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Case No: CO/3240/2020 & CO/2492/2021

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22/07/2022

**Before :**

**LORD JUSTICE DINGEMANS**

**AND**

**MR JUSTICE SWIFT**

**Between :**

**MAREK KURTA**

**Appellant**

**- and -**

**REGIONAL COURT POZNAN (POLAND)**

**Respondent**

**And Between:**

**ASAD AL-JABAN**

**Appellant**

**- and -**

**COURT OF FIRST INSTANCE IN ANTWERP**

**Respondent**

**(BELGIUM)**

**Martin Henley (instructed by Freemans Solicitors) for the Appellant Kurta**  
**Tom Hoskins (instructed by CPS Extradition Unit) for the Respondent**

**David Josse QC (instructed by Freemans Solicitors) for the Appellant Al-Jaban**  
**Tom Hoskins (instructed by CPS Extradition Unit) for the Respondent**

Hearing date: 8 July 2022

**Approved Judgment**

**This judgment was handed down remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be 11.00 hrs on 22 July 2022**

## **Lord Justice Dingemans:**

### **Introduction**

1. This is the hearing of applications to reinstate renewed applications for permission to appeal against extradition orders. The renewed applications for permission to appeal had been struck out because the applicants' solicitors had failed to file hearing bundles which complied with directions which had been sent to them by the Administrative Court. These applications have raised a number of procedural matters.

### **The extradition orders and appeals**

2. District Judge Snow, by order dated 5 September 2020, ordered the extradition of Marek Kurta pursuant to a conviction European Arrest Warrant ("EAW") issued on 30 May 2019 by Michal Ziemniewski, a Judge of Regional Court in Poznan, Poland. The EAW was certified by the National Crime Agency ("NCA") on 2 August 2019.
3. District Judge Rimmer, by order dated 3 July 2021, ordered the extradition of Mr Al-Jaban's pursuant to an accusation EAW issued on 30 July 2020 by Karel van Cauwenberghe, a Judge of the Antwerp Court of First Instance. The EAW was certified by the NCA on 6 August 2020.
4. Section 26 of the Extradition Act 2003 provides that if an order for extradition is made in the Magistrates' Court the requested person may seek permission to appeal from the High Court of Justice, Queen's Bench Division, Administrative Court. Mr Kurta and Mr Al-Jaban have both sought permission to appeal to the High Court against their respective extradition orders.
5. The procedural rules governing extradition appeals have, since the coming into force of section 174 of the Anti-social Behaviour, Crime and Policing Act 2014 been set out in Part 50 of the Criminal Procedure Rules ("Crim PR").
6. The application for permission to appeal is first considered on the papers by a single judge, see Crim PR 50.17(1)(b)(ii). If permission to appeal is refused, the judge will give short written reasons refusing permission to appeal. The applicant may renew the application for permission to appeal by serving notice. The renewal notice "must explain the grounds for the renewal", see Crim PR 50.22(3). The renewal notice should engage with the reasons given by the judge who refused permission to appeal on the papers.
7. If the application for permission to appeal is renewed, the renewed application will be determined at a 30 minute hearing. As a matter of practice the judge hearing renewed applications for permission to appeal will sometimes hear between four and six renewed applications for permission to appeal against orders for extradition, together with some applications for bail. If there are not proper hearing bundles, the judge will have to attempt to locate relevant documents in order to determine matters fairly, and this has led in the past to unnecessary adjournments. In October 2021, Swift J. had directed that renewed applications for permission to appeal should not be listed for hearing unless an Administrative Court Office compliant bundle has been filed.

8. In an attempt to ensure that proper bundles are lodged, the Administrative Court Office sends out directions for the hearing of the renewed application for permission to appeal. The letter warns that “If you fail to comply with the Directions your case will be referred to a judge for consideration of whether the appeal should be struck out”.
9. Paragraphs 2 and 3 of the directions currently provide:
  - “2. The Appellant shall prepare a bundle (the Permission Hearing Bundle) comprising (a) the Notice of Appeal and Perfected Grounds of Appeal; (b) the documents filed with the Notice of Appeal (which must, as a minimum, include the extradition request and the judgment of the District Judge who made the extradition order); (c) the Respondent’s Notice; (d) any pleading or other document filed by the Appellant in reply to the Respondent’s Notice; (e) the renewed application for permission to appeal; (f) the order made by the Judge refusing the application for permission to appeal, on consideration of the papers; and (g) any other document it is reasonable to assume a court would consider material to whether or not permission to appeal should be granted. An electronic version of the bundle shall be prepared in accordance with the Guidance on the Administrative Court website.
  3. The Appellant shall, within 14 days of the date of this letter, lodge an electronic copy of the Permission Hearing Bundle with the court and serve a copy of the same, together with a copy of these Directions, on any Respondent and/or Interested Party. The Appellant shall if requested by the Court, lodge a hard-copy version of the Permission Hearing Bundle.”
10. If the Appellant’s solicitors do not comply with the directions and file a bundle in accordance with the directions, a further letter is sent out by the Administrative Court Office. The letter notes the failure and provides “If you do not file the bundle, as required by the directions, within 2 working days of this letter, your case will be referred to a judge to determine whether or not your appeal should be struck out in exercise of the Court’s powers under Crim PR.”
11. By an Order dated 17 May 2022, Turner J. struck out Mr Kurta’s appeal pursuant to Crim PR 3.5(6)(c). This was on the basis that the applicant had not complied with directions about renewal bundles.
12. Also by order dated 17 May 2022, Turner J. struck out Mr Al-Jaban’s appeal pursuant to Civil Procedure Rules Part 3.4(c). This was also on the basis that the applicant had not complied with directions about renewal bundles. It was common ground at the hearing that Turner J. had wrongly referred to the Civil Procedure Rules in the order relating to Mr Al-Jaban when he should have referred to the Crim PR.

### **Relevant factual circumstances for Mr Kurta**

13. Mr Kurta was born on 26 January 1980. Between 1998 and 2010 Mr Kurta had convictions and periods of imprisonment for offences which included theft, escaping from custody and perjury.
14. On 4 January 2013 Mr Kurta committed the offence which forms the basis of these extradition proceedings. This was: “acting jointly with others, submitted an unreliable certificate of employment and income which misled the Credit Agricole Bank to grant a loan of PLN 30,000.00.” The amount of money is approximately £6,000.
15. Mr Kurta came to the UK in October 2013. In 2014, it appears the Mr Kurta went back to Poland to address the criminal proceedings against him. It seems that Mr Kurta pleaded guilty to the offence, and on 12 November 2014, a custodial sentence of 1 year 4 months’ imprisonment was imposed in Poland, which was suspended for 5 years. Mr Kurta was ordered to pay compensation to the victim of the crime.
16. On 7 April 2017, the Poznan District Court decided to activate the suspended sentence dated 12 November 2014 because Mr Kurta had failed to pay compensation to the victim.
17. On 19 March 2019, the Mr Kurta obtained a new Polish passport and Polish ID card from the Polish Consulate in Manchester.
18. An EAW in relation to the Mr Kurta was issued on 30 June 2019. The EAW was certified by the NCA on 2 August 2019. Mr Kurta was arrested on 2 March 2020. Mr Kurta was remanded into custody on 3 March 2020, and was granted conditional bail on 7 April 2020.
19. On 5 September 2020, Mr Kurta’s extradition was ordered. Mr Kurta’s notice of appeal was received in the Administrative Court Office on 10 September 2020. It was issued for service on the same day. Mr Kurta’s notice was also lodged on that day.
20. There were amended grounds of appeal lodged with the Court on 14 October 2020. There is a single ground of appeal in this case which is that under Article 8 of the European Convention of Human Rights, the District Judge’s reasoning on the Applicant’s fugitive status was flawed and he failed to deal with the seriousness of the offending. On 23 October 2020, the Respondent’s notice was lodged.
21. Permission to appeal was refused on the papers by Hill J. on 13 April 2022. Hill J. set out under “Reasons” in the order, ten paragraphs identifying why there were, in her judgment, no arguable grounds of appeal.
22. Mr Kurta renewed his application for permission to appeal. The grounds of renewal did not engage with the reasons given by Hill J. and provided: “a. Section 21 of the Extradition Act 2003; b. Article 8 of the European Convention on Human Rights (the right to privacy and family life); and c. A combination of both Section 21 of the Extradition Act 2003 and Article 8 of the European Convention on Human Rights (the right to privacy and family life).”

23. This renewal notice did not “explain the grounds for the renewal”, in accordance with Crim PR 50.22(3). Filing a renewal notice which does not engage with the judge’s reasons for refusing permission to appeal on the paper and does not explain the grounds for renewal assists neither the applicant nor the Court.
24. The first Administrative Court Office renewal bundle letter was sent to Mr Kurta’s solicitors. No renewal bundle was lodged. On 6 May 2022, a second renewal bundle warning letter was sent to Mr Kurta’s solicitors. It contained a warning that if a compliant bundle was not filed within 2 working days, the result would be that the matter would be referred to a judge to consider striking out the claim pursuant to the Crim PR.
25. As recorded above, the renewed application was struck out by Turner J. on 17 May 2022. On 19 May 2022, an application for relief from sanctions and interim relief to prevent removal was lodged. The solicitor for Mr Kurta, who is also the solicitor for Mr Al-Jaban, made a witness statement on 19 May 2022. The solicitor apologised for not ensuring that the bundle was compliant, accepted that he had been sent the letters from the Administrative Court Office, and said no disrespect was intended to the Court. The solicitor said that he assumed that the documents previously sent were compliant with the rules, but accepted that they were not. It might be noted that such a mistaken belief might explain the failure to respond to the first letter. It does not begin to explain the failure to respond to the second letter.
26. The solicitor explained that he was not aware of the new directions, which suggests that he had not read the letter from the Administrative Court. He explained that his workload had increased dealing with backlogs from the COVID-19 pandemic and covering work for colleagues. The statement concluded by noting that Mr Kurta was not to blame for the failure to respond, and that Mr Kurta’s offence was of no great gravity. The solicitor was right that Mr Kurta was not to blame for the failure, but the solicitor’s description of Mr Kurta’s offence was not well-founded. The solicitor produced and exhibited a bundle purporting to comply with the directions.
27. On 27 May 2022, Swift J. granted interim relief to prevent Mr Kurta’s removal pending the determination of the application for relief from sanctions.

#### **Relevant factual circumstances for Mr Al-Jaban**

28. Asad Al-Jaban, who was born on 25 August 1981, says he is Assed Koluni and was born on 25 August 1977. I have referred to him as Mr Al-Jaban for the purposes of this judgment.
29. Between August 2018 and January 2020 Mr Al-Jaban is alleged to have committed the offence which forms the basis of these extradition proceedings. Mr Al-Jaban is accused of being part of a criminal organisation involved in “smuggling victims to the UK”.
30. On four occasions, Mr Al-Jaban was apprehended in Belgium on account of illegal residence. On 20 June 2019 Mr Al-Jaban gained entry to the UK by way of illegal entry, in that he used the cargo space of a lorry. Mr Al-Jaban then applied for asylum. A domestic arrest warrant was issued on 30 July 2020.

31. An EAW in relation to Mr Al-Jaban was issued on 30 July 2020. The EAW was certified by the NCA on 6 August 2020.
32. Mr Al-Jaban was arrested on 4 September 2020. He was produced before Westminster Magistrates' Court on 7 September 2020. It is important to note that since proceedings were opened, Mr Al-Jaban has been remanded in custody on the grounds that the Court had fears he would fail to surrender.
33. On 13 July 2021, Mr Al-Jaban's extradition was ordered by District Judge Rimmer sitting at Westminster Magistrates' Court. Mr Al-Jaban's Notice of appeal was received in the Administrative Court Office on 19 July 2021. It was issued for service on the same day. There were two grounds of appeal: (1) The District Judge erred in making an order for extradition in that the EAW is wholly defective as it does not comply with section 2 Extradition Act 2003. (2) The District Judge erred in making an order for extradition in that the offending mentioned in the EAW is not an offence per section Extradition Act 2003. A Respondent's notice was lodged on 11 August 2021.
34. Permission to appeal was refused by Jay J. on 21 January 2022. The order refusing permission to appeal was sent to the parties on 2 February 2022.
35. On 8 February 2022, a notice of renewal of permission to appeal was lodged. This simply provided: "1. Section 2 Extradition Act 2003 2. Section 10 Extradition Act 2003. 3. Section 12A Extradition Act 2003. 4. Section 21A Extradition Act 2003". Again this notice of renewal did not begin to explain the grounds for renewal.
36. On 10 February 2022, the first Administrative Court Office renewal bundle letter was sent to Mr Al-Jaban's solicitors. No bundle was lodged. On 1 March 2022, a second renewal bundle warning letter was sent to Mr Al-Jaban's solicitors. It contained a warning that if a compliant bundle was not filed, the result would be that the matter would be referred to a judge to consider striking out the claim.
37. On 3 March 2022 a hearing bundle was received by the Administrative Court Office. This bundle did not comply with the directions. The bundle was neither hyperlinked nor bookmarked and did not contain the required documents specified in the notification letter.
38. As already recorded, the renewed application for permission to appeal was struck out by Turner J. on 17 May 2022. On 19 May 2022, an application for relief from sanctions and interim relief to prevent removal was lodged. The solicitor sent in a bundle. The solicitor made a witness statement in support of the application for relief from sanctions and apologised for his errors. The statement was in broadly similar terms to the statement made on behalf of Mr Kurta. The Respondent provided written submissions on 24 May 2022 in response to application for relief from strike out.
39. On 27 May 2022, Swift J. granted interim relief to prevent Mr Al-Jaban's removal pending the determination of the application for relief from sanctions.

#### **Grounds for setting aside the renewal order**

40. The applications to set aside the orders made by Turner J. striking out the renewed applications for permission to appeal have been made on the same basis. This is that it would be just and appropriate to set aside the order because the fault was that of the solicitor and the applicants should not be penalised by losing their right to have an oral renewal of their application for permission to appeal. The requesting judicial authorities resisted the application on the basis that when it came to considering all the circumstances the weakness of the respective renewed applications for permission to appeal meant that the applications for reinstatement should be refused.
41. Reference was made in submissions to *Denton v TH White* [2014] EWCA Civ 906; [2014] 1 WLR 3926, the principles of which had been applied in extradition appeals in *Zelenko v Latvia* [2020] EWHC 1800 (Admin); [2021] 1 WLR 133. Reference was also made to *Public Prosecutors Office of the Athens Court of Appeal v O'Connor* [2022] UKSC 4; [2022] 1 WLR 903.
42. In *Denton v TH White* the Court of Appeal said that a judge addressing an application for relief from sanctions should: (1) identify and assess the seriousness and significance of the failure to comply with any rule, practice direction or court order; (2) consider why the default occurred; and (3) evaluate all the circumstances of the case, so as to enable the court to deal justly with the application. In *Zelenko v Latvia* the Divisional Court considered the circumstances in which relief from sanctions might be given in an extradition case. At paragraph 52 it was stated that so long as the various interests in play in an extradition case were borne in mind (including importance of finality, the interests of the requesting state in the prevention and deterrence of crime, the strong public interest in favour of extradition in appropriate cases, and the need to avoid injustice or oppression of the requested person) then *Denton v White* provided a principled and structured approach to be applied to the exercise of the Court's discretion to extend time. In *Public Prosecutors Office of the Athens Court of Appeal v O'Connor* [2022] UKSC 4; [2022] 1 WLR 903 the Supreme Court considered a case where a solicitor had been instructed to appeal, but failed to lodge and serve on the requesting authority's agents, a notice of appeal within the seven day time limit. Time had been extended by the Court below, and then an appeal allowed on the merits against the extradition order. The requesting judicial authority appealed, but the Supreme Court dismissed the appeal.
43. There was some discussion in the written and oral submissions before this Court about the circumstances in which it might be fair to hold an applicant responsible for the failures of legal representatives.

#### **The directions to file the renewal bundle**

44. At the hearing of the appeal the court asked who had made the directions to file the bundle, the non-compliance with which had led to the order striking out the renewed applications for permission to appeal. The reason for having to raise this at the hearing was because the bundles filed for the hearing of the application to set aside the orders of Turner J. did not contain the relevant letters sent by the Administrative Court Office or the directions. The failure to file bundles helpful to the court has been a feature of these cases.
45. The Crim PR provide at Part 2.6 for "Exercise of functions of the High Court". Provision is made for "an authorised Court officer" to carry out certain functions. It

was common ground at the hearing that this would include giving directions about lodging of bundles and the form of those bundles. An “authorised Court officer” is defined in Crim PR at Part 2.4(1)(b) as a “person authorised for the purpose by the Lord Chief Justice under section 67B” of the Courts Act 2003.

46. It became apparent during the hearing that the relevant letters referring to the directions and requiring a bundle to be filed within 2 working days of the letter had been signed “Yours faithfully”, with a name then given, “For Court Manager”. When it was asked whether the named person, or the Court manager, had been authorised under section 67B of the Courts Act 2003, the parties stated that they had not checked that.
47. Over a short adjournment the position was checked. It became apparent that neither the person named in the letter nor the Court manager were authorised persons under section 67B of the Courts Act 2003. Inquiries showed that this template ending “For Court manager” had been set up on the automated system for Administrative Court Office letters so that replies to letters from solicitors, which were usually addressed to the Court manager, could be sent.
48. This information was shared with counsel at the hearing. In the light of this information Mr Josse QC, on behalf of Mr Al-Jaban, and Mr Henley on behalf of Mr Kurta, submitted that the orders of Turner J. striking out the renewed applications for permission to appeal ought to be set aside. This was because those orders had been made on the mistaken basis that there had been a failure to comply with valid Court directions. The reality, as it had now become known, was that although correspondence had been sent by the court directing renewal bundles to be filed, there had been no Court orders to that effect.
49. I agree that the orders of Turner J. striking out the renewed applications for permission to appeal should be set aside. This is because those orders were made on the basis that there had been a failure to comply with orders for directions as to the filing of the bundles. The directions did not have the status of orders of the Court because they were not made either by a Judge or by a Court officer authorised pursuant to section 67B of the Courts Act 2003 in accordance with the Crim PR. It is true that the solicitors should have complied with the letters from the Administrative Court Office requiring an electronic copy of the renewal hearing bundles, which included directions about bookmarking and hyperlinking, but there is a principled difference between an unhelpful failure to comply with reasonable requests made by the Administrative Court Office and a breach of an order for directions made by the Court.
50. This means that it is not necessary to address the further questions about the extent to which it is fair and just to hold a party responsible for the failures of legal representatives in extradition proceedings, and I have not done so.
51. It also means that it is not necessary to address the merits or lack of merits of the renewed applications for permission to appeal. Further, it would not be appropriate to do so, given that the renewed applications will be heard before another judge shortly.

#### **Some other matters**



52. In my judgment it is, however, appropriate to remind the parties that the provisions on renewed applications for permission to appeal at Crim PR 50.22 must be complied with. If the application to renew is made in response to a refusal to grant permission to appeal “the renewal notice must explain the grounds for the renewal”: see Crim PR 50.22(3). If the renewal application is made in response to a decision refusing permission to appeal on some grounds the application must identify the grounds concerned and set out “reasons” in support of the application to rely on the excluded ground: see Crim PR 50.22(5)(a). Any renewal application that does not comply with these requirements is not an application made in accordance with the Rules. To meet the requirements in the Crim PR, the renewal notice should engage with the reasons given by the judge who refused permission to appeal on the papers.
53. A renewal hearing bundle which complies with the directions set out in paragraph 9 above permits the Court to deal with renewal applications justly and expeditiously in accordance with the objective stated at Crim PR 50.2. Legal representatives who are asked to file such bundles should do so.
54. The applications now before the Court have raised an issue about the practice by which orders for directions for renewal applications were made in the Administrative Court. This issue has now been addressed and orders to be made in the future will be made in accordance with Crim PR 2.6. Such directions should therefore be complied with unless or until varied or set aside by the court.
55. I am very grateful to Mr Josse QC, Mr Henley and Mr Hoskins for their helpful written and oral submissions.

### **Conclusion**

56. For the detailed reasons set out above I would allow the applications to set aside the orders made by Turner J. The renewed applications for permission to appeal against the extradition orders should be heard as soon as is reasonably practicable.

### **Mr Justice Swift**

57. I agree.