Neutral Citation Number: [2020] EWHC 1746 (Admin)

Case No: CO/2168/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/07/2020

Before :

THE HON MR JUSTICE KERR

- -

Between :

GABRIELA TILEA

Appellant

– and –

GENERAL PROSECUTOR'S OFFICE OF THE COURT OF APPEAL IN GHENT, BELGIUM

Respondent

Florence Iveson (instructed by **McMillan Williams Solicitors**) for the **Appellant**
Rebecca Hill (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 16th June 2020

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Approved Judgment

Mr Justice Kerr:

Introduction

1. In this appeal under section 26 of the Extradition Act 2003 (**the 2003 Act**) by permission of Laing J, the appellant challenges the decision of District Judge Gareth Branston to order that the appellant be extradited to Belgium to serve the balance of an eight year prison sentence for 46 offences, all of which in English law parlance would broadly be called offences of dishonesty.

2. The decision appealed against followed a hearing at Westminster Magistrates' Court on 15 May 2019. The appellant and others gave evidence, parts of which the judge rejected. The judgment was handed down on 29 May 2019. The judge decided that the appellant should be extradited to Belgium pursuant to section 21(3) of the 2003 Act.

3. Laing J gave permission to appeal on two grounds: first, that the European Arrest Warrant (**EAW**) relied on by the respondent judicial authority did not specify sufficiently what criminal acts the appellant had committed; and secondly, that in consequence the judge should have decided that the offences in the EAW were not extradition offences and therefore should have discharged the appellant under section 10(3) of the 2003 Act.

4. Laing J adjourned to a "rolled up" hearing the third ground of appeal: that extradition would cause a disproportionate interference with the appellant's private and family life, under article 8 of the European Convention on Human Rights; and that the judge was therefore wrong to decide that the balancing exercise came down in favour of extradition.

Relevant Law

5. A "Part 1 warrant", i.e. an arrest warrant issued by a judicial authority of a "category 1 territory" (which includes Belgium) must, where it relates to a person already convicted and sentenced in the requesting state, contain among other things "particulars of the conviction" (section 2(2)(b) and (6)(b) of the 2003 Act).

6. The judge before whom such a person is brought in the executing state must decide whether each offence specified in the warrant is "an extradition offence" (section 10(2)). If it is not, the judge must discharge the person concerned (section 10(3)). If it is, then the judge must, unless there is some bar to extradition, order the extradition of the person to the requesting state.

7. In this case, it is common ground that if (contrary to the appellant's case) the offences were extradition offences, the judge was required (via sections 11, 20 and 21) to order the appellant's extradition to serve her sentence unless that would not be "compatible with the [appellant's] Convention rights" (section 21(1) and (3)).

8. Whether the appellant's conduct in the case of each of the 46 offences was "an extradition offence" depends on whether "the conduct would constitute an offence

under the law of the [England] … if it occurred in … [England]" (see section 65(2) and (3)(b)); or whether "a certificate issued by an appropriate authority of the category 1 territory shows that the conduct falls within the European framework list" (see section 65(5)(c)).

9. The "conduct" is "the conduct specified in the Part 1 warrant": see section 66(1) and (1A). The "European framework list" (see section 215(1) and Schedule 2) is the list of offences appearing in the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) ("the Framework Decision").

10. In an appeal to the High Court, the court may allow the appeal if the judge below ought to have decided a question differently, which would have required the judge to order the requested person's discharge (section 27(3)); or an issue is raised or evidence is served that was not available in the court below, and had it been available, the judge would have been required to order the requested person's discharge (section 27(4)).

11. Unless an EAW satisfies the terms of section 2 of the 2003 Act, extradition cannot be ordered. By section 206, it is for the judicial authority of the requesting state to show to the criminal standard of proof that the EAW does satisfy the requirements of section 2. A district judge must examine an EAW in a spirit of mutual trust and confidence, which includes reasonable allowance for documents not being written in English (*M v. Italy* [2018] EWHC 1808 (Admin) per Nicol J at [46], Gross LJ concurring).

12. The requirements of section 2 must be read in the light of the Framework Decision. As Cranston J explained in *Ektor v. Netherlands* [2007] EWHC 3106 (Admin) at [7]:

> "the Council Framework Decision requires the warrant to set out a description, not in legal language, of how the alleged offence is said to have occurred. In particular, the description must include when and where the offence is said to have happened and what involvement the person named in the warrant had. As with any European instrument, these requirements must be read in the light of its objectives. A balance must be struck between… the need on the one hand for an adequate description to inform the person, and on the other the object of simplifying extradition procedures. The person sought by the warrant needs to know what offence he is said to have committed and to have an idea of the nature and extent of the allegations against him in relation to that offence… ."

13. Further, where a conspiracy is alleged (per Collins J in *Pelka v. Poland* [2012] EWHC 3989 (Admin), at [6]:

> "… it is not necessary to include any great detail as to the precise acts committed in furtherance of the conspiracy. But, as a general proposition, it seems to me that a warrant ought to indicate, at least in brief terms, what is alleged to have constituted the involvement or the participation of the individual in question. … prima facie, simply to say there was a conspiracy and he conspired with others ... to do whatever the end result of the offence is, is likely not to be sufficient …"

14. Particulars under section 2(6)(b) "must extend beyond a mere recital of the conviction. What is needed in all cases is sufficient information to enable any mandatory or optional bar … to be considered …" (*King v. France* [2015] EWHC 3670, per Collins J (Lloyd Jones LJ concurring) at [18]). The level of particularity required will depend on the circumstances of each case:

> "In many, where for example offences were committed wholly within the requesting state and involved acts directed at individual victims, little would be required beyond time, place and that the person did the criminal act which led to conviction." (*ibid.* at [21]).

15. As Moore-Bick LJ observed in *Dhar v. Netherlands* [2012] EWHC 697 (Admin) at [68]:

> "Although … the warrant need not contain highly detailed information of the kind that one might expect to find in a civil pleading, it must contain enough information to enable the requested person to understand with a reasonable degree of certainty the substance of the allegations against him, namely, what he is said to have done, when and where…"

16. The court must not fill in gaps in the information by "guesswork" (*Office of the King's Prosecutor, Brussels v. Cando Armas* [2005] 3 WLR 1079, per Lord Hope at [48]). However, *Assange v. Swedish Prosecution Authority* [2011] EWHC 2849 (Admin) shows (judgment of the court, Sir John Thomas PQBD and Ouseley J, at [112]) that where the offence has been classified by the requesting state by reference to the European Framework list:

> "although the court executing the EAW must scrutinise the EAW to ensure that it complies with the requirements of particularity, it should ordinarily accept the classification of the issuing Member State, unless there is an obvious inconsistency which shows that the conduct alleged does not amount to the offence under the law of that state."

17. Where an offence is specified in an EAW "a necessary mental element of an English equivalent offence may be inferred from the description of conduct in the extradition request where that inference …. is capable of being drawn": *Cleveland v. Government of the USA* [2019] 1 WLR 4392, DC, per Holgate J (with whose judgment Leggatt LJ agreed) at [52]. *Assange v. Swedish Prosecution Authority* is not authority that the inference must be the only one capable of being drawn (*ibid.* at [54]).

18. As to article 8 of the ECHR, I refer to Baroness Hale's remarks in *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25. The question is whether the interference with the private and family lives of the requested person and other family members is outweighed by the public interest in extradition. That public interest always carries great weight; how great depends on the nature and seriousness of the crime involved.

19. As Baroness Hale went on to explain, delay since the crimes were committed may diminish the weight to be attached to the public interest in extradition and increase the impact upon private and family life. The public interest in extradition is likely to outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe.

20. The impact of extradition upon children is a primary consideration of primary importance but can be outweighed by other factors. Children need a family life in a way that adults do not because they rely upon the care of others and above all need to be loved if they are to become functioning members of the community. There is a strong public interest in ensuring that children are properly brought up; careful attention must be given to what will happen to children where the requested person is their sole available carer.

The Facts

21. The appellant is a Romanian citizen and a member of the Roma community. She was born in Bucharest in March 1987. She has a history of suffering domestic violence, reporting that she was regularly beaten up by her violent ex-partner who is the father of her three children.

22. From 31 December 2009 to 3 October 2010, the appellant was living in Belgium and was involved in committing offences at several different locations. According to evidence she gave in previous extradition proceedings before District Judge Tempia in February 2019, she was at that time a member of a group of thieves and acted under the instructions of others.

23. On 3 October 2010, she was arrested in Belgium and taken into custody. She was released on bail on 15 March 2011, on payment of a deposit of €2,000. On release, she was pregnant with her eldest child, a daughter born in May 2011. She was not prohibited from leaving Belgium but was required to appear personally in all legal proceedings, to attend police if and as soon as summoned to do so and to notify the court of any change of address.

24. Later in 2011, the appellant, her then partner and their daughter went to live in Croatia. They stayed about 2½ years. During their time there, he was convicted of assaulting her. Their two younger children, both sons, were born in Croatia. The appellant kept in touch with her lawyer in Belgium about the criminal proceedings.

25. The family then went to live in Romania. In early 2017, the appellant left her partner. In November 2017, she came to this country with one of her children to live and obtain work and to avoid further domestic violence. Her ex-partner came to the UK bringing the other two children and seeking reconciliation, but she did not allow this and took over care of all the children. Her ex-partner has ceased to have contact with the three children.

26. On 6 December 2017, the appellant was tried in her absence and sentenced by the Court of Appeal in Ghent. Her lawyer was present. The sentence was 8 years, less 3 months and 15 days served on remand. The balance, therefore, was 7 years, 8 months and 15 days. The court issued a warrant for the appellant's arrest. The sentence became final on 21 December 2017.

27. The Belgian authorities searched for the appellant. She did not return. As District Judge Branston later found, she became a fugitive from Belgian justice. There is no appeal against that part of the decision. On 4 May 2018, an EAW (**EAW (1)**) was issued for the appellant's arrest. It was certified by the National Crime Agency on 9 May 2018.

28. EAW (1) was later superseded by a further EAW (**EAW (2)**), which is the relevant EAW in this appeal. I therefore need not set out the content of EAW (1), except to say that it sought the extradition of the appellant to serve the balance of her sentence and relied on her conviction and sentence for the 46 criminal offences for which she had been sentenced in Ghent, in her absence but with her lawyer present, on 6 December 2017.

29. On 22 November 2018, the appellant was arrested in East London pursuant to EAW (1). PC James Brown went with other officers to the address to arrest a man for failing to appear at court for driving offences. The appellant was at the property. After apprehending the man who was trying to escape via the back garden, police checked the police national computer and found that the appellant was wanted on an EAW. She was then arrested and kept in custody.

30. The appellant's three children were at school. Arrangements were made for them to be cared for by a relative. On 9 January 2019, following a welfare assessment, a report on the welfare of the three children was prepared by a social worker on behalf of the London Borough of Newham, under section 7 of the Children Act 1989. This report was later considered by District Judge Branston in relation to article 8 of the ECHR.

31. On 14 January 2019, certain further information about the procedural history was provided by one P. de Smet on behalf of the Attorney General in Ghent. A further request for more information was then made in this country, for "further clarification as to what role [the appellant] played in each offence?" Before P. de Smet responded to that request, the appellant was brought before District Judge Tempia to determine whether extradition should be ordered on the basis of EAW (1), supplemented by some additional information.

32. DJ Tempia gave her judgment at Westminster Magistrates' Court on 19 February 2019. She decided that EAW (1) was "wholly defective" and could not be cured by the additional information provided; and that, even if EAW (1) could have been cured, the additional information provided to date did not suffice to specify the appellant's role in the offending. That additional information included an undated document providing further information about Belgian law, to which I am coming shortly.

33. DJ Tempia stated in her judgment that she would not have discharged the appellant by reason of interference with private and family life, applying article 8 of the Convention. She ordered the appellant's discharge, applying sections 2 and 10 of the 2003 Act. The appellant was released the next day, but her time at liberty did not last long.

34. EAW (2) was issued on 25 February 2019 and certified by the National Crime Agency the next day. It included some of the information thus far provided by way of further particulars of EAW (1), and included detailed lists of the items of jewellery and other things misappropriated in the course of the offending, with a combined value of over €1 million, as well as dates and locations of the misappropriations and the names of the victims.

35. I will come to the offences in more detail shortly. The European Framework list classifications in EAW (2) were the same as those used in EAW (1). The offences which we would call burglary, theft and attempted theft were classified as "organised or armed robbery". An offence of signing a flat rental agreement using a false name was classified as "forgery of administrative documents and trafficking therein". Certain offences related to the raising of €2,000 bail money were classified as "laundering of the proceeds of crime".

36. One of the offences was not classified at all. It could be called an offence of impersonation or use of a false name. The narrative in EAW (1) and (2) stated: "[w]ith connection in Vorst, Brussels and elsewhere in the Kingdom in the timeframe from 31/10/2009 until 15/11/2010 repeatedly having adopted in public the name of Nikolva Galina which doesn't belong to her… ."

37. On 4 March 2019, the appellant was arrested and brought before DJ Branston pursuant to EAW (2). She was kept in custody, where she has been ever since. Her children remained at school, in the care of their great aunt, the appellant's aunt.

38. A primary school support worker at her children's school, Mr Mowdud Chowdhury, produced a letter dated 8 March 2019 about the position of the three children at the school. He noted behavioural difficulties and signs of distress coinciding with their mother having returned to custody. DJ Branston refused a bail application on 14 March 2019.

39. P. de Smet then responded on 5 April 2019 to the outstanding request for further information. P de Smet stated that the appellant was "guilty as perpetrator/co-perpetrator". She or he then gave some further information about the offences, some of which was new.

40. The first 30 offences (**the 1st to 30th offences**) were described as "[t]hirty thefts of among others jewels with burglary, escalation, false keys in premises". The following nine offences (**the 31st to 39th offences**) were "attempted thefts" characterised in the same way, save that the items taken were not listed, presumably because the attempt to take them failed.

41. The remaining seven offences (**the 40th to 46th offences**) were explained as follows, as far as I can discern and following the English translation provided by the Belgian authorities, the original of which I do not have:

    (40) attempted theft with violence or "theft equivalent to theft" [sic], committed with two of the mentioned circumstances in article 47 of the Penal Code, namely by burglary, escalation or false keys and by two or more persons; the date, location and victim's name are then supplied;

    (41) a simple theft, of a case with its contents, namely a bank card, an identity card and €600; the date, location and name of the victim are then supplied;

    (42) belonging to an association which has as purpose committing thefts by means of burglary, escalation or false keys; the only particulars added are the locations and time frame of the previously mentioned offences;

(43) on 31 October 2009, committing forgery by adopting a fake identity Galine Nikolova [sic] in a rental contract for a flat; the address of the flat is given and it is said that the appellant signed the contract "to the prejudice of" a named person, by inference probably the landlord;

(44) from 31 October 2009 up to 15 November 2010, repeatedly, adopting the name "Nikoleva" [sic] in public, which does not belong to her; and (with reference to articles 505 and 42 of the Penal Code) having converted or transferred with the purpose of hiding or concealing its illegal origin, the sum of €2,000 "paid caution" (i.e. bail surety) for the appellant;

(45) in Bruges on 16 March 2011, in breach of article 505 and 42, the "nature, origin, finding, spot, disposal, movement or ownership" of the things mentioned in article 42; having "received or concealed, although at the moment of the beginning of these acts he should have known or knew the origin of these things, namely an amount of €2000 of a paid caution …";

(46) in breach of article 505, in Bruges on 16 March 2011, "the goods … mentioned in [article 42] … namely having obtained financial benefits out of the crime, goods and funds which were put instead or income from invested benefits, having concealed or disguised, although he should have known or knew at the moment of the beginning of these acts the origin of those goods", with reference to the €2,000 for the appellant's bail.

42. The further undated document already mentioned (which had been available to DJ Tempia) was also available to District Judge Branston when he gave his judgment. This document added references to relevant articles of the Belgian Penal Code, and their content. The following relevant propositions of Belgian criminal law may be derived from that document, subject to making due allowance for loss of precision through translation.

43. By article 66 of the Penal Code, a perpetrator is one who executes the crime or collaborates directly in its execution or does so by any act of assistance in its execution, such that the crime could not have been committed without his or her assistance, or who by gifts, promises, threats, abuse of authority or power, criminal machinations or guiles, directly provokes the crime.

44. This was said to be the appellant's method of committing the 1st to 30th offences of misappropriating objects not belonging to her, having taken them away deceptively by means of what was translated as "burglary, clearing or fake keys". Without delving deeply into the original language of the Penal Code, I take judicial notice that in the French version, this is breaking in ("*effraction*"), climbing ("*escalade*") or the use of false keys ("*fausses clés*").

45. In the case of the 31st to 39th offences of attempting to misappropriate other people's property, the appellant's stated method of committing the crimes is, first, by means of participation as a perpetrator or collaborator under article 66 of the Penal Code (cited above); and second, in that she:

> "attempted to take away fraudulently a good [property] which didn't belong to her, by means of burglary, clearing or false keys, which the intention was to commit the crime

> has been manifested by external acts which are a beginning of the crime and only because of the circumstances, independently of the will of the perpetrator, are discontinued or have missed their effect… ."

46. In the case of the 40th offence, attempted theft with violence, the same formulation was used, but with the added information that the thief was "caught on the scene and threats or violence has been used whether to remain in possession of the taken objects, whether to guarantee his escape … ."

47. In the case of the 41st offence, that of simple theft of a case and its contents, namely a bank card, an identity card and €600, the following information was given: in breach of articles 461, 463 and 465 of the Penal Code, "having taken an object which didn't belong to him or her in a fraudulent way … ."

48. In relation to the 42nd offence, that of belonging to an association dedicated to criminal purposes, the added information was provided that the appellant was a member of the association "with the aim to commit an attack on persons or on properties, composed by the single fact that setting up a gang, the association had as aim to commit crimes namely thefts by means of burglary, clearing [sic] or fake keys."

49. The 43rd offence, earlier described as forgery in connection with rental of a flat, was supplemented with references to articles 193, 196 and 214 of the Penal Code and:

> "a fraudulent intent or with the intention to harm, in authentic and public writings, in commercial and bank documents or in private documents, having committed a forgery, whether by fake signatures, whether by a counterfeit or forgery of writings or signatures, whether by agreements, ordinances, commitments or debt discharges, having drawn up falsely or afterwards by adding to the deeds, whether by an adding or counterfeiting the clauses, statements or facts which aimed these deeds to incorporate or to establish, namely … by adopting the fake identity LIPOVAC Darko (for which concerns the sixth accused) and NIKOLOVA Galina (for which concerns the seventh accused) in a rental agreement of a flat … [address given] and to sign this to the prejudice of [named victim, probably the landlord]".

50. In the case of the 44th, 45th and 46th offences, all linked to the use of €2,000 to secure the appellant's bail in March 2011, no new information of note was added save that it was explained that the appellant was a perpetrator or collaborator within the meaning of article 66 of the Penal Code, already quoted.

51. The totality of the information available to DJ Branston about the crimes committed by the appellant was, therefore, as I have set out above. Before the District Judge, it had to be pieced together laboriously from different sources, as I have had to do with the assistance of counsel in this appeal.

52. On 2 May 2019, Dr Tom Grange, a clinical psychologist, provided a psychological report on the appellant. The appellant's aunt was living in London and looking after the children while the appellant was in custody. Dr Grange considered the adequacy of this arrangement and concerns about whether it could continue; together with other

issues relevant to the degree of interference with family life which extradition would cause.

53. The full hearing before DJ Branston took place on 15 May 2019 at Westminster Magistrates' Court. The appellant gave evidence, as did her brother and aunt, both living in the UK. Dr Grange's report was available and relied on by the appellant, along with the welfare report and the information from the children's school, previously mentioned.

54. The judge found that the appellant was a fugitive from Belgian justice, rejecting her evidence that she had been told to leave the country and believed the criminal proceedings in Belgium had been concluded. He found that she had chosen to absent herself from the criminal proceedings. He then outlined the domestic circumstances and the contents of the reports. He set out the relevant law and the submissions of Ms Iveson and of counsel then appearing for the judicial authority, Ms Hannah Hinton.

55. The judge rejected the argument that the particulars of the offences were insufficient. He held that an allegation that the appellant was either a perpetrator or a co-perpetrator in a burglary satisfies the requirement of particularity and enables the extradited person to raise any relevant bars to extradition. He pointed out (paragraph 95) that:

> "[t]he court does not extradite a person because they have been convicted of being a lookout in a burglary but because they have been convicted of burglary."

56. He then set out the relevant law relating to the balancing exercise under article 8 of the Convention and the submissions for and against extradition. He then set out a "balance sheet" of factors for and against extradition. There is no criticism of the manner in which he went about that task, which was carried out in the manner ordained in the prevailing case law.

57. Despite "immense sympathy" for the children who were "innocent victims", he concluded that the public interest in extradition outweighed the position of the appellant and her family. He acknowledged the concerns of Dr Grange and others about the traumatic consequences of separation of the children from their mother.

58. However, he found that they could continue to be looked after by their great aunt with support from the wider family. Their great aunt had already become a "mother figure" for them. He concluded that extradition would be compatible with article 8 of the Convention and ordered the appellant's extradition on all the offences. The appellant then appealed.

Grounds of Appeal

First and second grounds: error of law applying section 2, 10 and 65 of the 2003 Act

59. The first and second grounds may be taken together, since they stand or fall together. The first ground is that the judge erred in deciding that EAW (2) specified adequately what criminal acts the appellant had committed. The second ground is that in consequence the judge erred in finding that the offences were extradition offences.

60. Ms Iveson submits that the District Judge erred in his determination that the 46 offences were all extradition offences, in the following four ways. First, she says the judge was wrong to find that the warrant set out a "description of the circumstances in which the 46 offences were committed" (see paragraph 92 of the judgment below).

61. Article 8(1)(e) of the Framework Decision states that the description must include "the time, place and degree of participation in the offence by the requested person". Ms Iveson complained that while the time and place of the offending has been set out in the EAW, nothing had been said about what the appellant was alleged to have done on each occasion; it was not possible to ascertain the degree of her participation in the offending.

62. The judge had been wrong to accept that the appellant's participation was sufficiently indicated by specifying that she was a perpetrator or co-perpetrator. That broad terminology encompasses all modes of involvement in criminal offending and does not say anything specific about the appellant's level of involvement.

63. Third, Ms Iveson contends that the judge erred in stating (at paragraph 96) that "Charge E also gives an indication as to the involvement of [the appellant] in these offences". Ms Iveson says that he probably meant to refer to Charge F7, i.e. the 42nd offence of belonging to a criminal association. I agree that he was probably referring to the 42nd offence (easily mistaken for "Charge E" due to the confusing layout of the document).

64. The judge's reasoning was to the effect that belonging to a criminal association was indicative of the nature and degree of the appellant's participation in the preceding 41 offences of burglary, theft and attempted theft. Ms Iveson criticised this reasoning; it was merely stating the existence of the conspiracy, without saying what the appellant's part in it was. As such it was insufficient, applying the reasoning of Collins J in *Pelka v. Poland.*

65. Ms Iveson also criticised the judge's absolution of the judicial authority from the vice of providing only a "broad omnibus description" (in Dyson LJ's phrase in *von der Pahlen v. Austria* [2006] EWHC 1672 (Admin), at [21]). The judge had placed wrong reliance on the detailed list of property stolen, locations, times and dates, victims' names and property values, none of which said anything about what the appellant had actually done.

66. The difficulty could not be overcome, said Ms Iveson, by reference to the Framework Decision classification indicated in EAW (2); since the chosen classification for the theft and burglary offences was "organised or armed robbery"; while the narrative describes most of them as "thefts….with burglary, escalation, false keys", which appear to be alternatives to each other. Ms Iveson did not accept that a burglary could be classified as an organised robbery by reference to the European Framework list.

67. Ms Hill (who was only briefed a day or two before the hearing of the appeal), with one exception adopted the submissions of her predecessor counsel, Ms Hinton (opposing permission to appeal) and the reasoning of the District Judge. She submitted, first, that the court should not go behind the classification of the offences by reference to the European Framework list.

68. Furthermore, she submitted that the judge was correct to find that sufficient particulars of the appellant's participation in the offending had been provided. The offences of burglary, theft and attempted theft or burglary (the 1st to 30th offences and the 31st to 39th offences) were not complicated. The *mens rea* of their English law equivalents could be inferred without difficulty.

69. It did not matter what the appellant's precise role in each crime was, submitted Ms Hill in agreement with the judge. That would require too much detail. The appellant might be now the lookout, now a pocket picker, now a copier of keys, now a putter of the victim off guard, and so forth. She was clearly either principal or accessory in every case. The judge was right not to require more narrative from the requesting state.

70. The "criminal association" charge (the 42nd offence) referred back to the previous offending. The essence of the 43rd offence (forgery by signing a flat rental contract using a false name) was fraud. Two of the three offences (the 45th and 46th offences) relating to the €2,000 bail money were, in essence, cases of knowing use of the proceeds of crime.

71. Ms Hill had not had time to formulate English law equivalent offences and charges in detail (as recommended by Julian Knowles J in *Biri v. Hungary* [2018] 4 WLR 50); but she referred to section 2 of the Fraud Act 2006 (fraud by false representation) as a suitable English law analogue for the 43rd offence of signing the flat rental contract using a false name; and to section 327 of the Proceeds of Crime Act 2002 (concealing, disguising, converting, etc criminal property) as an appropriate analogue for the 45th and 46th offences relating to the raising of the €2,000 bail money.

72. The one exception, Ms Hill noted, was the 44th offence of repeated use of a false name. That had not been classified in EAW (2) by reference to the European Framework list. Ms Hill accepted that she could not find an English law equivalent offence of repeatedly using a false name in public. There was a suggested link to raising the €2,000 bail money but the link was not clear.

73. Ms Hill therefore did not rely on section 327 of the Proceeds of Crime Act 2002 in the case of the 44th offence and accepted that the appeal should be allowed in the case of that offence only. However, she submitted that the article 8 balancing exercise was unaffected and that the judge's extradition order should stand for the other 45 offences, as provided for by the Extradition Act 2003 (Multiple Offences) Order 2003.

74. I can now come to my reasoning and conclusions in respect of the first two grounds of the appeal. The balance to be struck is between simplicity, on one side, and sufficient information, on the other. The warrant should inform the requested person what she has done or is accused of having done but should not have to be swamped with detail; that would undermine and deny the mutual trust and assurance underlying the Framework Decision.

75. It is tempting to propose that a warrant such as this should include a short factual narrative for each offence. In many cases, that will not be difficult. For example, it might have been said that the appellant distracted the victim, copied a set of keys, acted as lookout or removed the goods while someone else distracted the victim, and

so forth. But here the narrative could have been long if the appellant was versatile as well as prolific in her offending.

76. In the present case, although (as Laing J observed when granting permission) EAW (2), read together with all the available further information, contained a vast amount of information about the goods, their value, the names of the victims, the dates of the crimes and their location, it did not include any such narrative. I surmise that the omission may be because there were 46 offences rather than just one or two.

77. The requirement to provide sufficient particulars should be interpreted in a manner that accords with proportionality. An English law indictment would not have to specify whether the appellant was the lookout or the person who pocketed the goods. In a joint enterprise charge, it would be sufficient to state that the accused robbed, burgled, stole, etc together with others and to give particulars of the date and location of the crime and the victim.

78. Furthermore, if the Crown's evidence in such a case mistakenly attributed the wrong role to the accused (for example that of lookout), she would not on that account escape conviction if the jury found her guilty in a different role (for example, driving the getaway car). This observation lends force to the judge's observation that the appellant's crime here is not that of e.g. being the lookout but of committing a burglary as perpetrator or co-perpetrator.

79. Specimen counts are allowed in an indictment in this country where a course of repeated offending over a period is alleged by the Crown. Similarly, aiding and abetting, counselling or procuring an offence may be indicted in the same way as the principal offence (see Blackstone's Criminal Practice 2020, at D11.42, citing section 8 of the Accessories and Abettors Act 1861).

80. English criminal procedure thus avoids unduly onerous requirements to include disproportionate amounts of information in an indictment. Similarly, I do not think the requirement to specify the nature and degree of participation by the requested person in the offences charged should, at any rate in a case of serial and multiple offending, be so exacting as to require the requesting state to specify more particularity than would suffice in an English law indictment.

81. In multiple offending cases such as this, the amount of detail can easily become very voluminous indeed. The requesting state here provided plenty of detail about the goods, victims, locations and dates and the value of the goods stolen. That was helpful and should be encouraged. The nature and value of the goods taken may be important where an article 8 balancing exercise has to be carried out.

82. The role played by the requested person is also relevant to proportionality in any article 8 exercise. But the burden on the requesting state is greater when specifying her individual role in each offence than in giving details of goods stolen and the timing and location of each offence. The latter features are common to all perpetrators and can be readily extracted from records. The former differs for each perpetrator and must be laboriously compiled.

83. There is a danger that if the requirement for particulars is too exacting, the more prolific the offending, the more likely the offender will succeed in impugning the

validity of the EAW and avoiding extradition. The EAW system should not be a rogue's charter. And the requesting state may not know the exact role played by the requested person. It might be driven to speculate ("she either lit the fuse or drove the car; either is enough for guilt").

84. With those general observations in mind, I come to the specific offences. I will deal first with the 1st to 30th offences. These were "[t]hirty thefts of among others jewels with burglary, escalation, false keys in premises". In each case the appellant either personally removed the goods; or committed an act of assistance without which the crime could not have been committed; or by gifts, promises, threats, abuse of authority or power, criminal machinations or guiles, directly provoked each of the crimes.

85. The first point is that I accept the classification of those crimes under the European Framework list. The requirement of dual criminality is satisfied by the certification in EAW (2) that the conduct falls within the European framework list" (see section 65(5)(c) of the 2003 Act) and the reasoning in the *Assange* case, cited above.

86. I do not accept Ms Iveson's invitation to reject the classification of the offences as organised or armed robbery rather than burglary. The classification appears to me to be correct and the reasoning in *Assange* dissuades me from questioning it. In the European Framework list, there is no separate category of cases that we would call burglary. I take judicial notice that in the equally authentic French version of the Framework Decision the classification is "vols [thefts] organisés ou avec arme", which would include burglaries that are organised.

87. I also agree with the judge that, in the context of this serial and multiple offending, the particulars were sufficient. The appellant was told enough about her role in the 30 offences. Her role may have differed from one offence to the next, but she was told what they had in common: that the requirements for guilt as principal or accessory were met in each case. She was told what those requirements were. On the facts here, that was enough for the 1st to 30th offences. To require up to 30 separate factual narratives would be disproportionate.

88. Turning to the 31st to 39th offences, these were characterised and classified in the same way, though the items taken were not listed because they were attempted thefts rather than completed offences. The appellant, correctly, does not complain about the absence of property descriptions and named victims. By the same reasoning, I am unwilling to go behind the classification and I decline to do so.

89. The appellant was told that her participation was as perpetrator or co-perpetrator in each case (as explained above) and that the intention to commit the crime was "manifested by external acts which are a beginning of the crime and only because of the circumstances, independently of the will of the perpetrator, are discontinued or have missed their effect… ." I agree with the District Judge that the information supplied was adequate. I do not think that up to nine further separate individual factual narratives should be required.

90. The 40th offence was attempted theft with violence or "theft equivalent to theft" [sic], committed with two of the mentioned circumstances in article 47 of the Penal Code, namely by burglary, escalation or false keys and by two or more persons. The date,

location and victim's name are supplied. The thief was "caught on the scene and threats or violence [were] … used whether to remain in possession of the taken objects, whether to guarantee his escape …."

91. By the same reasoning, the court should not depart from the classification of that offence as falling within the rubric which in English is "organised or armed robbery". In addition, the judge was right to find that the nature and degree of the appellant's participation was adequately imparted to her by that narrative of fact and law combined. The requesting authority might well have said more, but I do not think that was required in the present context.

92. The 41st offence was one of simple theft, of a case containing a bank card, identity card and €600. This was taken from the owner "in a fraudulent way". Although further particulars of the appellant's individual role are not given, the classification of the offence in EAW (2) is, again, to be treated as conclusive. Her role was must have been either that she personally took the case from the victim, or that she helped someone else to do so or "directly provoked" the crime. I consider that sufficient in the present context.

93. Turning to the 42nd offence of belonging to a criminal association; this is equivalent to what we would call taking part in a conspiracy to commit the burglaries, thefts and attempted thefts comprising the first 41 offences. The particulars given are of the timing, locations, property and victims in the previously mentioned offences.

94. The appellant was told in EAW (2) that she was guilty of the 42nd offence because she was a member of the association "with the aim to commit an attack on persons or on properties, composed by the single fact that setting up a gang, the association had as aim to commit crimes namely thefts by means of burglary, clearing or fake keys."

95. The classification of that offence as organised or armed robbery is, again, to be accepted (though it might well have been "participation in a criminal organisation"). I do not regard the information provided as lacking in sufficient particularity; and it is consistent with the appellant's candid admission when giving evidence before DJ Tempia that she had been a member of a group of thieves, albeit acting under instruction from others.

96. The 43rd offence was the one described as forgery by adopting a fake identity when signing a rental contract for a flat; the address of the flat was provided and it was said that in signing the contract the appellant prejudiced a person who was probably the landlord and the other party to the contract.

97. This was supplemented by the explanation that there was a fraudulent intent or intention to harm and that the offence involved forgery in "public writings" in "commercial and bank documents or in private documents"; committed jointly with a named co-accused and involving the assumption of false identities, in the case of the appellant, that of Nikolova Galina.

98. I accept the classification of the offence in the European Framework list as one of "forgery of administrative documents and trafficking therein". In my view, applying the reasoning in *Assange*, it would not be right to question that classification.

99. I also accept the argument of Ms Hill that the particulars were sufficient to discern an offence equivalent to, in English law, fraud by false representation under section 2 of the Fraud Act 2006. The essence of the offence was knowingly and dishonestly making a false representation to the victim (probably the landlord) that the appellant was Nikolova Galina, and doing so for gain, i.e. to enable the appellant and her co-accused to rent the flat.

100. The position is different in the case of the 44th offence. Here, as I have noted, the respondent concedes that the appeal should be allowed and the order for the appellant's extradition should be set aside in respect of that offence only. I respectfully agree with the concession made.

101. The judge should have noted that the offence was not classified as one falling within the European Framework list but was individually described. He therefore did not go on to consider whether "the conduct would constitute an offence under the law of the [England] … if it occurred in … [England]" (see section 65(2) and (3)(b) of the 2003 Act).

102. Had he done so, he should have answered no to that question. I cannot think of an English law crime of publicly using a false name, without more, which is what the allegation supporting the 44th offence amounts to. In the explanatory narrative, there is some link to the raising of the tainted €2,000 of bail money, but it is not adequately explained by the judicial authority how that rendered criminal the appellant's public use of a name other than her given name.

103. Finally, the 45th and 46th offences can be dealt with together. The detail of the offences differed but both were committed in Bruges, on 16 March 2011, the day the appellant was granted bail. Both related to the raising of the €2,000 bail money; both involved the proposition that the money was tainted by its criminal origin, i.e. that it was the proceeds of crime; both involved the proposition that it was used to get bail; and at least one (the 46th offence) involved active concealment of the criminal origin of the money.

104. These offences were classified as "laundering of the proceeds of crime", a category included among those on the European Framework list. That is sufficient to satisfy the requirement of dual criminality, applying section 65(5)(c). In addition, I think Ms Hill is correct to say that the offences closely resemble offences under section 327 of the Proceeds of Crime Act 2002. I find the particulars given sufficient, like the judge.

105. It follows that, subject to the third ground of appeal raising the issue of article 8 of the Convention, the appeal must be dismissed save in respect of the 44th offence of publicly using a false name; and the judge's decision that the appellant should be extradited must stand save in respect of that offence. I therefore turn to consider the article 8 issue.

Third ground: the rolled up hearing on the article 8 point.

106. Ms Iveson submitted that the court should grant permission to appeal on this ground and hold that the judge was wrong to reject the proposition that the appellant's extradition would infringe her and her family's right to respect for their private and family life.

107. Ms Iveson accepts that the judge applied the law in the correct manner and carried out the required balancing exercise commended to first instance judges in cases such as *Polish Judicial Authority v. Celinski* [2016] 1 WLR 551. She does not challenge the finding that the appellant became a fugitive; nor that the offending was serial and the total value of items stolen was high.

108. But, she submitted, having properly weighed the competing factors for and against extradition, he drew the wrong conclusion. She submitted that he should have given more weight to factors against extradition, to the point where they could only have outweighed those in favour of it.

109. The pro-extradition considerations listed by the judge can be paraphrased thus: the need to uphold mutual trust between member states bound by the Framework Agreement, the strong public interest in extradition, the strong imperative of respecting the justice system in Belgium, the appellant's flight from justice there, the superior knowledge of the Belgian court about the offending and the appellant's background and the seriousness of the offending.

110. On the domestic front, the judge noted the continuing ability of the appellant's aunt to care for the children, with further support available from other family members living in England and, if necessary, from the social services department of the local authority, which had already carried out an investigation into the children's welfare.

111. Against that, the judge weighed the appellant's settled family life developed over 18 months, the primary importance of the children's welfare, the absence of any offending in this country, the age of the offences (eight to nine years), time spent in custody in both countries, having to endure the first set of proceedings, emotional harm to the appellant and, more important, her children, the likelihood that the appellant's aunt would struggle and uncertainty about whether the children would be allowed prison visits.

112. Ms Iveson submitted that the judge had failed to accord sufficient weight to the long term impact of extradition upon the children. The evidence, she submitted, clearly demonstrates that extradition is likely to have very severe consequences for these vulnerable children, particularly the two boys. The children had already suffered upheavals, having witnessed domestic violence and breakdown of their parents' relationship.

113. They had then had to cope with moving to the UK, starting school, having to learn a new language, and separation from their mother twice during her periods in custody, the second time witnessing her arrest. They now face a prolonged period of limited contact with their mother at a very important time in their lives and development, Ms Iveson pointed out.

114. She submitted that the children would be very unlikely to see their mother in prison in Belgium. The regular visits needed to alleviate significantly the harm caused by separation would be impossible in practice. She pointed to the learning and behavioural difficulties already detected at the school and by Dr Grange.

115. The judge's optimism about their future was misplaced, she argued. He had overstated the ability of the children's great aunt the wider family and social services

to help them. Only their mother could do that. In reality, the children faced the risk of further disruption and upheaval. If the judge had properly addressed the degree of harm to the children extradition of their mother would cause, he would have put the case in the "exceptionally severe" category.

116. Like the judge, I have great sympathy for the plight of the children and some, though much less, for the appellant. But I cannot agree that the judge reached a conclusion not open to him after carrying out the balancing exercise. He carefully addressed and considered all the evidence. He accepted that some of the children's behavioural difficulties resulted from separation from their mother and renewed custody after a short period at liberty.

117. The judge described the children as further innocent victims of their mother's offending. That was a fair observation to make. As he pointed out, the separation of child from parent is always a consequence of the parent's imprisonment. It is worse when the imprisonment is abroad, but the principle is the same. In short, his conclusion was that the offending was too serious for extradition to be avoidable. The emotional damage to the children would be serious but, as he said at paragraph 129:

> "not …. so catastrophic that this would be one of those rare cases where it would be disproportionate to extradite".

118. I cannot find any fault either with the judge's conduct of the balancing exercise or with the conclusion he reached. His reasoning and conclusion are unassailable on the basis of the extradition offences he found the appellant to have committed. However, those included the 44th offence of publicly using a false name, which turns out not to be an extradition offence because the conduct may not be criminal in this country.

119. The judge's balancing exercise must be revisited, therefore, to the extent of considering whether the scales are tipped against extradition by the omission from the balance in favour of extradition of that solitary offence. I do not think that makes any difference. It is unlikely to have had much bearing on the overall sentence and appears to add little, factually, to the 45th and 46th offences, both also connected to the raising of bail money.

120. The really serious harm was the misery caused to the many victims of this gang of thieves, whose possessions were taken so that the thieves could unlawfully enjoy them. The extent of that wrong is untouched by removing the 44th offence. While removal of one of the offences makes it appropriate to grant permission to advance the third ground of appeal, it must fail.

Conclusion and Disposal

121. The first and second grounds of appeal succeed only to the extent that the judge should have discharged the appellant on the 44th offence. On my reading of section 27 of the 2003 Act, as modified by article 7 of the Extradition Act 2003 (Multiple Offences) Order 2003, the correct course is to uphold the judge's decision except in respect of the 44th offence and to order the appellant's discharge in relation to that offence only.

122. If the appellant had faced up to justice in Belgium instead of fleeing to this country, she might have been released by now. I am told that in Belgium offenders may apply for early release after serving one third of their sentence. The time she has spent in custody both here (see article 26(1) of the Framework Decision) and in Belgium will count towards her sentence. She cannot be required to serve a sentence for the 44th offence (article 27(2)).
