



DELF
DEFENCE EXTRADITION LAWYERS FORUM

NEWS

Welcome to the Defence Extradition Lawyers Forum newsletter, edition 20 – our first in post-Brexit Britain 2020. We still have until the end of the year before the great period of uncertainty begins and we had expected to have many interesting developments in the months ahead but with the recent turmoil adding to the general uncertainty we anticipate the pace of change will slow. We will be grateful for contributions for our next bumper edition which will attempt to compensate for a postponement in events. This edition contains a brilliant legal update from Graeme Hall looking at recent Part 1 cases in relation to specialty and the value of an interest in moonshine. Myles Grandison updates us on his recent meeting with the Home Office to discuss the Extradition (Provisional Arrest) Bill and Hannah Hinton on her recent activities as Court Liaison Officer. With many thanks to all our contributors.

A message from the Chair

Welcome to the first newsletter of 2020. The beginning of the year is a busy time for DELF and in particular our Administrative Assistant Harriet who does a first class job at marshalling the renewal fees and new member applications for which we are extremely grateful. Can I take the opportunity to remind those of you who have not yet renewed to do so in order to have access to all the brilliant work our committee does on your behalf, more of that below.

The Christmas drinks were a resounding success, thank you to everyone who attended and thanks to Claire Kelly for her wonderfully festive organisation of the event, I am sure there were plenty of sore heads the next day – I blame the person who instigated tequila shots at 9pm!!

As you will see below we are actively engaging with both the Admin Court Office at the High Court and the Senior District Judge at Westminster Magistrates' Court; so much so, we have created a new role of Court Liaison Officer and Hannah Hinton is currently fulfilling that role. We would encourage our members to continue to get on touch with issues we can raise with both courts and Hannah has written a short piece below updating on the progress that has been made.

We are also arranging a meeting with the Legal Aid Agency (“LAA”) and co-ordinating some training to update the caseworkers on extradition developments in the hope of improving how the LAA deal with applications and billing in extradition cases. Myles Grandison attended a round-table discussion regarding the Extradition (Provisional Arrest) Bill at the Home Office on 14th February 2020; Myles updates us on that below.

We have had to postpone organising education events for the moment, but we are planning on the Annual Conference taking place in September 2020 and we will be launching the third John Jones QC Essay Competition later in the year. In lieu of education events we will be producing a special edition of the newsletter in due course which includes discussions on legal developments in Extradition and the impact of Brexit.

Finally, thank you to everyone who has contributed to this newsletter, with special thanks to Áine Kervick at Kingsley Napley who has taken over from Katherine Tyler. Thank you to everyone for your continued support and please do get in touch if you have something you would like to raise.

Katy Smart
Sonn Macmillan Walker

Our Recent Activities

Educational events and socials

In addition to the events that DELF puts on we continue to make representations on behalf of its members to the Criminal Procedure Rules Committee, the LAA, the Administrative Court staff and the Senior District Judge’s office. If members have any issues they would like DELF to raise please email enquiries@delf.org.uk.

Court Liaison

On 25th February the Court Liaison committee met with Chief Magistrate Emma Arbuthnot, District Judge Tempia and senior members of the IJ staff to discuss a range of issues of concern with the aim of improving our interaction with the Court. As ever, the meet was really useful and the Court has agreed to help us on all of the issues we raised. One problem we have identified is late notice of **listings for uncontentious matters** like changes to directions and bail variations or SCOPIA applications. Most of our members have found the short notice hearings difficult (and expensive) to cover at short notice and would prefer to see more use of ‘delegated powers’. I will meet with Legal Advisor/Duty Legal Adviser in the coming weeks to discuss ways that we can streamline communication of decisions without attendance and I have suggested the Court introduce a **consent order form** through which the parties can indicate what they apply for; whether it is an agreed direction and whether, in the view of the parties, attendance can be waived. If that could be put to use there would be less need to panic when an email comes in late in the day (or on the same day, as has happened) announcing that your case has been listed and wondering if attendance is necessary. It is probable that the matters will still be listed in Court 3 to be determined by a Judge but administratively. The DJs themselves are willing to help on this issue as Court 3, as everyone recognises, can get very busy and is often overloaded!

The Court has a monthly meeting with **SERCO** and will raise access issues we identified with them at the next meeting.

HMP Wandsworth is not always forthcoming with information about clients’ reasons for refusals to attend Court. Lack of information has wasted the Court's and the advocates’ time considerably and led to wasted costs. In two recent cases, one in which I was involved, parties waited for an update for up to half a day and still did not receive the required information from the prison, meaning the Court couldn’t make an informed decision on proceeding in absence. Errors made by prison staff who are required to produce a ‘reasons for refusal’ form cannot be rectified efficiently if the prison doesn’t have a sufficiently accessible communication channels - requests from the Court are

not getting through. The Chief Magistrate has this issue well in hand and has personally written to the prison Governor to encourage better communication in future cases to avoid these sorts of delays.

We have been asking for the Court lists to provide the **video link time slots** but there are some tricky issues meaning it is not likely to happen soon. As such it is the responsibility of those attending hearings to take a note of the VLR time slots in their attendance notes so colleagues do know what time the hearing is scheduled. It makes a big difference to know in advance if your hearing is at 10am or 12 noon, if just to your commute!

Other issues were raised including: interpreter bookings, expert fees payments, finding space opportunities to open up better facilities for cyclists and certificate for counsel application delays.

Anne Downer has kindly agreed to accept communications on facilities matters: Anne.downer@justice.gov.uk. She is a busy woman so please think carefully before bothering her with questions and feel free to run court liaison issues by me hhinton@serjeantsinn.com or via admin@delf.org.uk so I can consider them for the next meeting agenda or give you a bit more detail on these topics.

Hannah Hinton
Serjeants' Inn Chambers

Legal Update

The speciality principle in Part 1 cases

Speciality (also known as “specialty”) is a time-hallowed legal principle, the roots of which can be traced back to section 3(2) of the Extradition Act 1870, which precluded extradition where the “*fugitive criminal*” could be “*be detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded*”.

Sections 17 and 95 of the Extradition Act 2003 contain the principle’s current, more sophisticated, iteration. The upshot is that unless the requested person has had the opportunity to leave the requesting state, they cannot “*be dealt with*” for an offence committed before his extradition in the requesting state. This principle is also encapsulated in the Article 27(2) of the Framework Decision 2002/584/JHA, which provides that a “*person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered*.”

Speciality has come up in several cases relating to European arrest warrants (‘EAWs’) seeking extradition to serve an “aggregate”, “cumulative” or “composite” sentence for two or more offences. Often, domestic courts will discharge a requested person from one or more of the offences making up an aggregate sentence because, e.g., the offence is not (adequately) particularised, or it is not an extradition offence. In such circumstances, an order discharging the requested person from one or more offence will require the issuing judicial authority to disaggregate the aggregate sentence, and to re-sentence the requested person solely in relation to the offences for which extradition has been ordered.

In relation to Poland, the courts have found that Polish law provides for the disaggregation of aggregate sentences: see *Brodziak v Poland* [2013] EWHC 3394 (Admin); and, more recently, *Kortas v Poland* [2017] EWHC 1356 (Admin).

In relation to Lithuania, the courts have found that Lithuanian law does not provide for the disaggregation of aggregate sentences (*Lithuania v Zuolys*, 12 October 2018, District Judge Grant). The requested person was therefore discharged from the entirety of the EAW seeking his surrender to serve the balance of a 12 year sentence for offences including murder as *inter alia* the production of “moonshine” is not an offence known to England and Wales. The decision was not appealed.

In relation to Romania, the High Court in *Edutanu v Romania* [2016] EWHC 124 (Admin) at [81]-[87] and [129] doubted that Romania could disaggregate sentences. There have been two contradictory recent decisions at first instance. In *Romania v Manole*, District Judge Ezzat found that it was “50/50” whether Romania would comply with speciality protection. This was insufficient to conclude that Romania lacked speciality protection, and extradition was therefore ordered. However, in *Romania v Vlanger*, 6 January 2020, District Judge Goozée found that Romania

cannot disaggregate aggregate sentences. The requested person was therefore discharged from an EAW seeking extradition for an assault and an otherwise unparticularised offence, with a combined sentence of 1 year and 9 months' imprisonment. The decision was not appealed.

Graeme Hall appeared for the requested persons in *Lithuania v Zuolys* and *Romania v Vlangar*.

Graeme Hall
Doughty Street Chambers

European Parliament Report on the European Arrest Warrant

The European Parliament is producing a report on the EAW, to be published in April. The reporter, Wouter Van Ballegooij, has already produced a preliminary report, which is available online [here](#). The follow up report will be an assessment of the implementation of the Framework Directive.

The European Parliament is talking to various stakeholders in a number of jurisdictions and DELF will be preparing a response.

Extradition (Provisional Arrest) Bill

Home Office round-table 14 February 2020

A member of our Committee (Myles Grandison) attended a round-table discussion regarding the Extradition (Provisional Arrest) Bill at the Home Office on 14th February 2020.

The Home Office stated that the Bill is likely to be passed by the Summer. It is currently at the Committee stage. The Bill is intended to address a lacuna, whereby Officers have no power to stop individuals wanted by Part 2 territories, unless there is a warrant issued by a District Judge at Westminster Magistrates' Court. The new Bill will address this shortcoming, but only in relation to our closest extradition partners. In essence, there will be a triage process whereby the requests (most likely on the Interpol system) from these countries will be considered by our Central Authority (likely to be the NCA) and assessed as to whether or not they fulfil the "seriousness" criteria, so as to justify the issuance of a certificate. The Bill does not seek to change any substantive element of the Extradition Act; it merely enables people to enter the process more "speedily".

A number of stakeholders raised concerns as to the possibility of extending the application of the Bill beyond the current 6 countries (Australia, Canada, Liechtenstein, New Zealand, Switzerland and the US), as Interpol Notices had been abused by a number of jurisdictions. The Home Office was aware of this and tried to allay concerns by stating that countries could only be added to the Schedule under the affirmative procedure. In other words, both Houses would have to agree before further jurisdictions could be added to the list. Those present also raised the possibility that, if a request had been certified by the NCA, Police Officers would arrest individuals under this certificate, as opposed to seeking a warrant from the Court as it was the "easier option". The apparent safeguard is the requirement that those arrested under a certificate need to be brought before a court within 24 hours.

Other issues were raised as to disclosure requirements and subsequent arrests where an individual has been discharged. The Home Office stated that they would consider the matters raised.

It is apparent that the Bill will come into force imminently. Whilst there are a number of shortcomings, members will no doubt be more concerned about the countries that it may apply to in the coming months and years. DELF will need to address MPs and Lords as and when new countries are proposed.

Myles Grandison
Temple Garden Chambers

Upcoming Events

DELF Annual Dinner

Given the current uncertainty surrounding the spread of Covid-19, the committee have taken a decision to postpone the annual dinner that takes place in May of each year. We will announce a date for the dinner when the situation improves.

Membership

Membership runs from January to December annually. If you wish to join DELF for the first time since 01 January 2020, 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 "DELF Membership" in the subject heading to the e-mail address membership@delf.org.uk and follow the payment instructions set out below.

Fees for 2020 are 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 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 transfer in this case.

Please make your payments by bank transfer to:

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For any queries, please contact enquiries@delf.org.uk

Contacts

Current Committee member officers 2020

Chair – Katy Smart

Vice-Chair – Ben Keith

Treasurer – James Stansfeld

Educational Secretary – Anthony Hanratty

Social Secretary – Claire Kelly

Policy Officer – Peter Caldwell

Membership Secretary – Kate Chanter

Equality and Diversity Secretary – Mary Westcott

Court Liaison Officer – Hannah Hinton

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