been little affected.

45. Mr Butt is correct to caution the court against putting itself into the shoes of the District Judge. Our function is not to make our own assessment of the evidence. Equally, the court is entitled to ask whether the position would or at least might have been different had the matters now disclosed been put before the District Judge. This is an exercise which this court is well able to undertake: see *Mills* at [60] where the court said

Sometimes the court hearing the judicial review application will be given the information which should have been given to the court below.... if it is plain that once all the evidence is taken into account the judge below would still have issued the warrant, then it should not be quashed. In effect, the court is concluding that taken in the round....non-disclosure did not materially affect the outcome. On that strict test the court is reviewing the lawfulness of the issue of the warrant but is not undertaking its own assessment.

Thus, in this case consideration must be given to all of the evidence placed before the District Judge together with any relevant material not placed before him but which now has been disclosed. With all of that in mind would the District Judge have issued the warrant?

46. The matters about which it is said that the District Judge should have been informed but was not are: the convictions in November 2018 of Gök and the two other men; the fact that their trial had concluded without the Qu’ran being physically before the court in Turkey; the content of the e-mail of 2 December 2019 from Judge Altintas in which

he identified the Qu'ran as an item of cultural significance and he requested its return to Turkey pursuant to the 1970 Convention; the investigation being conducted in Turkey in respect of an alleged breach of Law number 2863 which concerned removal of cultural artefacts from Turkey i.e. not an offence under any law in this jurisdiction. Had District Judge Goldspring been aware of those matters might he have refused to issue the warrant?

47. It is important to consider the information given to the District Judge that was factually correct. First, in 2015 a valuable Qu'ran had been the subject of a robbery in Istanbul. Second, there were strong grounds to believe that the stolen Qu'ran was the artefact placed with Christie's for auction by the Claimant. Third, the District Judge had a full picture of what the Claimant had said about provenance of the Qu'ran. In 2017 he had provided provenance information to Christie's which was wrong. In 2018 he provided different material supposedly supporting legitimate provenance wholly inconsistent with the original information. Finally, in 2020 he provided material which purported to supplement the material supplied in 2018 but in fact was in part inconsistent with it. Moreover, it included a document dated 2016 which on the face of it should have been provided to Christie's when the Qu'ran was placed for auction. Fourth, there were ongoing criminal proceedings in Turkey. Those proceedings involved two investigations: the export of cultural property; the unidentified suspect in the robbery. Fifth, Christie's had the Qu'ran and were not prepared to surrender it voluntarily.
48. District Judge Goldspring found that there were reasonable grounds to believe that one of two indictable offences – theft and handling – had been committed. The judge referred in his written reasons to the fact of the robbery coupled with the Qu'ran thereafter being offered for sale at auction in London. The matters of which he was unaware would not have changed his reasoning or his conclusion. If anything they would have strengthened it. He concluded that reasonable grounds existed to believe that the Qu'ran, namely the stolen goods, was likely to be of substantial value to the investigation of the offence, whether theft or handling. The fact that three men had been tried and convicted of the offence of robbery without the investigating authority having had access to the Qu'ran would not have affected the likelihood that it would be of substantial value to the continuing investigation. Finally the District Judge said that there were reasonable grounds to believe that the Qu'ran would be relevant evidence. He observed that the Qu'ran was the stolen goods and constituted real evidence. That conclusion cannot possibly be impugned. It would have been the same had all the material now available been placed before the District Judge.
49. What of the fact that the Turkish authorities were concerned to secure the return of the Qu'ran as a cultural artefact? Whilst the material now available makes it clear that this was a significant part of their calculations, it was not the sole factor. Mr Güney probably was correct when in June of this year he expressed the view that the return of the Qu'ran was sought “due to its cultural significance in addition to (their) goal to proceed with the criminal proceedings”. The dual object being pursued by the Turkish authorities would not have altered the high likelihood that the Qu'ran was stolen property or the fact that there were continuing investigations into offences connected to it. It would not have led the District Judge to conclude that the application for a warrant was being made for a collateral purpose. Whatever cultural significance the Qu'ran may have, the critical point is that it is in all likelihood a stolen Qu'ran.

50. Is it significant that, in the event of the return of the Qu'ran to Turkey, the Claimant would not be able to exercise his rights to the Qu'ran as a bona fide purchaser for value without notice? Even if he were able to establish ownership of the artefact, once in Turkey the Qu'ran would be subject to strict controls and the Claimant would be unable to remove it from Turkey or to sell it. The District Judge did not have the evidence of Mr Güney explaining the restrictions that would be placed on the Claimant in relation to any dealing with the Qu'ran. But the District Judge did have all of the material concerning the supposed provenance of the Qu'ran. Even without the other evidence in the case, this material inevitably was to be viewed with very considerable scepticism by reference to its internal inconsistencies and its inherent improbability. Given the high degree of likelihood that the Qu'ran was stolen in 2015 from Mr Çir, the rights of the Claimant inevitably would have been seen as largely illusory. That is not to engage in speculation about how the District Judge would have viewed the position. It is an irresistible inference.
51. It follows from the above that none of the material now disclosed would have made any difference to the reasoning of the District Judge. Mr Butt sought to rely on the document dated 5 October 2020 from the District Prosecutor in Istanbul as set out at paragraph 30 herein. He argued that this showed that the Qu'ran was required solely to further the investigation into the smuggling of the cultural artefact. In fact, the document tends to support the proposition that the Qu'ran was required to see if fingerprints or biological material from suspects relating to "the crime of seizure" could be recovered. That would strengthen the argument that the Qu'ran was likely to be of substantial value to the investigation.
52. What of the argument that there were other means by which Turkey could and should have sought the return of the Qu'ran which would have enabled the Claimant to engage in an inter partes procedure? The availability of the procedure under the Proceeds of Crime Act 2002 and the 2005 Order is doubtful given the lack of any relevant order in the proceedings involving Gök and the other two men. In any event, the Qu'ran on the face of it was stolen property and there was a continuing investigation in Turkey in respect of which it was relevant evidence. The application for a warrant was a proportionate approach in those circumstances. Though there is evidence of a request having been made pursuant to the 1970 Convention, there is no evidence of how this would be achieved or whether it would allow any representations to be made by the Claimant. The Convention simply provides for the requesting state (in this case Turkey) to pay compensation to an innocent party.
53. The District Judge was required to be satisfied that the conduct amounted to an offence in Turkey and that, were it to occur in this jurisdiction, it would constitute an offence. It is critical to note that it was the conduct rather than the offence on which the judge had to focus. Even if the offence for which the Turkish authorities required the Qu'ran was the offence of smuggling cultural property (which clearly is not an offence known to English law), the conduct was handling stolen goods. The cultural property was a Qu'ran stolen in a robbery. It is an inevitable inference that, once stolen, it had to be removed from Turkey if it was to be sold. Whoever did that handled stolen goods. The Turkish authorities may not have been investigating that offence but the conduct they were investigating constituted the offence of handling stolen goods in this jurisdiction.

Conclusion

54. If application for this warrant had been obtained in relation to a theft which had occurred somewhere in England and Wales, it would have been entirely unexceptional. The District Judge would have concluded that the Qu'ran almost certainly was stolen property and that the Claimant would have to press his claim (if any) at some later stage of the proceedings. The real complaint of the Claimant is that the effect of the issue of the warrant is that the Qu'ran will be returned to Turkey where his rights will be difficult to assert. That complaint is unconnected to the validity of the warrant. Notwithstanding the non-disclosure that admittedly occurred and despite the lack of explanation from the Turkish authorities for the inadequacy of the information in the ILORs, the issue of the warrant was not invalid. The District Judge would have issued the warrant in any event. I would dismiss this claim for judicial review of his decision.

Lord Justice Bean:

55. I agree.