



DELF  
DEFENCE EXTRADITION LAWYERS FORUM

## NEWS

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Welcome to the Defence Extradition Lawyers Forum newsletter, in this edition Saoirse Townshend considers the interplay between family and extradition proceedings, Ben Seifert summarizes a recent and important decision concerning Romanian prison conditions, we update you on our recent seminar “Extradition – a view from Europe” and the success of DELF’s inaugural dinner last month.

### *Our Recent Activities*

#### *Engagement with the LAA*

We continue to engage with LAA over various issues. If anyone has anything specific they would like us to raise, please do get in touch with us at [enquiries@delf.org.uk](mailto:enquiries@delf.org.uk)

#### *Representations to the Criminal Procedure Rules Committee*

Following our meeting with the Criminal Procedure Rules Committee in April, if members have any issues they would like DELF to raise with the Criminal Procedure Rules Committee, then please email Ben Lloyd ([ben.lloyd@6kbw.com](mailto:ben.lloyd@6kbw.com)).

#### *Meeting with the Admin Court*

On 6 April 2017 representatives of DELF met with the Admin Court lawyers and caseworkers. Senior Legal Advisor David Hackett also attended from Westminster Magistrates’ Court. At the meeting the Admin Court reported that the service of appeals by email using the online payment system seemed to be working but that there was no means of issuing a receipt at the present time. The Admin Court agreed that they would enquire with central services as to whether this could be achieved and we expect to be updated at the next meeting. As a result of concerns raised by members DELF explained to David Hackett from Westminster Magistrates’ Court that there would be a benefit to having the users’ group meeting reinstated. In respect of the large number of prison conditions cases awaiting hearing and judgment the Admin Court explained that it should not be assumed that just because a case is reopened on article

3 that other cases will be stayed as a result.

DELf will meet with the Admin Court approximately every 3 months, with the next meeting taking place on 20<sup>th</sup> July at 10.30am. If there is anything that you would like us to raise please e-mail Ben Keith at [BenKeith@5sah.co.uk](mailto:BenKeith@5sah.co.uk)

### *The Advocates Room at WMC*

As a result of the court closure at Hammersmith Magistrates' Court, Westminster Magistrates' Court is expected to become busier. So much so that plans are afoot to convert the 2<sup>nd</sup> floor advocates' room into additional court space. On 7 June 2017, DELf sent a letter to the Court Manager, inviting him to reconsider plans to relocate the space currently afforded for advocates, highlighting a number of factors in favour of the current room remaining a place for advocates to work away from the hustle and bustle of the court rooms.

### **Legal Update**

#### *Concurrent family and extradition proceedings – which to go first?*

As many will know, an inconsistent approach is being applied at Westminster Magistrates' Court where extradition proceedings are running parallel to family court proceedings. Earlier this year, Amelia Nice (5 St. Andrew's Hill) and Mary Westcott (Doughty Street) drafted submissions to the Criminal Procedure Rules Committee to suggest amendments to the Criminal Practice Directions, October 2015 (as amended April 2017) to include guidance for situations where these two types of case overlapped.. The guidance encompassed common themes to these types of cases: which tribunal should go first – the “chicken and egg” dilemma; how the court may consider “the best interests of the child” in an extradition setting; reporting restrictions; how to obtain evidence from the Family Court; and where separate representation for the child may be appropriate.

Perhaps one of the hardest questions that advocates and judges have to deal with in this context, is the first of these issues: deciding whether extradition proceedings should be adjourned pending the outcome of family proceedings. The importance of this decision is patently clear given the interdependence of the two tribunals' judgments and the impact each decision will have on the Requested Person's right to private and family life pursuant to Article 8 ECHR. Furthermore, it is well established that “a primary consideration” of the Court must be the best interests of any children who will be affected by any decision to order extradition (*HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25; paras. 15; 85). Despite the need for expeditious extradition, many courts have taken a cautious approach, adjourning cases for a considerable time until the outcome of family proceedings is known. The Divisional Court in *GS v Hungary* [2016] EWHC 64 adjourned an Article 8 ECHR argument on appeal due to care proceedings being instigated by the local authority after the appeal was lodged (see para. 3). Similarly, Foskett J, whilst dismissing an appeal of a mother whose children were subject to care proceedings, recognised the importance of “*enabl[ing] [the requested person] to take an active part in [care] proceedings*” and thereby delayed an order dismissing an appeal to take effect (*Z v Slovakia* [2014] EWHC 1360 (Admin), para. 11; see also para. 9). Green J in the recent case of *PA v Portugal* [2017] EWHC 331 (Admin) endorsed this approach:

*“It also seems to me that to avoid a chicken and egg scenario where the outcome of both the extradition and the family decisions could be dependent upon each other, the logical course is for the Family Court to come to its decision first of all. Only in this way can the Extradition Court then make a full assessment of the position under Article 8”* (para. 54).

Green J also emphasised the need for mutual cooperation between the Extradition Court and Family Court to ensure that both courts are fully informed of each other's position and to reduce the risk of making conflicting decisions

(para. 55). To that end, the Judge took a pragmatic course and drafted a “Provisional Note” (found at the end of the Judgment) which was given to the Family Judge before the substantive extradition appeal hearing to set out the Court’s provisional views on the merits of the appeal. This addressed three different scenarios considering the variety of possible outcomes of the Family Court. In my view, this case should be held as the paradigm example of how better communication and cooperation between the two tribunals meets a primary consideration in extradition appeals involving children; the best interests of the child.

Support for this approach can also be found deeply rooted in an immigration context both from Strasbourg (*Ciliz v The Netherlands* (29192/95, 11 July 2000) and domestic immigration jurisprudence (*Mohammed (Family Court proceedings-outcome)* [2014] UKUT 00419 (IAC) and *Kurtaj, R (on the application of) v Secretary of State for the Home Department* [2014] EWHC 4327 (Admin)). The Court of Appeal guidance in *RS v Secretary of State for the Home Department* [2012] UKUT 00218 (IAC) is particularly useful:

“43. *In our judgment, when a judge sitting in an immigration appeal has to consider whether a person with a criminal record or adverse immigration history should be removed or deported when there are family proceedings contemplated the judge should consider the following questions:*

*(i) is the outcome of the contemplated family proceedings likely to be material to the immigration decision?*

*(ii) Are there compelling public interest reasons to exclude the claimant from the United Kingdom irrespective of the outcome of the family proceedings or the best interests of the child?*

*(iii) In the context of immigration proceedings initiated by an appellant in an immigration appeal, is there any reason to believe that the family proceedings have been instituted to delay or frustrate removal and not to promote the child's welfare?*

*(vi) In assessing the above questions, the judge will normally want to consider: the degree of the claimant's previous interest in and contact with the child, the timing of the contact proceedings and the commitment with which they have been progressed, when a decision is likely to be reached, what materials (if any) are already available or can be made available to identify pointers to where the child's welfare lies?”*

The CrPR Committee were invited to draw on these cases and to set up a mechanism by which information about the family proceedings can be shared and to give a blue-print for deciding when extradition cases ought to be adjourned. Unfortunately the Committee, whilst very grateful for the proposals, doubted its power to make the proposed provisions by rules and practice directions. Instead they recommended that the matters be aired before the Divisional Court in a suitable case. Hopefully this will provide further guidance to provide the consistency needed for these types of sensitive cases.

*Saoirse Townshend,  
The 36 Group*

## Domestic Case Law Update

### *Greco & Bagarea [2017] EWHC 1427 (Admin).*

The Divisional Court today gave judgment in the landmark case of *Greco & Bagarea* [2017] EWHC 1427 (Admin). The Court found that, following the judgment of the Grand Chamber of the European Court of Human Rights in the case of *Muršić v Croatia*, there is a strong presumption of a violation of Article 3 of the European Convention on Human Rights where the personal space available to a detainee falls below 3m<sup>2</sup> in multi-occupancy

accommodation. Such a presumption can only be rebutted when the reductions in the required minimum personal space are accompanied by various cumulative mitigating factors.

The background of this decision is that in February 2015 the Romanian Ministry of Justice gave an assurance that individuals extradited from the United Kingdom to Romania would be subject to a minimum of 3m<sup>2</sup> in closed conditions and 2m<sup>2</sup> in open or semi-open conditions. This assurance has been given approval by several Divisional Courts but none of them had considered the case of Muršić, decided on 20th October 2016. The Divisional Court in *Greco* has decided that the assurance in relation to semi-open conditions cannot comply with the European Convention and that the first mitigating factor, that the reduction in person space would be short, occasional and minor, removed the possibility of compliance with the Convention because the assurance guarantees personal space that is significantly below the minimum.

Mr Greco had been sentenced in Romania to a term of one year and six months for burglary of a door from a house under refurbishment. As his sentence is less than three years, Romanian law stipulates that he would be subject to the semi-open regime and he would therefore only be guaranteed personal space of 2m<sup>2</sup> during his imprisonment, breaching his Article 3 rights.

Mr Bagarea had been sentenced to a term of three years for cultivating cannabis and it was accepted by the Romanian authorities that he would also serve his term in semi-open conditions almost immediately after surrender to Romania.

The Romanian authorities have been given time to consider if they can increase the minimum space for those prisoners who are incarcerated in semi-open conditions.

The current position is now clearly that extradition to Romania for individuals who will go into semi-open conditions would constitute a violation of their Article 3 rights. Prisoners who are also coming to the end of their terms of imprisonment in closed conditions are almost routinely transferred to semi-open conditions. For this reason there may well be arguments in relation to individuals who are subject to sentences of longer than three years.

*Benjamin Seifert  
Drystone Chambers*

### **Extradition – A View from Europe**

DELF's third lecture of the year, "Extradition – A View from Europe", hosted by 5 St. Andrew's Hill on 7<sup>th</sup> June welcomed extradition lawyers from 5 different jurisdictions across the European Union in order to discuss recent developments in challenges to extradition in their respective countries. Members had the opportunity to pose questions to lawyers from: Poland, Spain, Germany, Portugal and the Netherlands. It was a fascinating and well attended evening which demonstrated not only the great experience and knowledge of our speakers but also the huge amount that UK lawyers can learn from our counterparts in mainland Europe. Given the success of the event we are hoping to run another similar event later this year.

*Katherine Tyler  
Kingsley Napley*

### **Recent events – the DELF Annual Dinner**

Much like Prime Minister May's recent attempt to achieve a resounding success with only 8 weeks to prepare for it, the DELF Social Committee set itself the same tight timeframe to achieve its own triumph in the form of the Inaugural Annual DELF dinner. Happily, all our headaches after the moment of truth were the result of overindulgence not

underachievement.

Beautiful flowers adorned the candlelit crypt and our dinner guests were welcomed by a wonderful speech from Rebecca Niblock highlighting our accomplishments over the past year. Given the setting the dinner was only ever destined to be a classy affair. That is, until 35 lawyers crammed themselves into a karaoke room fit for ten.

The food was delicious and the wine was divine, so special thanks should be given to Aaron Watkins for his dedication to the menu tasting. We were treated to an inspirational speech from James Lewis QC, recounting his difficulties with extradition in the early stages of his career and the esteemed Senior District Judge concluded with warm wishes for the future of DELF.

The evening was without a doubt the who's who of the extradition world and we were once again joined by eminent solicitors and barristers from across the profession. It was a fantastic opportunity to mingle in a relaxed atmosphere and enjoy a night celebrating all that DELF have achieved this year.

On behalf of the committee we would like to thank our sponsors for the evening and everyone who came and supported DELF. Next year certainly has something to live up to...

*Katy Smart  
Sonn Macmillan Walker*

## Membership

Membership runs from January to December annually. If you wish to join DELF for the first time from 01 January 2017, please e-mail your name, professional title, firm / chambers / employer, e-mail address and the category of membership that you wish to join DELF under, with "DELFL Membership" in the subject heading to the e-mail address [membership@delf.org.uk](mailto:membership@delf.org.uk) and follow the payment instructions set out below.

If you are simply renewing your existing 2016 membership from 01 January 2017, please follow the payment instructions set out below.

Fees for 2017 will be as follows:

**£50** - Full Membership - Open (subject to approval by the Committee) to any Solicitor, Barrister or member of the Institute of Legal Executives practising in the field of extradition and legal academic staff, whose practice includes representing requested persons in extradition cases. Full membership is also open to lawyers practising outside of England and Wales whose practice includes representing requested persons in extradition cases

**£25** - Associate Membership - Trainee Solicitors, Pupil Barristers and Paralegals

**£15** - Correspondent Membership - Open to court staff and other lawyers practising in the field of extradition

Fees can be paid in a group payment by a firm or Chambers administrator, or can be paid individually. If you are paying for more than one member in the same transfer, please email the details of who you have paid for and at what levels of membership they are joining at to [membership@delf.org.uk](mailto:membership@delf.org.uk) after you have transferred the membership fees.

If you are simply paying for your own membership fee, please use your name as a reference on the bank transfer. There is no need to email to confirm if the name is used as the reference on the bank transfer.

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For any queries, please contact [enquiries@delf.org.uk](mailto:enquiries@delf.org.uk)

### Contacts

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