Neutral Citation Number: [2018] EWHC 2540 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

CO/3474/2018
Royal Courts of Justice

Friday, 21 September 2018

Before:

MRS JUSTICE ELISABETH LAING

B E T W E E N :

LASZLO BALAZS

Applicant

- and -

(1) THE CROWN PROSECUTION SERVICE
(2) THE NATIONAL CRIME AGENCY
(3) GOVERNOR OF HER MAJESTY'S PRISON, WANDSWORTH

Respondents

A P P E A R A N C E S

MR M SUMMERS QC acting pro bono (instructed by instructed by Oracle Solicitors) appeared on behalf of the Applicant.

MS S TOWNSHEND (instructed by The Crown Prosecution Extradition Unit) appeared on behalf of the Respondent.

THE SECOND RESPONDENT did not attend and was not represented.

THE THIRD RESPONDENT did not attend and was not represented.

J U D G M E N T

MRS JUSTICE ELISABETH LAING:

Introduction

1 This is an application for a writ of *habeas corpus*.

2 The application was considered by Supperstone J on the papers on 5 September 2018. He listed the application for hearing by a single judge on 18 September 2018, stayed the applicant's removal pending the determination of the application for the writ or further order, and directed the filing and service of skeleton arguments.

3 The applicant has been represented on this application by Mr Summers of Queen's Counsel, acting *pro bono*, and the first respondent by Ms Townshend. I thank both counsel for their helpful written and oral submissions. I am particularly grateful to Mr Summers for arguing the case pro bono.

4 At the start of his submissions, Mr Summers said that there were two ways of approaching this case, an "easy way" and a "hard way". The "easy way", he submitted, involved a straightforward issue of statutory construction which was decided by authority binding on me.

5 The "hard way" was not foreshadowed in his skeleton argument. It involved an argument that s.36 of the Extradition Act 2003 ("the 2003 Act") does not properly achieve the results contemplated by Art.23 of Council Framework Decision of 13 June 2002 ("the Framework Decision") in at least three respects:

(i) by permitting 'reasonable cause' to be an admissible reason for delay.

(ii) by allowing agreements under 36(3) to side-step an application for release.

(iii) by requiring the requested person to apply for his release, rather than by stipulating that that it is automatic.

6 I said that if I rejected the primary submission made by Mr Summers, I would, both in fairness to Ms Townshend, and recognising the ramifications of his secondary submission, have to adjourn that submission to be heard by a Divisional Court. After some discussion, both counsel agreed that they were content for me to decide Mr Summers' primary submission without adjourning it to a Divisional Court.

The facts

7 On 16 July 2018, the Divisional Court dismissed the applicant's appeal against his order for extradition to Hungary (CO/5227/2017). The applicant's appeal was heard with the appeal of *Fuzesi & Anor v Budapest-Capital Regional Court, Hungary* [2018] EWHC 1885 (Admin), (CO/4291/2017).

8 On 31 July 2018, the Divisional Court dismissed *Fuzesi's* applications to reopen his appeal and to certify a point of law of general public importance. The applicant's case was erroneously listed to be heard on the same date. Later that day, the Administrative Court Office ("the ACO") sent an email to the National Crime Agency ("the NCA") telling them that the "disposal originally listed for today has been vacated." The "required period", as defined in 36(3)(a) of the 2003 Act, ended on 9 August 2018.

9 At 11.53 a.m on 23 August 2018, the applicant's solicitors lodged an application for the discharge of the applicant at Westminster Magistrates' Court ("WMC") pursuant to 36(8) of the 2003 Act. They also told the Crown Prosecution Service ("the CPS") that any

application to extend the period for the applicant's removal would be opposed. The applicant's application was listed before the appropriate judge at WMC on 24 August 2018.

10 The NCA had told the ACO on 23 August that 'we had set up a follow up on the case [...] for the end of the CPOL period to begin surrender plans. But it seems there has been some confusion following receipt of a hearing date from the Admin Court for 30/08/2018, then a further notice stating that the hearing had been vacated. Notes on the case show officers expected a new hearing date to be listed, hence no surrender plans were started'. "CPOL" stands for "certification of a point of law."

11 On 24 August, the NCA applied to 'Immediates' Judge (Moulder J), pursuant to s.36(3)(b) of the 2003 Act, for an extension of the time for removing the applicant. She ordered that the ten-day period in which to extradite the applicant should start on 23 August 2018. She noted that the original ten-day period had ended on 9 August 2018. She was persuaded that it was appropriate to extend the period because the NCA had been mistakenly told by the ACO on 30 July 2018 that there was to be a hearing in relation to the applicant on 31 July 2018; an "administrative error which caused confusion for the NCA regarding any time limits". She added that the NCA had acted promptly as soon as "the need to make an application came to light."

12 On 30 August 2018, District Judge Tempia ("the DJ") handed down judgment in this case on the application for discharge. The question for her was whether she had jurisdiction to order the discharge of the applicant, Moulder J having already ordered that the ten-day period should start on 23 August 2018. The DJ decided that she had no jurisdiction to order the discharge of the applicant because the time for removing him had already been validly extended by the High Court.

13 As the DJ observed in her judgment**,** the NCA had made a further application to extend time on 27 August 2018. On 28 August 2018, the High Court granted the application and ordered the ten-day period should run from 11 September 2018.

14 On 13 September 2018 the Administrative Court ordered, on the application of the CPS made on 12 September 2018, that the ten-day period should start on 20 September 2018.

The law

The Framework Decision

15 The Framework Decision is designed, as its recitals make clear, to replace the existing fragmentary and cumbersome arrangements for extradition between Member States with a simple, coherent and speedy scheme for surrender between judicial authorities pursuant to the European Arrest Warrant ("EAW"). Article 3 provides for mandatory grounds for not executing an EAW and Art.4 for discretionary grounds for not executing an EAW. Article 17.1 provides that an EAW must be executed as "a matter of urgency". The executing judicial authority has to make a decision on the EAW; and where the requested person does not consent to his surrender, he must be heard by the executing judicial authority (Art.19).

16 Article 23.1 provides that the requested person must be surrendered "as soon as possible on a date to be agreed between the authorities concerned". He must be surrendered no later than ten days after the final decision on the execution of the EAW (Art.23.2). Article 23.3 and 23.4 provide for the executing and issuing judicial authorities to agree a new surrender date where surrender is prevented by 'circumstances beyond the control of any Member State' or where there are 'serious humanitarian reasons', respectively. Once the time limits

referred to in para.2 to para.4 have expired, the requested person must be released, if he is still in custody (Art.23.5).

17 *Criminal Proceedings v Vilkas Case* (C-640/15) [2017] 4 WLR 69 (para.69) decides that the expiry of the time limits in Art.23 of the Framework Decision does not:

(1) Prevent the agreement of a new time limit or,

(2) Mean that the executing judicial authority is no longer required to execute the EAW; indeed, the relevant authorities are required to agree a new date. The reasoning in this decision points to the conclusion that Art.23 establishes two distinct regimes which run in parallel; a regime governing the time during which it is lawful to detain a requested person for the purposes of his surrender, and a regime for the agreement of time limits. *Vilkas* shows that the fact that the requesting State is required to release the requested person from detention does not prevent the requesting State and the requested State from agreeing a further extension of time; indeed, they are obliged to, because the requested State is still obliged to execute the EAW.

Section 36 of the Extradition Act 2003

18 Section 36 of the extra Act provides, so far as is relevant:

> "36. Extradition following appeal
>
> (1) This section applies if —
>
> (a) there is an appeal to the High Court under section 26 against an order for a person's extradition to a category 1 territory, and
>
> (b) the effect of the decision of the relevant court on the appeal is that the person is to be extradited there.
>
> (2) The person must be extradited to the category 1 territory before the end of the required period.
>
> (3) The required period is —
>
> (a) 10 days starting with the day on which the decision of the relevant court on the appeal becomes final or proceedings on the appeal are discontinued, or
>
> (b) if the relevant court and the authority which issued the Part 1 warrant agree a later date, 10 days starting with the later date.
>
> [...]
>
> (8) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay."

The authorities

Kasprzak v Warsaw Regional Court

19 In *Kasprzak v Warsaw Regional Court* (2011) EWHC 100 (Admin), Richards LJ decided the issues before him on a narrow basis (judgment, para.39 to para.40). The rest of his judgment was expressed to be *obiter* (judgment, first sentence of para.41).

20 In para.51, he explained that the High Court does not have jurisdiction to entertain an application to set aside its agreement to extend the required period. In para.53, he explained his view that the requesting judicial authority could ask for the agreement of the relevant court to extend the required period after the primary period had expired. He considered that the statutory context did not help to resolve this question but that Art.23 of the Framework Decision "must contemplate the possibility of an agreement being [made] after the end of original period [...]".

21 He considered whether an agreement to extend the required period could be made after the primary period had expired in para.56. He said that s.36(8) cannot be read as requiring the application for discharge to be made before the expiry of the required period. 'Thus, an application for discharge made after the expiry of the primary period and before a later extension of that period might well be a valid application, and the effect of a later extension might then be a matter of some difficulty. But I am very doubtful whether a valid application for discharge can be made at a time when the required period has already been extended and the extended period has not been expired, even if the extension occurred after the expiry of the original period; in that situation, at the time when the s.36(8) application is made, extradition can still take place before the end of the required period and there is therefore no failure to comply with s.36(2). I am therefore strongly inclined to the view, without deciding, that it is not open to Bingham to make a s.36(8) to the Magistrates' Court at this stage, based on the expiry of the original period before the period was extended'.

22 At para.57, he observed that s.36(2) did not prohibit the surrender of the requested person after the expiry of the required period (subject to a successful application for discharge). Section 56 did not render a late removal unlawful.

R (Hajda) v Polish Judicial Authority

23 In *R (Hajda) v Polish Judicial Authority* [2013] EWHC 1080 (Admin) Ouseley J considered an application for an injunction to stay the removal of the applicant to Poland. The respondent did not appear and was not represented. The applicant was not removed before the end of the primary required period (17 February). He made an application to the appropriate court on 25 February, pursuant to s.36(8). It came on for hearing 27 February. During that hearing, Ouseley J granted an extension of time pursuant to a request which had been lodged on 26 February. When she was told about that order, the DJ in that case decided that had she had no power to hear the application under s.36(8). Ouseley J said (judgment, para.7) that the crucial question was the effect of his grant of the extension of time before the discharge application had been ruled on.

24 Ouseley J referred to the decision in *Kasprzak* and to the passage in para.56 which I have quoted. Despite the view of Richards LJ that the issue was difficult, he decided that it was not arguable that:

> "the effect of a subsequent extension time on a discharge application which was valid when made, in the sense that the required period had expired, but which has not yet been ruled upon by the district judge, could prevent a further required period running, and thereby removing the s.38(6) power. The Act contains nothing to suggest that and although extension of the required period can be granted after the expiry of

> an earlier period, that time stops upon the making of an application for discharge after a required period had elapsed. If such a course of action were to be the statutory intention, I have no doubt that in this comprehensive statutory scheme, that particular procedural consequence would have been made abundantly clear" (judgment, para.9).

25 He could see no warrant for implying any words. He rejected a submission that this interpretation made the 36(8) protection nugatory:

> "It would still have an important part to play where the person [...] has not been extradited, no steps have been taken to do so and he cannot be left in limbo; the statute puts an end to proceedings in his interest through a discharge application".

26 He referred also to the possibility that the court might refuse the application for an extension of time. He had no doubt (judgment, para.11) that the effect of the grant of an extension of time was to prevent the district judge from deciding the application. She was bound to reach the decision she had reached. He rejected an alternative submission that the making of the application to him without telling him that there had been an application under 36(8) had been an abuse of process (judgment, para.12 to para.14). He would have made the same decision had he been told of the application under 36(8). He considered that the court would have power, in order to protect the integrity of its own process, to set aside an order for an extension of time which had been made on a false basis (judgment, para.15 to para.16). Richards LJ had not had this sort of point in mind when he made his observations about the availability of judicial review in *Kasprzak* (at para.51).

R (Netecza) v Governor of Holloway Prison

27 In *R (Netecza) v Governor of Holloway Prison* [2014] EWHC (Admin) 2098; [2015] 1 WLR 1337, the required period expired on 9 March. The requested person was not removed by that date. On 31 March, she applied to the appropriate court under s.36(8). The Crown Prosecution Service, ("the CPS"), was told of the application. On 1 April, the court told the parties that the application would be heard on 3 April. The CPS applied *ex parte* on 2 April for an extension of time and it was granted. The appropriate court then told the parties that the hearing would be taken out of the list. The applicant applied for a writ of *habeas corpus*, "which, if issued, would permit the hearing as to reasonable cause to be restored".

28 Moses LJ described the issue the court had to decide as "whether an application for discharge may be obviated by an agreement between the High Court and the authority of the requesting State, reached after the end of ten-day period [...] in s.36(3)(a) [...]". He recorded that there was no dispute that the only remedy was a writ of *habeas corpus* and that neither respondent had disputed that that remedy was available.

29 This formulation of the issue runs together three logically distinct questions which were posed by the facts of that case. The first is whether the required period can be extended under 36(3)(b) after the primary period provided for in s.36(3)(a) has expired. The second is whether irrespective of the expiry of the primary period an application for discharge properly made under s.36(8) may be circumvented by an application under s.36(3)(b) which is made after the application for discharge is made (but before it has been decided). The third is whether the making of an application for discharge under s.36(8) invalidates a subsequent agreement for an extension of time pursuant to 36(3)(b). Mr Summers frankly accepted that that conflation was his fault. He argued the case for the applicant and his primary submission, which concerns only the first of the three issues I have just described, is recorded at para.9 of the judgment.

30 In para.10 of the judgment, Moses LJ decided the first issue in the applicant's favour. In para.11 to para.23, he gave reasons for that view. They included the lack of protection given to the requested person by the s.36(3)(b) procedure, contrasted with the protection conferred by s.36(8), (judgment, para.14 to para.20). The reasoning in para.20 is significant, in my judgment. He said:

> "Those considerations, in my view, powerfully indicate that protection afforded to a requested person by the obligation to extradite within a limited period of ten days and by requiring the requesting State to provide justification for a failure to do so cannot be circumvented by an agreement reached by the requested and the requesting State *after* the period identified in s.36(3)(a) of the 2003 Act. Retrospective agreement of a later starting state circumvents the process whereby a requested State is compelled to justify a failure to comply with 36(2)".

31 He expressed his conclusion on the first two issues in para.24:

> "[...] The statutory scheme does not permit the right of the requested person to be discharged to be circumvented by agreeing a later starting date after the expiry of the period identified in s.36(3)(a) unless reasonable cause is shown" (see also para.26, which I quote below).

32 He then acknowledged that that proposition was inconsistent with two authorities. He referred to the *obiter* statements in *Kasprzak* and to *Hajda*. After citing part of para.56 of *Kasprzak* ("[...] an application for discharge made after the expiry of the primary period and before a later extension of that period might well be a valid application, and the effect of a later extension might then be a matter of some difficulty"), he said (judgment, para.26), "For the reason I have given, an application for discharge made after the expiry of the required period is valid, and must be considered whether or not a relevant court and authority purport to agree a later starting date" .

33 He acknowledged that that proposition was contrary to the decision in *Hajda*. He said that Ouseley J's view depended on an assumption that an extension of time can be granted after the primary period has expired. He did not accept that, for the reasons he had given. In para.29, he considered the way in which Ouseley J had dealt with the argument that the procedure adopted in *Hajda* made the protection conferred by s.36(8) nugatory. On the basis of *In re Owens* [2009] EWHC 1343 (Admin), [2010] 1 WLR 17, he questioned whether the s.36(3)(b) procedure gave any protection to the interests of the requested person (judgment para.30). He recognised that the interests of the requested person were not protected if a timely application for an extension of time was made; but in those circumstances, the requested person had:

> "no rights under s.36(8) which require to be protected because there is no question of non-compliance with 36(2). The problem and the need for protection of the requested person only arises because s.36(2) has not been complied with and, on the CPS's and Ouseley J's interpretation, that protection is circumvented".

34 In para.31, he expressed the view that the delay might be outweighed by the seriousness of the offence. By contrast, under s.36(8), "if is there no reasonable cause for the delay, a person who applies to the appropriate judge to be discharged is entitled to discharge". For those reasons, he disagreed with the conclusion of Ouseley J:

> "The statutory scheme does not [...] permit the provisions of s.36(8) [...] to be circumvented. If there was reasonable cause for the delay, then neither the requesting State nor the requested State have any cause to fear the consequences of this decision. If there was no reasonable cause, then it seems to me that a failure to extradite within the required period runs counter to the statutory intention to ensure speedy extradition once all opportunity for resistance has passed away" (judgment, para.32).

35 King J agreed with the conclusions and reasoning of Moses LJ. In para.34 of the judgment, he said that once the primary period had come to an end without being extended,

> "then self-evidently the required period has come to an end and I can see no room on the face of the provisions themselves for that required period to be revived [...] if it were otherwise, the protection expressly given to the requested person under ss.8 once the required period has come to an end, would be nugatory".

36 The court did not address the third issue in terms. A decision that the agreement to extend time was invalid would have required the court to engage with the powerful reasoning of Richards LJ in para.51 in the judgment in *Kasprzak* and with the reasoning of Mr Ouseley J on that subject in *Hajda*.

Desai v Westminster Magistrates' Court

37 The most recent relevant decision of the Divisional Court is *Desai v Westminster Magistrates' Court* [2014] EWHC 4631 (Admin) (Laws LJ, Simon J and Ouseley J). The DJ in that case had declined to order the discharge of the claimants pursuant to s.36(8). The required period in that case initially expired on 15 November 2014. Their solicitor gave notice of their intention to apply for their discharge. The application was heard on 20 November 2014. The DJ held that there was reasonable cause for the delay and refused to order their discharge. The Divisional Court upheld that decision (judgment, para.14).

38 The Divisional Court went on to consider whether *Netecza* was wrongly decided. Laws LJ, giving the judgment of the court, said, at para.8 that that *Netecza* concerned a different point, which was whether an agreement under 36(3)(b) could lawfully be made after the expiry of the primary ten-day period. Laws LJ then said that "for reasons to which I will come, it is necessary to address the decision in the *Netecza* case." Mr Summers explained that the Divisional Court's observations about *Netecza* were not *obiter* because, although this is not articulated in the reasoning of the court, the court had to decide whether it was open to the authorities in that case to agree a further extension of the required period, the primary period having expired, and the appropriate court having refused the application for discharge.

39 Laws LJ described the decision in *Netecza* thus, "A s.36 (3)(b) agreement could not be made after the primary period of 10 days [...] had expired" (judgment, para.15). That meant that the requesting State could not ask for an extension of time once that period had expired. He said that that was "unsatisfactory". He considered that it was a result that was not intended by Parliament. "*Netecza* therefore requires to be revisited." He cited *R v Greater Manchester Coroner ex p Tal* [1985] QB 67 for the proposition that the Divisional Court could depart from one of its decisions if satisfied that it was clearly wrong. He then cited para.31 and para.32 of the judgment in *Netecza*, and para.34 of King J's concurring judgment.

40 Laws LJ regarded the reasoning which he quoted as "within its own terms compelling" but said that it left a "lacuna" in the statute. He said that "had that been considered, a different result might well have been and should have been reached" (judgment, para.18). His view was that because an important aspect of the administration of statutory scheme had not been considered in *Netecza*, "the result of that case as erroneous and would so hold". In para.20, he said that, if the other members of the court agreed, the request should go back to the Magistrates' Court for a new date under s.36(3)(b). Ouseley J corrected that; the court was itself 'the appropriate court'. It is evident from the transcript that there was then a discussion about the mechanics of applying for an extension of time under s.36(3)(b).

Discussion

41 Section 36 is a terse provision. Two questions raised by the facts of this case which it does not expressly resolve, at least at first sight, are:

(i) Whether the power to extend the required period by agreement can be exercised after the period prescribed in 36(3)(a) has expired.

(ii) The nature of the relationship between the power to extend the required period by agreement which is conferred by s.36(3)(b) and the option, conferred on the requested person by 36(8), to apply for his discharge.

42 The second issue has two aspects; whether:

(i) an application under s.36(8) can be circumvented by an application under 36(3)(b) which is made after the 36(8) has been lodged, but before it has been decided, and

(ii) the making of an application under 36(8) invalidates a contemporaneous or later application under 36(3)(b).

43 In my judgment, the answer to the first question depends on whether the correct approach to interpreting s.36 is a static or a dynamic one. If the correct approach is a static approach, the date when the required period expires is fixed by the statute at the outset, and unless extended by agreement, before it expires, it ends 10 days after the decision on the appeal becomes final, or the proceedings are discontinued. If the correct approach is a dynamic one, the question is answered on the facts at the date when it is asked, and, if as at that date, time has been extended pursuant to s.36(3)(b) then the required period ends when the period, as extended, ends whether or not the application for the extension was made during the currency of the initial required period.

44 If the correct approach to the interpretation of s.36(2) is a static approach, then s.36(2) is not complied with if the primary period expires without being extended. As soon as that is the position, on the static interpretation, the person may apply for his discharge. If the correct approach is a dynamic approach, then, if by the time the person applies for his discharge time has in fact been extended, the required period (as extended) has not yet ended. It cannot, in those circumstances, be said that "ss.(2) has not been complied with". If that is the right approach, the s.36(8) option cannot be exercised in that situation.

45 In my judgment, the first question is answered by the decision of the Divisional Court in *Desai*. *Desai* decides two things; that the DJ was entitled to refuse the application for discharge and that, on the facts, it was open to the authorities to apply to the appropriate court for an extension of the required period, even though the primary period had by then expired. In order to make the second of those decisions, it was necessary for the Divisional Court to depart from the decision of the Divisional Court in *Netecza*, to the extent

that that decision was contrary to the view of the Divisional Court in *Desai*. *Desai* is a more recent decision of the Divisional Court on this point than *Netecza*, and I do not consider that it is clearly wrong. Indeed, it seems to me that it is consistent with the approach of the CJEU in *Vilkas*.

46 But neither of the points decided by the Divisional Court in *Desai* answers the other questions posed by this case, because *Desai* did not involve a conflict between s.36(8) and s.36(3)(B). In any event, in my judgment, the Divisional Court expressed no opinion on those points other (perhaps) than to suggest that on the issues which were not before the Divisional Court in *Desai*, the reasoning in *Netecza* was "within its own terms compelling".

47 *Netecza* and *Hajda* raise two conceptually distinct issues. One is what I have called "the first question". The second question is the relationship between an agreement under s.36(3)(b) and an application under s.36(8), which, as I have already explained, has two aspects.

48 The two cases resolve those issues differently. *Desai* supports the reasoning of Ouseley J on what I have called "the first question". As I have said, *Desai* does not deal with the second question. I consider that the *Netecza* does deal with it. One strand of the reasoning in *Netecza* concerns the question whether a s.36(8) application can be circumvented by an application made under s.36(3)(b) after a s.36(8) application has been made but before it has been decided. *Netecza* decides, essentially for policy reasons connected with protecting the interests of the requested person, that it cannot. *Netecza* is a decision of the Divisional Court, reached after an adversarial argument, and it departs from the reasoning of Ouseley J in *Hajda*. Ouseley J's decision was not made after adversarial argument (I appreciate, in saying that, that only the applicant was represented). Even if I am not strictly bound by the reasoning on this point in *Netecza*, I do not consider that that that reasoning is clearly wrong.

49 The starting point for answering the second question is the opening words of s.36(8). The option to apply for discharge is conferred if s.36(2) has not been complied with. There is no such option if s.36(2) has been complied with, as at the date when the s.36(8) application is made. So an important further question is what s.36(2) requires. My own view, for what it is worth, and I consider that it is supported by the decision in *Netecza*, is that the requested person has a statutory right to make an application under 36(8) as soon as it is the case that s.36(2) has not been complied with. That right is an important safeguard against arbitrary detention. The question whether 36(2) has been complied with is to be judged at the point when the s.36(8) application is lodged. If at that point the right to make the s.36(8) application has crystallised, that right cannot be taken away by a later application and agreement pursuant to s.36(3)(b). The making of the s.36(3)(b) application or of an agreement after the s.36(8) application is made, but before it is decided, does not relieve the Magistrates' Court of the obligation to decide the s.36(8) application.

50 Ms Townshend has conceded that the interpretation which she advanced "leads to a fairly ludicrous situation", as which application is to have priority depends on who, the applicant under s.36(8), or the CPS under s.36(b), could "get to a judge first". Since s.36(8) is clearly intended to confer a protection on the person against unreasonable delay in arranging his removal, I do not accept that such an arbitrary position could have been Parliament's intention.

51 What I consider to be the correct approach does not prevent a later application under s.36(3)(b), or invalidate the court's agreement to a fresh required period, as respects the future. So in this case, the agreements to extend the required period are valid, even although they were made after the s.36(8) application. I consider that that conclusion is

supported by the reasoning of Richards LJ in para.51 of *Kasprzak* and by the reasoning of Ouseley J on that subject in *Hajda*. It is, moreover, consistent with decision of the CJEU in *Vilkas*. This is because Art.23, as interpreted by the CJEU in *Vilkas*, and s.36, which I have to interpret, so far as is possible, to attain the result pursued by Art.23, (see for example, *Criminal Proceedings against Pupino* (C-105-03) [2006] QB 83) provide for parallel regimes. The first regime, which provides a safeguard for the requested person against arbitrary detention after the date when his surrender should have been effected, is in s.36(8). The second regime ensures that, despite the expiry of the primary required period, the requesting State and the requested State are able to agree further extensions of time, so that, even if the requested State is obliged to release the requested person from detention, it can comply with its continuing obligation to execute the EAW.

Conclusions

52 For those reasons, I grant the writ. WMC must list, hear and decide the s.36(8) application as soon as possible. That decision has no impact on the s.36(3) agreements which have already been made in this case.

53 Mr Summers was inclined to accept that a conforming interpretation of s.36(8) could mean that even if WMC acceded to the application for discharge, and released the applicant on bail, that might not result in the discharge of the EAW, presumably because of para.69 of *Vilkas*. Ms Townshend was inclined to agree with that approach, I think, while pointing out that the current practice is that where a s.36(8) application succeeds, the EAW is discharged. Both counsel agreed, after discussion with me, that I did not have to decide this question, and that, if I found for the applicant, all the consequences of my decision and all the issues on the discharge application would be for the DJ to decide.

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