

IN THE WESTMINSTER MAGISTRATES' COURT

CENTRAL MAGISTRATES COURT NUMBER 1
OF THE SPANISH CRIMINAL COURT

(Judicial Authority "JA")

V

TARIK CHADLIOUI

(Requested Person "RP")

JUDGMENT

Introduction

1. This is a Part 1 Extradition Act 2003 ("EA") request from the Central Magistrates' Court Number 1 of the Spanish Criminal Court in relation to Tarik Chadlioui. The European Arrest Warrant ("EAW") was issued on 23rd June 2017 and certified by the National Crime Agency on 27th June 2017. The defendant was arrested on 28th June 2017 and has been remanded in custody since that date.
2. The RP, Mr Chadlioui, is a Belgian national born in Morocco on 12th December 1973 and is aged 43. He and his family came to the United Kingdom from Belgium in 2015. The RP is wanted for prosecution in Spain in relation to an allegation of membership and/or collaboration with an armed group; in short he is said to be a recruiter to the jihadist cause. This is denied by the RP. The Framework List was ticked for participation in a criminal organization and terrorism.
3. At an earlier hearing Mr Chadlioui raised section 21B of the EA and requested a video interview with the requesting judge. This took place hosted by WMC on 18th September 2017. The judge asked the RP some questions. I received a document dated 22nd September, signed by the requesting judge, who said that he did not consider that the interview "was proper" and said that "no further steps could be taken on the case until the defendant is returned to Spain and placed at the disposal of the Examining Judge".
4. The full hearing took place on 28th September 2017. The case was adjourned for judgment on 3rd October 2017. At the full hearing I was assisted by Mr Ben Lloyd who represented the JA and by Mr Malcolm Hawkes for the RP.

Issues

5. The issues raised by the RP against his extradition are the following: section 2 of the Extradition Act 2003, that there are insufficient particulars of the alleged offence. At the full hearing for the first time Mr Hawkes (who had only just been instructed) raised section 12A that no decision has been taken by the JA to charge or try the RP. Another issue raised was that there had been no attempt to interview the RP such as would satisfy section 21B of EA. Finally, Mr Hawkes raises Article 8, he contends that extradition would be a disproportionate interference with Mr Chadlioui and his family's right to a family life in the United Kingdom.

Offence alleged

6. The EAW gave the defendant's name and alias and other personal details. It had details of the domestic decision on which the EAW was based, the offence classification and the maximum sentence of 20 years. The Framework List was ticked for participation in a criminal organization and terrorism. There was also a brief summary of the allegation at box (e). I have underlined the word "may" used in the English translation below as Mr Hawkes relies on this in his submission on section 12A.
7. Box (e) said that the RP and others named "and who may comprise a structure giving support to the terrorist organization Islamic State by means of propaganda and indoctrination of new members to join the organization."
8. In the second paragraph of box (e) it is said that it has come to light that "this structure has a strong internal cohesion, with a division of roles and functions, its own hierarchy, and has remained over time recruiting new members. In a first stage, this structure may have been devoted to the production of audiovisual material ideally used for the recruitment of jihadists, and later on, for indoctrination and radicalization of its members and the recruitment of new members.
9. In paragraph 3, it appears the indoctrination and radicalization processes "may have been effective within the members of the structure. Some members declared themselves openly in favour of Jihad, discussing the commission of violent actions in conversations".
10. In paragraph 4, the EAW turns to Mr Chadlioui's role, "it has been detected that he may have participated in the production of audiovisual material ideally used for the recruitment of jihadists. He may have also participated in the production and dissemination on YouTube of material ideally used for jihadist indoctrination and recruitment as well as showed and posted symbols and banners of the terrorist organization Islamic State on the social media".
11. The EAW did not mention a date nor a place for the allegation.
12. Further information was received dated 3rd July 2017 which takes the form of a Ruling of the Magistrate Judge, His Honour Santiago Pedraz Gomez. Judge Gomez signed the original EAW, he signs the further information set out in an EAW style. In the further information, the Ruling sets out the dates of the allegations along with more details of the offence. The RP in the summer of 2014 and 2015 went to Majorca and visited a mosque at which point the various videos mentioned were made. The material is said to be just the sort needed to recruit jihadists. It was published on YouTube. He also messages others and has meetings and their radicalization journey begins with his indoctrination. The word "may" is not used.

Evidence

13. I had evidence from the JA including the EAW, the further information and the note about the interview and I had a proof from the RP and his wife. I heard evidence from the RP.
14. The RP gave evidence adopting his proof of 20th July 2017, subject to correcting his children's ages. I had read the proof. He denied any involvement in the alleged activities. He has been on YouTube since 1996 promoting Islam and been lecturing against terrorism around Europe. He said he was a member of a group called "Tableegh & Dawah" and he would preach the teachings of Islam in local mosques.

15. In Belgium he had set up his own business selling perfume oils and Islamic traditional clothing. Since arriving in the United Kingdom in 2015, he had registered the company at Companies House, he had an accountant and paid tax.
16. He told the court he had been married for 21 years and has eight children aged 18, 17, 15, 13, 12, 5, 2 and five months. The family live in Birmingham and his wife is unemployed and not in receipt of benefits. He said in his proof of evidence that his wife has no family or friends in the United Kingdom. I noted however that there was a young man accompanying the wife to court and that she also was with a woman who apparently was a friend.
17. He said that his wife and children are entirely financially dependent on him. He said he has a driving licence and drives his children to school and college. His wife cannot drive and cannot take public transport as she does not know how it works. In cross examination however it turned out that the older children went to school on their own by bus and the younger ones were walked there by their mother when he was away preaching.
18. He said he was interviewed by video link by a Spanish judge for 15 minutes on 18th September 2017. The quality of the connection was good although the Spanish judge had him brought out of the dock so he could be heard better. He had an interpreter and a Spanish lawyer. The Spanish judge asked him what he would like to tell the court.
19. He said he has eight children, a wife and he works and has not done anything. He told the judge that the YouTube film is against terrorism and not in favour of it.
20. He told this court in evidence that the videos were made in four sections and every week he would download a section on YouTube, the first section said clearly that the people going to Syria are very young, mostly on drugs and that what they are doing is against Islam. This was against terrorism. He said they managed to upload three section and the fourth had not been uploaded yet. In the third section of video, they had said terrorism comes out of Facebook and YouTube but does not come out of mosques.
21. The fourth section of video talks about how to persuade young people not to join in terrorism. In it, the father of a young man who went to Syria goes to the mosque to ask for advice in relation to his son. He explained to this court (WMC) that he did not tell the Spanish judge about the fourth section video. All he said was that he had uploaded three and that they were not in favour of terrorism. When he had told them there were four sections of video and not three, they were shocked and “everything collapsed”. Neither the Spanish judge nor even his own solicitor wanted to listen to his account of the fourth video which was to persuade young people not to join terrorism. The judge was not interested.
22. He was asked about the effect on his wife of him being away. He relied on his proof of evidence of 28th September 2017. He said his children are hurting a lot. His wife had told him that M and Y (two boys aged about 12 and 13) had not been to the park to play for nearly a month. His older daughters had asked to go out to work to bring in money so they can eat and drink. His wife is dealing with the three youngest children, aged four, three and three months.
23. He said he has no connection to anybody who encourages terrorism. He follows Islam religiously and the Koran says it is against Islam to kill innocents. There are extracts in the

Koran which says if you kill one soul, whether Jewish or Muslim, you kill every soul in the world. He uploads videos onto YouTube which portray family life in Islam and include film of his family. When he mentions Jihad, it is to say that it is not the word of God or part of Islam.

24. He was asked in cross examination about his travels. He explained he goes away to Europe quite a lot preaching for four or five days, three or four times a month. He had been stopped in Dover as outlined in his proof of evidence. He accepted that he had been to Spain in the summer of 2014 and 2015. When asked who had looked after his wife and family when he was away he said that he usually went over the weekends. On the Fridays some of the children go to school on their own by bus and the younger ones are taken by his wife on foot.
25. I read the statement of the RP's wife Gemhet Ettaghadouini dated 25th July 2017 who said that she is 38 years old and has eight children. They moved to the United Kingdom from Belgium in 2015. All their family live in Morocco and she has no family or friends in the United Kingdom. She said she was entirely reliant on her husband. This echoes his proof where he says that he provides everything for his wife and children and "without me they cannot live". Mrs Ettaghadouini says that she is suffering depression and anxiety because of the proceedings. She is struggling to support the eight children financially. She cannot attend doctors' appointments for the four month old baby as the RP is the only one who drives. She explains that the RP is the family's rock, both financially and emotionally. They feel as if they have lost their freedom and cannot live without him.

Submissions

26. Mr Hawkes relied on the written submissions of Saba Ashraf his instructing solicitor. Section 2 (4) was not satisfied by the fundamental failures in the information provided by the JA in box (e) of the EAW. These made the EAW wholly deficient and this could not be corrected by the supplemental information.
27. His most recent submission is that the wording of box (e) of the EAW is vague. It is not clear that the RP is wanted to be charged or tried. It looks as if he is under investigation only. The warrant does not comply with section 12A of the EA and the RP should be discharged. Mr Lloyd argues that the word "may" is used because there has not been a conviction and the JA is alleging this offence.
28. His next contention is that section 21B is not satisfied because the interview by the Spanish judge only took 15 minutes and he did not ask questions about the fourth video that had not been uploaded on to YouTube. Section 21B allows the JA or the RP to request a temporary surrender or for arrangements be made for the RP to speak to the JA. The extradition would be disproportionate in the circumstances of a RP who has a wife and eight children in this jurisdiction
29. Finally, Mr Hawkes argued that extradition would be a disproportionate interference with Mr Chadlioui and his family's Article 8 family rights to live together in this country.

Findings

Section 2(4)

30. I have set out in paragraphs 6 to 12 above the way the offence is described in the original box (e) and then in the supplemental information.
31. So far as section 2 is concerned, I accept the EAW box (e) lacks the date and place of the alleged offence and that this is required by section 2(4) of the EA. I noted, however, that box (e) has the name and details of the RP, a brief description of what is alleged and explains that the alleged facts constitute a crime of membership and/or collaboration with an armed group under Article 571 of the Spanish Criminal Code. A maximum sentence of 20 years is given. The Framework List is then ticked for participation in a terrorism organisation and terrorism.
32. Before the recent case of *Sean Alexander v Public Prosecutors Office, Marseille District Court of First Instance, France; Gianfranco Di Benedetto v Court of Palermo, Italy* [2017] EWHC 1392 (Admin), which gave effect to the Supreme Court decision of *Goluchowski v Poland* [2016] UKSC 36 and the European case of *Bob-Dogi* (C-241/15) EU:C:2016:385 this court would have found that the lack of place and date meant that the EAW did not meet the requirements of section 2(4) of the EA and therefore was invalid.
33. Since *Alexander and Benedetto* this court is able to give effect to the purpose of the EAW process which is supposed to proceed by way of judicial cooperation and mutual trust. The supplemental information I was provided with includes the missing date and place and is provided in a formal court document signed by the original requesting judge. This information was received very soon after the RP's arrest and over two months before the full hearing took place.
34. This supplemental information explains that the intelligence authorities had been investigating since 2015 the creation of three videos on the internet called "Toufiq went to Syria". They were associated with a particular mosque in Majorca. The RP went there in the summers of 2014 and 2015 and recorded the videos mentioned in the summer of 2015. The JA is of the view that they promote the victimisation of Muslims as a step towards their radicalisation. It is said to be "ideal recruitment material for the recruitment of jihadists for the Islamic State". These are uploaded onto YouTube. It is said he also is involved in indoctrination which precedes radicalisation via meetings with a local group.
35. The EAW provides the offence category, a description of it, the maximum sentence, the Framework List is ticked, the name of the RP, his details and the arrest warrant. The information provided in the EAW is not "wholly deficient" nor is it a "bit of paper" (paragraph 75 of *Alexander and Benedetto*). I find, applying *Alexander and Benedetto*, that the warrant is section 2 valid with a combination of the information found in the EAW and the supplemental document.

Section 12A

36. 12A of the EA reads

"(1) A person's extradition to a category 1 territory is barred by reason of absence of prosecution decision if (and only if)—

(a) it appears to the appropriate judge that there are reasonable grounds for believing that—

(i) the competent authorities in the category 1 territory have not made a decision to charge or have not made a decision to try (or have made neither of those decisions), and

(ii) the person's absence from the category 1 territory is not the sole reason for that failure,

and

(b) those representing the category 1 territory do not prove that—

(i) the competent authorities in the category 1 territory have made a decision to charge and a decision to try, or

(ii) in a case where one of those decisions has not been made (or neither of them has been made), the person's absence from the category 1 territory is the sole reason for that failure.”

37. Mr Hawkes contends that there has been no decision made to charge or try the RP. He bases that submission on the repeated use of the word “may” in box (e) (see my paragraph 6 to 11 above). Mr Lloyd says I should consider the whole of the information from the JA including the supplemental information. He argues that the picture is clear, the RP is wanted for prosecution.
38. This argument was raised on the day of the full hearing. I looked at box (e) in the original language and I told the parties that although I was not a fluent Spanish speaker I questioned the translation. In a number of European languages there is no distinction in the conditional tense. In other words, no distinction between “may” and “would” which in the past on occasions has led to problems with English translations.
39. Having looked more carefully now at the Spanish original I am even more convinced that the translation is at fault. I am conscious that although raised with the parties we have not had the translation checked. This was not an issue that had been raised before during the case management phase when it should have been.
40. If the right tense is “would” rather than “may”, Mr Hawkes' submission fails. Even if I am wrong in my questioning of the translation, Mr Hawkes has not provided me with evidence which would lead me to have reasonable grounds for believing that the JA has not made the decision to charge or try the RP. The 22nd September letter from the requesting judge also leads me to believe that the RP's absence from the territory is the sole reason that the prosecution has not gone any further.
41. I find that the combination of the EAW, the supplemental information and the 22nd September 2017 document from the Spanish judge, all lead to the clear conclusion that RP is wanted for prosecution. The 22nd September 2017 document ends with the comment that no further steps could be taken on the case until he is returned to Spain “and placed at the disposal of the Examining Judge”. He is not wanted as part of an investigation.

Section 21B

42. Mr Hawkes argues that section 21B is not satisfied because the Spanish Judge's video interview with the RP was short and he was not questioned about the fourth video that he had not yet uploaded which he says shows he was not recruiting jihadists.
43. Section 21B EA 2003 reads;

“Requests for temporary transfer etc

(1) This section applies if—

(a) a Part 1 warrant is issued which contains the statement referred to in section 2(3) (warrant issued for purposes of prosecution for offence in category 1 territory), and

(b) at any time before or in the extradition hearing, the appropriate judge is informed that a request under subsection (2) or (3) has been made.

(2)...

(3) A request under this subsection is a request by the person in respect of whom the warrant is issued—

(a) to be temporarily transferred to the requesting territory, or

(b) that arrangements be made to enable the person to speak with representatives of an authority in the requesting territory responsible for investigating, prosecuting or trying the offence specified in the warrant.

(4) The judge must order further proceedings in respect of the extradition to be adjourned if the judge thinks it necessary to do so to enable the person (in the case of a request under subsection (2)) or the authority by which the warrant is issued (in the case of a request under subsection (3)) to consider whether to consent to the request.

An adjournment under this subsection must not be for more than 7 days.

(5) If the person or authority consents to the request, the judge must—

(a) make whatever orders and directions seem appropriate for giving effect to the request;

(b) order further proceedings in respect of the extradition to be adjourned for however long seems necessary to enable the orders and directions to be carried out.

(6) If the request, or consent to the request, is withdrawn before effect (or full effect) has been given to it—

(a) no steps (or further steps) may be taken to give effect to the request;

(b) the judge may make whatever further orders and directions seem appropriate (including an order superseding one made under subsection (5)(b)).

(7) A person may not make a request under paragraph (a) or (b) of subsection (3) in respect of a warrant if the person has already given consent to a request under the corresponding paragraph of subsection (2) in respect of that warrant (even if that consent has been withdrawn).

(8) A person may not make a further request under paragraph (a) or (b) of subsection (3) in respect of a warrant if the person has already made a request under that paragraph in respect of that warrant (even if that request has been withdrawn).

(9) If—

(a) a request under subsection (2) or (3) is made before a date has been fixed on which the extradition hearing is to begin, and

(b) the proceedings are adjourned under this section, the permitted period for the purposes of fixing that date (see section 8(4)) is extended by the number of days for which the proceedings are so adjourned.]”

44. The RP made the request to speak to the Spanish judge, the request was granted by the JA. The interview took place. The RP complains that when he told the Spanish judge about the fourth video that had not been uploaded onto YouTube, the judge was not interested. The RP has told this court that the fourth video was not uploaded but would show that he is not a jihadist recruiter. I find the Spanish judge’s failure (if that is what it is) is not a reason for finding that section 21B was not satisfied. This court cannot expect to know what the Spanish judge would find relevant and on what I heard from the RP, the fourth video is not

relevant to the charge he faces as it was never uploaded onto YouTube, it might be relevant as part of his defence or mitigation. The three videos uploaded are the ones of interest to the Spanish authorities. Section 21B is satisfied.

Article 8

45. The RP raises Article 8. The 2016 case of *Polish Judicial Authorities and Others v Celinski and others* [2015] EWHC 1274 (Admin) requires the court to balance the factors for and against extradition in reaching a decision.

46. In favour of extradition are the following factors:

- a. The RP is requested for a prosecution in relation to a very serious offence. A conviction in this country would be followed by a long custodial sentence.
- b. There is a clear public interest in this country complying with its international extradition treaty obligations and not being regarded as a haven for those avoiding prosecution in foreign jurisdictions.
- c. There are a number of older children (aged 18, 17 and 15) who can help their mother care for the younger ones. The RP said that the older ones had offered to go out to work and if the two eldest did that the family's financial circumstances would improve. At present the RP said the family do not receive benefits, they are surely eligible for them and the daughters could assist their mother in filling in the forms. I do not find the family are friendless or as dependent on the RP as he (and his wife) have made out. The RP's wife came to court with a female friend and a male friend was in the public gallery. The RP is a preacher who has travelled Europe, I would expect that his family would be financially assisted by colleagues of Mr Chadlioui.

47. Against extradition are the following factors:

- a. Currently the RP brings in the only income that the family has although I do not accept that the family will be destitute without him (see c. above). The family will be eligible for benefits and I would expect the mosques where the RP has been preaching to support his family in these difficult circumstances. At worst and I accept it might be a hardship, the oldest two children could go out and get jobs, they are 17 and 18 after all.
- b. The RP's wife has depression and is feeling anxious which is entirely understandable in the circumstances. She has three particularly young children (aged 5, 2 and five months) and like any other mother would undoubtedly welcome help. The RP says she has no friends in this country, they moved here in 2015. It may well be that she would find her life easier if she were to move back to Belgium with her family where they have lived for many years and where I assume they will be able to obtain the support of friends.
- c. The children of whatever age will miss their father deeply, I accept he has played an important role in their lives but noted that he was spending four or five days, three or four times a month away preaching. It is lucky that there are older children who will no doubt support the younger ones. The family lived without the RP on a regular basis even before he was remanded into custody. I do not accept the RP's evidence that the children will not be able to get to school. Contrary to what the RP said in his

proof, when he is not there, the older children go to school by bus and the younger ones are walked to school by his wife.

48. I find that the seriousness of the offence and the public interest in upholding our extradition agreement outweigh the interference with Mr Chadlioui and his family Article 8 rights. The interference is proportionate and necessary in the circumstances.

Decision

49. In the light of the decisions set out above, I find extradition is compatible with the RP's Convention rights within the meaning of the Human Rights Act 1998. I order the RP's extradition to Spain.

Senior District Judge (Chief Magistrate) Emma Arbuthnot
3rd October 2017