Neutral Citation Number: [2021] EWHC 1437 (Admin)

Case Nos: CO/1813/2020 and CO/3678/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 May 2021

Before :

MR JUSTICE JOHNSON

- -

Between (CO/1813/2020):

CIPRIAN OLEANTU-URSACHE	**Appellant**
- and -	
JUDECATORIS BACAU, ROMANIA	**Respondent**

And between (CO/3678/2020):

DAMIAN MAJEWSKI	**Appellant**
- and -	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

Émilie Pottle (instructed by Shah Law Chambers) for the Appellant Ciprian Oleantu-Ursache
Abigail Bright (instructed by Lansbury Worthington) for the Appellant Damian Majewski
Alexander dos Santos (instructed by CPS) for the Respondents

Hearing date: 25 May 2021

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Approved Judgment

Mr Justice Johnson:

1. In each of these otherwise unrelated cases:

   (1) an extradition order was made against the Appellant,

   (2) permission to appeal against the order was refused on the papers,

   (3) a renewed application for permission to appeal was not made within the permitted time,

   (4) an application for an extension of time for making a renewed application for permission to appeal was refused on the papers.

2. In Mr Oleantu-Ursache's case a renewed application for an extension of time was then made. In Mr Majewski's case an application was made to re-open the application for permission to appeal. The cases were listed together to determine whether there is, in these circumstances, jurisdiction to entertain (i) a renewed application for an extension of time for making a renewed application for permission to appeal and/or (ii) an application to re-open an application for permission to appeal.

The facts

Mr Oleantu-Ursache's case

3. Mr Oleantu-Ursache's extradition is sought by a judicial authority in Romania in respect of his conviction for (1) an offence of drink driving in May 2012 and (2) an offence of failing to provide a blood specimen when suspected of drink driving in January 2016. In respect of these offences a custodial sentence has been imposed with a term of 22 months.

4. On 5 May 2020 DJ Zani ordered Mr Oleantu-Ursache's extradition, having rejected an argument that extradition would be incompatible with his rights under Article 8 of the European Convention on Human Rights ("ECHR"). On 11 May 2020 Mr Oleantu-Ursache lodged an application for permission to appeal. This was refused on the papers on 14 December 2020 by Stacey J. The time for making a renewed application for permission to appeal expired on 21 December 2020. No renewed application was made by that date. An out of time application for permission to appeal was made on 22 February 2021. On 25 March 2021 Swift J considered the application on the papers and refused to extend time to file a renewed application for permission to appeal. On 30 March 2021 Mr Oleantu-Ursache applied "to orally renew the Applicant's application for permission to appeal out of time."

5. Mr Oleantu-Ursache no longer contends that his extradition would be incompatible with Article 8 ECHR. He seeks permission to appeal on two grounds: (1) the Respondent is not a judicial authority within the meaning of section 2 Extradition Act 2003 because it is not sufficiently independent, and (2) extradition would not be compatible with Article 3 ECHR owing to the conditions in which Mr Oleantu-Ursache would be incarcerated in Romania. These issues were not ventilated before the District Judge or before Stacey J. They were raised for the first time in the application that was determined by Swift J on 25 March 2021.

Mr Majewski's case

6. Mr Majewski's extradition is sought in respect of his conviction for offences of assault. A custodial sentence was imposed with a term of 18 months. Initially, this was suspended, but the suspended sentence was activated on 4 December 2014 for non-compliance with the terms of the sentence.

7. On 6 October 2020 DJ Robinson ordered Mr Majewski's extradition, having rejected arguments that extradition was barred by the passage of time and that it would be incompatible with his rights under Article 8 ECHR. On 12 October 2020 Mr Majewski lodged an application for permission to appeal. This was refused by Murray J on the papers on 21 January 2021. The time for making a renewed application for permission to appeal expired on 28 January 2021. No renewed application was made by that date. On 10 February 2021 Mr Majewski applied, out of time, to renew his application for permission to appeal. He also applied to amend his grounds of appeal so as to argue that the Respondent is not a judicial authority within the meaning of section 2 Extradition Act 2003 because it is not sufficiently independent.

8. On 19 February 2021 Lane J refused to extend time for making a renewed application for permission to appeal. It is said that, due to an error, not all of the relevant papers were placed before Lane J. On 26 February 2021 Mr Majewski applied to re-open the application for permission to appeal.

The rules

9. Section 26(1) Extradition Act 2003 provides for a right of appeal against an order for extradition under Part 1 of the 2003 Act, but only with the permission ("leave") of the High Court.

10. Section 210 of the 2003 Act provides that rules of court may make provision as to the practice and procedure to be followed in connection with proceedings under the 2003 Act. Rules made under section 210 are contained in Part 50 of the Criminal Procedure Rules ("the Rules"). Section 3 of Part 50 of the Rules makes provision in respect of appeals to the High Court. Rule 50.17 states:

> **"50.17 Exercise of the High Court's powers**
>
> (1) The general rule is that the High Court must exercise its powers at a hearing in public, but—
>
> (a) that is subject to any power the court has to—
>
> (i) impose reporting restrictions,
>
> (ii) withhold information from the public, or
>
> (iii) order a hearing in private;
>
> (b) despite the general rule, the court may determine without a hearing—

(i) an application for the court to consider out of time an application for permission to appeal to the High Court,

(ii) an application for permission to appeal to the High Court (but a renewed such application must be determined at a hearing),

(iii) an application for permission to appeal from the High Court to the Supreme Court,

(iv) an application for permission to reopen a decision under rule 50.27 (Reopening the determination of an appeal), or

(v) an application concerning bail; and

(c) despite the general rule the court may, without a hearing—

(i) give case management directions,

(ii) reject a notice or application and, if applicable, dismiss an application for permission to appeal, where rule 50.31 (Payment of High Court fees) applies and the party who served the notice or application fails to comply with that rule, or

(iii) make a determination to which the parties have agreed in writing.

(6) The High Court may—

(a) shorten a time limit or extend it (even after it has expired), unless that is inconsistent with other legislation;

(b) allow or require a party to vary or supplement a notice that that party has served;

(c) direct that a notice or application be served on any person; and

(d) allow a notice or application to be in a different form to one set out in the Practice Direction, or to be presented orally.

(7) A party who wants an extension of time within which to serve a notice or make an application must—

> (a) apply for that extension of time when serving that notice or making that application; and
>
> (b) give the reasons for the application for an extension of time."

11. Rule 3.6(1)(a) allows a party to apply to vary a direction that was given without a hearing. However, in the context of an appeal against an extradition order that is qualified by rule 50.18(3) which states:

> "Rule 3.6 (Application to vary a direction) does not apply to a decision to give or to refuse—
>
> (a) permission to appeal; or
>
> (b) permission to reopen a decision under rule 50.27 (Reopening the determination of an appeal)."

12. Rule 50.22 states:

> **"50.22 Renewing an application for permission to appeal, restoring excluded grounds, etc.**
>
> (1) This rule—
>
> (a) applies where the High Court—
>
> (i) refuses permission to appeal to the High Court, or
>
> (ii) gives permission to appeal to the High Court but not on every ground identified by the appeal notice; but
>
> (b) does not apply where—
>
> (i) a defendant applies out of time for permission to appeal to the High Court, and
>
> (ii) the court for that reason refuses to consider that application.
>
> (2) Unless the court refuses permission to appeal at a hearing, the appellant may renew the application for permission by serving notice on—
>
> (a) the High Court officer;
>
> (b) the respondent; and
>
> (c) any other person on whom the appellant served the appeal notice,

not more than 5 business days after service of notice of the court's decision on the appellant.

…"

13. Rule 50.27 states:

> **"Reopening the determination of an appeal**
>
> (1) This rule applies where a party wants the High Court to reopen a decision of that court which determines an appeal or an application for permission to appeal.
>
> (2) Such a party must—
>
> (a) apply in writing for permission to reopen that decision, as soon as practicable after becoming aware of the grounds for doing so; and
>
> (b) serve the application on the High Court officer and every other party.
>
> (3) The application must—
>
> (a) specify the decision which the applicant wants the court to reopen; and
>
> (b) give reasons why—
>
> (i) it is necessary for the court to reopen that decision in order to avoid real injustice,
>
> (ii) the circumstances are exceptional and make it appropriate to reopen the decision, and
>
> (iii) there is no alternative effective remedy.
>
> (4) The court must not give permission to reopen a decision unless each other party has had an opportunity to make representations."

Submissions

14. Ms Pottle on behalf of Mr Oleantu-Ursache for this application (none of the counsel who appear before me appeared below) submits that the Rules require that the High Court must generally exercise its powers in respect of extradition appeals at a hearing in public. The exceptions to that rule are exhaustively identified within the rules. There is no exception in respect of a renewed application for permission to appeal out of time. Accordingly, such an application must be the subject of a public hearing. This approach is, she contends, consistent with a general principle that where an application is determined without a hearing there should be a right to have the application reconsidered at a hearing. In that respect Ms Pottle relies on *R* (*MD (Afghanistan)) v*

Secretary of State for the Home Department [2012] 1 WLR 2422 *per* Stanley Burton LJ at [21]:

> "It is a general rule of our civil procedure that, in the absence of any order of legislation to the contrary, a party who has applied for an order which has been refused by a judge on the papers, without oral argument, has the right to renew his application orally before a judge of co-ordinate jurisdiction."

15. In the event that there is not jurisdiction to entertain the application that is before the court, Ms Pottle argues that it should be treated as an application to re-open the appeal under rule 50.27.

16. Ms Bright, on behalf of Mr Majewski, adopted Ms Pottle's submissions. Ms Bright submitted that it is not necessary to determine whether there is an automatic and general right to renew an out of time application for permission to appeal, and that it is unnecessary and undesirable to determine a wide and important issue of principle in circumstances where the Respondent takes a neutral position, with the result that there is no adversarial argument before the court. Her argument was that where, as in these cases, the determination of an application to extend time requires consideration of the underlying merits of the proposed appeal, it necessarily encompasses a renewed application for permission to appeal, and that application must be determined at a hearing. Further, the parties are, in any event, before the court. Accordingly, an oral hearing of the applications should be permitted.

17. Mr dos Santos on behalf of the Respondent in each case adopted a neutral stance on the issues that fall to be determined.

Is there jurisdiction to entertain a renewed application for an extension of time for renewing an application for permission to appeal?

18. I agree with Ms Bright's submission that it may be undesirable to resolve an important jurisdictional question where it is not necessary to do so in order to determine the issue that is before the court, and particularly where there has not been adversarial argument. However, the issue that is before the court can only be determined if there is jurisdiction to do so. The fact that a hearing has been listed and the parties are before the court does not in itself give the court jurisdiction to determine the applications that have been made. The hearing was listed for the purpose of resolving the question of jurisdiction as a threshold issue before then (if there is jurisdiction to do so) addressing the substantive applications.

19. It is therefore necessary to resolve the underlying question of whether there is jurisdiction to entertain a renewed application for an extension of time for renewing an application for permission to appeal.

20. The Civil Procedure Rules ("CPR") give rise to a general right to seek reconsideration of an order where the order has been made of the court's own initiative and without hearing the parties – see CPR 3.3(5). This reflects basic requirements of procedural fairness as well as (where the order determines a civil right or obligation) procedural rights under Article 6(1) ECHR. It is this general right to which Stanley Burnton LJ was referring in *MD* (see paragraph 14 above). There is not, however, any universal

rule that permits reconsideration of an order that is made without a hearing. In some instances, issues can be fairly determined after taking account of written representations and without an entitlement to an oral hearing. These include cases where the parties agree the terms of the order, or agree that the application should be determined without a hearing (CPR 23.8(a) and (b)). There is no entitlement to a hearing of an application for permission to appeal (other than to the Court of Appeal) if the application has been considered on the papers to be totally without merit (CPR 52.4(3)). Nor is there a right to a hearing of an application for permission to appeal to the Court of Appeal where the judge considering the application on the papers does not direct that the application be determined at an oral hearing (CPR 52.5(2)). In all such cases the general right under CPR 3.3(5) to an oral reconsideration of a paper decision does not arise.

21. The observation of Stanley Burnton LJ in *MD* about the general rule in civil litigation is not therefore of universal application. It does not assist to determine whether, in this particular context, there is a right to an oral reconsideration of a paper decision.

22. The 2003 Act gives rise to a statutory right of appeal and provides that the procedure is regulated by rules of court. The question as to whether there is a right to an oral reconsideration of a paper decision is therefore determined by reference to the Rules.

23. I accept Ms Pottle's submissions that rule 50.17 exclusively identifies the circumstances in which the High Court may exercise its powers under Part 50 of the Rules without a hearing. That is because rule 50.17(1) imposes a general rule that requires a public hearing, but then identifies exceptions to that rule. Those exceptions fall within three categories:

    (1) exceptions to the requirement that the hearing be in public (rule 50.17(1)(a)),

    (2) issues that may be determined without a hearing (rule 50.17(1)(b)), and

    (3) (other) powers that may be exercised without a hearing (rule 50.17(1)(c)).

24. There is no general residual discretionary power to exercise powers under Part 50 without a hearing unless one of the exceptions applies. The structure of rule 50.17, and the careful detail of the exceptions to that rule, indicate that the general rule is subject only to the identified exceptions.

25. Rule 50.17(1)(b)(i) provides that an application for the court to consider out of time an application for permission to appeal to the High Court may be determined without a hearing. Ms Pottle submitted that this applies only to a first application for permission to appeal, and not, therefore, to a renewed application for permission to appeal (which must, therefore, be determined at a hearing). I do not agree, for the following reasons.

26. First, what is being pursued is an application for the court to consider out of time an application for permission to appeal. The fact that it is a renewed application for permission to appeal does not mean that it falls outside the ambit of the expression "an application for permission to appeal". As a matter of the natural and ordinary use of language, a renewed application for permission to appeal is an application for permission to appeal.

27. Second, the language of rule 50.17(b)(ii) shows that the rules contemplate that a renewed application for permission to appeal is to be considered as an application for permission to appeal: "an application for permission to appeal to the High Court [may be determined without a hearing] (but a renewed such application must be determined at a hearing)" (emphasis added).

28. Third, the presence of the words "(but a renewed such application must be determined at a hearing)" in rule 50.17(b)(ii) and their absence in rule 50.17(b)(i) shows that a clear distinction is drawn between in time and out of time applications. In the former case, the application may initially be determined on paper, but a renewed application must be determined at a hearing. In the latter case, the application may be determined on paper and there is no qualification that requires that a renewed application (assuming there is jurisdiction to make such an application) must be determined at a hearing.

29. Fourth, if the position were otherwise there would have been no power for Swift J and Lane J to have determined the applications on the papers. All out of time renewed applications for permission to appeal would have to be determined at an oral hearing. It would be surprising it this were intended, given the nature of the powers that can undoubtedly be exercised without a hearing. These include the giving of case management directions, the determination of initial applications for permission to appeal, and applications to re-open the determination of an appeal.

30. Fifth, the application cannot be characterised as a discrete application for an extension of time, entirely divorced from the renewed application for permission to appeal, such that the general rule (requiring an oral hearing) can be applied to the (hypothecated free-standing) application to extend time. That is because rule 50.17(7) requires that an application for an extension of time to seek permission to appeal must be made at the same time as seeking permission to appeal, and rule 50.17(1)(b)(i) provides that an out of time application for permission to appeal may be determined on the papers.

31. Sixth, there is no injustice in construing the rules in this way. The Appellants have had (a) a substantive hearing of the extradition proceedings, (b) a paper consideration of an application for permission to appeal, (c) a right to renewed oral consideration of that application (so long as the application is made within the required time), and (d) a paper consideration of an application to extend time. In addition, they have available to them the right to make an application to reopen the question of permission to appeal under the exceptional jurisdiction for which provision is made in rule 50.27. There is one possible category of case where it is possible to conceive of a risk of injustice (see paragraph 41 below). Neither of these cases fall within that category. The possible risk that arises in that context does not justify an interpretation of the rules that would require that out of time applications for permission to appeal must be determined at a hearing.

32. Seventh, the argument assumes that there is jurisdiction to make a renewed application for an extension of time for seeking permission to appeal. For the reasons given at paragraphs 34-36 below, there is no such jurisdiction.

33. It follows that the general rule that powers under Part 50 must be exercised at a public hearing does not apply to an application to consider out of time a renewed application for permission to appeal. The Court may, of course, in the particular circumstances of an individual case, exercise a case management discretion to direct that such an

application be determined at a hearing in public. However, it may also determine the application without a hearing.

34. Once the application has been determined (whether at a hearing or on paper) there is no right to renew the application. The rules specify the circumstances in which a renewed application may be made. Thus, rule 50.22(1)(a) permits an appellant to renew an application for permission to appeal where that application has been refused without a hearing. However, rule 50.22(1)(b) makes it clear that this does not apply where an application for permission to appeal is refused on the grounds that it is out of time. This is the case here. Swift J and Lane J refused to extend time for the respective applications for permission to appeal. The fact that they were renewed applications for permission to appeal is nothing to the point, because a renewed application for permission to appeal is, itself, an application for permission to appeal (see paragraphs 26-27 above).

35. I do not therefore accept that this is a case where the rules are "silent" as to the possibility of a renewed application: rule 50.22(1)(a) and (b) identify the cases where a renewed application can, and cannot, be made. However, even if the rules were silent on the point, that would not assist the Appellants. That is because, in the absence of contrary provision in the rules, "a court determines an application… once, not twice" – see *Zibala v Prosecutor General's Office, The Republic of Latvia* [2019] EWHC 816 (Admin) *per* Bean LJ at [14]-[17] (dealing with an equivalent submission in respect of rule 50.27):

> "14. In my judgment the submission that the absence of express provision in Criminal Procedure Rule 50.27 prohibiting renewal of an application to reopen is entirely misconceived.
>
> 15. The Extradition Act 2003 provides for an appeal from an order of the Magistrates' Court to this court. Nowadays, that requires permission, but that is not an issue in the present case.
>
> 16. Once an appeal has been dismissed, as Ms Zibala's appeal was in 2014, and the time for any application to seek to take the matter to the Supreme Court has passed, that is the end of the litigation. The only exception is where the High Court is asked to reopen a decision. Such an application may be "determined" without an oral hearing by virtue of Rule 50.17(1)(b)(iv). Once the High Court judge has refused the application on the papers, it has been "determined". Subject to any contrary provisions in primary statute or in court rules, a court determines an application, appeal or trial once, not twice.
>
> 17. There are of course significant exceptions provided for in court rules. One example is application for permission to appeal from the Magistrates' Court to the High Court in an extradition case: Criminal Procedure Rule 50.22(2) so provides. Another even better known exception in the Civil Procedure Rules is an application for permission to seek judicial review, which if determined in the first instance (as most applications are) on the papers may be renewed to an oral hearing subject to the provisions of Civil Procedure Rule 54.12."

36. The position, therefore, is that Swift J and Lane J had power to determine the applications on the papers. There was no requirement for oral hearings in respect of the applications. The applications having been determined, there is no power for the High Court to reconsider the applications.

37. That is the conclusion I would reach if the question were free from authority. However, I consider that this conclusion is also mandated by authority – see the judgment of the Divisional Court in *Gawryluk v Poland* [2020] EWHC 3679 (Admin) *per* Coulson LJ at [12]-[13]:

> "12. …I have concluded that the applicant has no right to renew the application [for permission to appeal out of time] which was refused on the papers by Sir Ross Cranston. Criminal Procedure Rule 50.22 makes that plain. The rule could not be clearer. In circumstances where the defendant applies out of time for permission to appeal to the High Court, and the court for that reason has refused to consider that application, then there is no right of renewal. Rule 50.22(2) is disapplied by the specific application of r.50.22(1)(b). In this case the applicant was out of time. Sir Ross Cranston refused to consider the application because it was out of time. There is, therefore, no right to renew.
>
> 13. In his written submissions, Mr Hawkes… relied… on the general provisions in r.50.17(1). Those do not deal with the specific situation that arose here, which is expressly covered by r.50.22. But in my view it makes little difference, because r.50.17(1) would lead to the same result. Although Mr Hawkes' principal argument was that, in general terms, the rules do not prohibit an application to renew, the rules to which I have referred show the opposite."

38. For all these reasons, there is no jurisdiction to entertain a renewed application for an extension of time for making a renewed application for permission to appeal against an extradition order under part 1 of the 2003 Act.

Application to re-open the determination of the application for permission to appeal

39. In each of these cases the High Court has determined (by refusing) an application for permission to appeal:

    (1) In Mr Oleantu-Ursache's case, Stacey J refused permission to appeal, and Swift J refused to extend time to make a renewed application for permission to appeal;

    (2) In Mr Majewski's case, Murray J refused permission to appeal, and Lane J refused to extend time to make a renewed application for permission to appeal.

40. It follows that each Appellant is entitled to ask the court to reopen the application for permission to appeal, pursuant to the exceptional jurisdiction in Rule 50.27. That is why no real risk of injustice is created by the lack of jurisdiction to entertain renewed applications for an extension of time (see paragraph 31 above).

41. There is one category of case where an argument might arise as to the availability of the rule 50.27 jurisdiction. That is where no in time application for permission to appeal has been made, and an application to extend time has been refused. In such a case there would be no right of appeal (because the right to appeal only arises where permission to appeal has been granted). The availability of the right to ask for the court to re-open the application for permission to appeal is dependent on the court having previously determined an application for permission to appeal. If it has not done so then there would be no right, under rule 50.27, to re-open the application for permission to appeal. On one interpretation of the rules, it is possible to conceive of a risk of injustice in such a case. To take an example which is not far removed from Mr Majewski's case (albeit there are significant differences): suppose a District Judge orders extradition without making any arguable error, and a decision is made not to seek permission to appeal. After the time limit for seeking permission to appeal, evidence comes to light which shows that extradition would result in the individual suffering treatment that is contrary to Article 3 ECHR. An application to extend time for seeking permission to appeal is made. Due to an administrative error the papers that contain the critical evidence are not put before the judge. The application to extend time is refused. A variation on the same theme is a case where the application to extend time is made, and refused, before the new evidence comes to light. What, if any, remedy is available in such cases?

42. It is not necessary, for the resolution of the applications that are before the Court, to decide what should happen in such hypothetical cases, and I do not do so. However, without deciding the point, I tentatively suggest that the refusal of an extension of time could be treated as the determination of an application for permission to appeal. That is because rule 50.17 requires that the application for an extension of time is made at the same time as the (out of time) application for permission to appeal, and the refusal of the extension of time necessarily has the effect of determining the application for permission to appeal. On that basis, the rule 50.27 jurisdiction would be available and the theoretical risk of injustice that might otherwise exist would be avoided.

43. So far as the present cases are concerned, Mr Majewski has made an extant application to re-open the determination of the appeal. In Mr Oleantu-Ursache's case there is no such extant application, but there is nothing to prevent him from making such an application now. Moreover, the Court may allow an application to be made in a different form to one set out in the Practice Direction, or to be presented orally (rule 50.17(6)(d)). It is therefore open to the Court to treat Mr Oleantu-Ursache's renewed out of time application to renew an application for permission to appeal as if it were an application to reopen the determination of the application for permission to appeal. In principle, I am willing to take that course. It is convenient to do so because it enables the application to be timetabled and case-managed with the assistance of the parties, who are now before the court. That best furthers the overriding objective (rule 1.1) and the special objective in extradition proceedings (rule 50.2). The alternative would be to leave Mr Oleantu-Ursache to make the application at some uncertain point in the future, with the management of the application then having to be addressed. That would be likely to cause further delay.

44. However, I consider that it is more appropriate for both applications to re-open to be determined on the papers. That would enable the Respondents to make written submissions that explicitly address the test for re-opening an application for permission to appeal (rule 50.27(4) requires that the respondent is given an opportunity to make

representations before such an application is granted). It would also give the Respondent in Mr Oleantu-Ursache's case time to consider whether to provide a (further) assurance as to the conditions in which he will be incarcerated in Romania (see *Bacau District Court Romania v Iancu* [2021] EWHC 1107 (Admin)). Further, the question of the independence of the judiciary in Romania (which is relevant to Mr Oleantu-Ursache's application) is due to be heard by a Divisional Court within the next two weeks, and the question of the independence of the judiciary in Poland (which is relevant to Mr Majewski's application) was considered by a Divisional Court at a hearing earlier this month (and judgment was reserved). Given the (likely) short timescales involved, it is appropriate for the determination of the applications to re-open the applications for permission to appeal to await those respective decisions of the Divisional Court. I will give directions for the resolution of the applications, on the papers, accordingly.

Outcome

45. There is no jurisdiction to entertain a renewed application for an extension of time for making a renewed application for permission to appeal against an extradition order, where the application for an extension of time has been refused on the papers.

46. However, where, as has happened in these cases, the court has refused an application for permission to appeal, there is, where stringent criteria are met, jurisdiction exceptionally to re-open the application for permission to appeal. In Mr Majewski's application an application to re-open has been made. In Mr Oleantu-Ursache's case the application that he has made can be treated as an application to re-open. Each of these applications is most appropriately addressed on the papers, once the Divisional Court has given judgment in a case that raises the same underlying issue.