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Ref:

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **10/03/09**

In the County Court for the Division of Belfast

IN THE MATTER OF THE EXTRADITION ACT 2003
('the 2003 Act')

BETWEEN:

KINGDOM OF SPAIN

AND

JOSE IGNACIO DE JUANA CHAOS

Burgess I

- [1] The Requesting State issued a European Arrest Warrant on the 11th November 2008, seeking the extradition of the Requested Person for the offence of public justification of terrorist actions (his own and that of others), which caused humiliation and intensified the grief of both the victims and their relatives. I will refer hereafter to this as “the alleged offence”.
- [2] The Kingdom of Spain is a category 1 territory for the purposes of the 2003 Act, and on 12 November 2008 the Secretary of State designated it in that capacity
- [3] Prior to the issue of the Warrant the relevant court in the Requesting State had summonsed the Requesting Person, by summons dated 16 October 2008, to answer questions in relation to the alleged offence. By that date the Requested Person had left Spain. Initially he travelled to the Republic of Ireland, but shortly thereafter came into this jurisdiction. From enquiries that this court has made, any person involved in an alleged offence in the Requesting State is afforded the opportunity to be interviewed by the relevant police authorities. In the absence of that taking place voluntarily, the procedure by way of summons follows. I am satisfied for purposes which will become clear in a moment, that in the event of an alleged offender failing to engage either with the police in interview or in the procedures of the court under the summons, the matter then proceeds beyond the

investigatory stage to the instigation of the criminal proceedings themselves.

[4] The defendant was arrested on 17 November 2008. From the outset he has had the benefit of legal representation, and at earlier hearings it was confirmed (a) that the Requested Person is the person identified in the Warrant, and (b) that no issue was taken in regard to the execution of the Warrant itself.

[5] A number of hearings have taken place and further information obtained from the Requesting State addressed to two issues.

(i) Whether the Requested Person is an “accused” person for the purposes of 2(2) of the 2003 Act; and

(ii) Assuming he is an “accused person”, whether the offence with which he is accused is an extraditable offence for the purposes of Section 10(2) of the 2003 Act.

[6] In Ismail [1999] AC 320 Lord Steyn said at pages 325-326:

“It is common ground that mere suspicion that an individual has committed offences is insufficient to place him in the category of “accused” persons. It is also common ground that it is not enough that he is in the traditional phrase “wanted by the police to help them with their enquiries”. Something more is required ... for my part I am satisfied that the Divisional Court in this case posed the right test by addressing the broad question whether the competent authorities in the foreign jurisdiction had taken a step which can fairly be described as the commencement of the prosecution”.

[7] In Office of the Kings Prosecutor, Brussels -v- Cando Armas [2006] 2 AC1, Lord Scott of Foscote said at paragraph 54:

“Extradition for the purpose of interrogation with a view to obtaining evidence for a prosecution, whether of the extradited individual or anyone else, is not a legitimate purpose of an arrest warrant. But the judicial authority in the Requested State cannot enquire into the purpose of the extradition. It is therefore necessary for there to be an unequivocal statement of that purpose in the arrest warrant itself.”

[8] At first this court was somewhat concerned that the matter was still in the investigatory stage. It had been furnished with the Summons of the 16th October 2008 and supporting documentation. In the summons

reference was made to its purpose, namely questioning the Requested Person in relation to the alleged offence. All jurisdictions have different procedures in relation to the criminal process, both its investigatory process and when that changes into the criminal prosecution stage. It is not for each court to superimpose its procedures on the procedural steps of another jurisdiction. I am satisfied, as I have stated earlier, that the summons represented a stage in the investigatory process, but that once that was completed – in this case by the failure of the Requested Person to take part – the matter then moved to the next stage which was for the arrest of the defendant for the purposes of prosecution for the alleged offence.

[9] This view is reinforced by the terms of the Warrant, which itself was a step in the prosecutory role of the Requested Person for the alleged offence. I am therefore satisfied that the Warrant is clear that the defendant is an “accused person”, and that the Requested State has discharged the burden of proof beyond a reasonable doubt that that is his status.

[10] Is this an extraditable offence? The Warrant initially appeared to raise two possible approaches by the Requesting State in relation to the provisions of the 2003 Act. The first, under Article 2.2 of the Framework Decision, could not be a ground for the court holding the alleged offence to be an extradition offence since, even if it could be regarded as an offence involving terrorism, it did not carry the requisite minimum sentence of three years imprisonment. That has been acknowledged by the court of the Requesting State.

[11] The alternative however is that this is an extraditable offence by reason of Section 64(3) of the 2003 Act which provides as follows:

“(3) The conduct also constitutes an extraditable offence in relation to category 1 territory if these conditions are satisfied:

- (a) That the conduct occurs in the category 1 territory;
- (b) The conduct would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom;
- (c) The conduct is punishable under the law of category 1 territory with imprisonment or another form of detention for the term of 12 months or a greater punishment (however that is described in that law)”.

[12] Conditions (a) and (c) are satisfied in this application, leaving condition (b) to be considered. In order to determine whether this is an extraditable offence the judge must carry out a transposition exercise

on the conduct specified in the warrant. The process of transposition was explained in R -v- Governor of Penteville Prison ex parte Tarling [1980] 70 Cr APP R 77, 136:-

“In considering the jurisdiction aspect it is necessary to suppose that England is substituted for Singapore as regards all the circumstances of the case connected with the latter country, and to examine the question whether upon that hypothesis and upon the evidence produced, the English courts would have jurisdiction to try the offence as charged”.

- [13] In the warrant at paragraph (e) under the heading “description of the circumstances in which the offence(s) was(were) committed, including the time, place and degree of participation in the offence(s) by the Requested Person:” the Requesting State set out the circumstances as follows:

“On 2 August 2008, at Juan De Bilbao Street, next to “Herriko Taberna Herria” (bar of the pro-independence party, in San Sebastian), homage was paid to celebrate the release from prison of Jose Ignacio De Juana Chaos (Spanish Nationality, D.N.I. number 15910046 - A, born on September 21 1955 in Legazpi (GUIPUZCOA), son of Daniel and Esperanza), after having served 21 years in prison for having committed 25 offences of murder and one offence of threat. During this event which was held at around 14.20 hours on the same day, when a group of young people blocked off both ends of the above named street, putting several banners of support to the prisoners of the terrorist organisation ETA - Militar, in a way that prevented from seeing and recording said event, and at one of the street ends, the also accused, namely Agustin Gimenez Aldalur, was leading the actions of blocking the street, to prevent people, who were not from their ideological environment, from entering the street, and specially the reporters gathered there, telling them that they were holding an intimate reception, although they were blocking off the street, and that it would be better for them not to come in, not to record anything and to go away, they even pushed one of the reporters who tried to enter, warning him that if they did not go away, things would get worse, this way was managed to convince them not to come in, and after that, a woman, unidentified so far, read a letter given by Jose Ignacio De Juana Chaos to be read in his name, in which reference was made, amongst other issues, to a call to continue with the armed struggle, and also specific reference was made to the historical leader of the terrorist organisation ETA, Domingo Iturbe Abasolo, alias Tkomin, directly involved in this participation in

five terrorist assassinations, and terrorist attacks by planting bombs in four vessels, in Campsa Depot (petrol depot), and also in French truck, and also made reference to extraordinary measures against the “Basque Political Prisoners, War Tribunals” and specifically to “the remaining long way ahead to achieve the independence of the Basque Country”, thus inciting the approximately 500 people attending the meeting, to continue using violent and criminal ways to achieve this objective”.

[14] After the first hearing in this matter the legal representatives for the Requested Person argued that what was included in the Warrant was no more than a paraphrase of what was said at the meeting referred to in the above description of the events giving rise to the issue of the Warrant; that the wording in the Warrant was vague and imprecise as to what was said; and that the interpretation of what was said was inaccurate and capable of having an entirely different, and innocent, meaning.

[15] I therefore decided to address a number of questions to the Judge in Madrid, seeking inter alia information in the following terms:

‘The actual words that were spoken, and if what is furnished represents the entire statement’.

The basis and reason for these enquiries arise from the power contained in the Framework Decision allowing the court of the State requested to enforce any Warrant to require further information. The guideline adopted was that set out in Castillo v. Spain and HMP Belmarsh [2004] EWHC (Admin) 1672 where at paragraph 25, the Court stated:

“25 However the description of the conduct alleged must be made in the request, and that description will be considered by Secretary of State and the court in the decisions each has to make in respect of the offences under the law of the United Kingdom which are constituted by the conduct described. It is in my view very important that a State requesting extradition from the UK fairly and properly describes the conduct alleged, as the accuracy and fairness of the description plays such an important role in the decisions that have to be made by the Secretary of State and the court in the UK. Scrutiny of the description of the conduct alleged constitute the offence alleged, where as here a question is raised about its accuracy, is not an enquiry into evidential sufficiency: the court is not concerned to assess the quality or sufficiency of the evidence in support of the conduct alleged, but it is concerned, if materials are put before it

which call into question the accuracy and fairness of the description, to see if the description of the conduct alleged is fair and accurate”.

[16] I am satisfied that the Requesting State has furnished me with the information that I sought and that I can consider this information accurate and fair for the purposes of the discharge of my task.

[17] Therefore in addition to the information in the Warrant, the court has the benefit of this further information, but also a considerable amount of background information which I will characterise as the context within which I could consider assessing the information which I was given. All of this information falls to be considered by me in ascertaining what was the alleged conduct of the Requested Person. It is not an exercise in considering evidential sufficiency.

[18] There are a number of aspects of the concept of ‘context’

- There is the meaning of particular words and expressions alleged to have been included in the letter which it is alleged was read to the people gathered on this particular day.
- There is the context of the overall contents of the letter in which those words and phrases are used.
- There is the context of the event during which it is alleged the letter was read.
- Finally there is the context of the background of the link of the Requested Person to ETA, and the statements of ETA in relation to their objectives and aims. The court has been the benefit of a detailed explanation of the links between the Requested Person and ETA and its campaign aimed at the achievement of those aspirations.

[19] I was furnished by both sides with their respective opinions of a glossary of terms as they are used in Spain. This should be the meaning to be attributed to specific words, to form the basis of the interpretation of the remarks attributed to the Requested Person, and any others who are part and parcel of the alleged joint enterprise in relation to the alleged offence. Therefore in my consideration as to whether the words used on this particular occasion could give rise to an offence in the United Kingdom, I take into account the interpretation attributed to them on behalf of the Requesting State.

I have carefully considered the meaning that can be attributed to the phrase “arrurea bolie” which forms the lynchpin to the case made by the Requesting State, both as to any literal meaning or meanings of that phrase, but also in the context of the historical background to the campaign carried on by ETA. I accept that this phrase may have many meanings as the expert on behalf of the Requested Person has demonstrated. However I also note that it is asserted by the Requesting State that it can have the meaning set out in its reply to my enquiry namely;

‘In fact, after this time we can detect the use of this expression in many letters among members of ETA, as an expression of encouragement and continuity in their terrorist activities, as can be seen in many documents that have been seized to arrested members of the gang that are included in different reports and international requests of judicial assistance. In this way, since then, said expression is used to end said documents in many occasions, substituting the other formula usually used by the terrorists: *(no rest until victory)*.’

[20] As to the context of the meeting, I refer to the particulars set out in the Warrant and which I have set out in paragraph [13] above – a description that sets out the connections in a variety of manners between that event and the ETA organisation.

[21] I remind myself that I am not an investigatory court. While I am grateful for the assistance of the linguistic expert on behalf of the Requested Person, the proper forum, as with all the evidence in respect of the alleged commission of any crime, is the court of the Requesting State. I am satisfied that these words are capable of meaning support for, or the glorification, of an armed struggle involving acts of terrorism. Whether they should be so considered in the context of the alleged offence faced by the Requested Person is not a matter for this Court, but that of the judicial system of trial in the Requesting State.

[22] In the same way I resist the temptation to weigh up, let alone determine, the evidence available in respect of any alleged link between the Requested Person and the statements alleged to have been made which form the basis of the alleged offence. The additional written submission from the Requested Person’s legal representatives contains denials on the part of the Requested Person having any role in any statement that was made. That is reinforced by an Affidavit from the Requested Person. Again however the proper forum to determine such issues would be the Courts in the Requesting State, not this Court.

- [23] The Requested Person's arguments on all contested issues will, no doubt, be deployed in the context of any trial for the alleged offence. In adopting this stance I proceed on the approach of the Extradition Act and the Framework Decision, namely on the basis of trust and confidence between the judicial systems of each State.
- [24] I then turn to the circumstances set out in the Warrant and the statements alleged to have been made by, or on behalf of, or in conjunction with others, to consider whether the alleged actions of the Requested Person would constitute an offence under the provisions of any legislative provision within the United Kingdom.
- [25] Mr Ritchie in his skeleton argument contends that the conduct attributed to the Requested Person would constitute an offence under Section 1 of the Terrorism Act 2006. I have set out the provisions of this Section in the Appendix to this Ruling. The legal representatives of the Requested Person contend there is insufficient evidence before the court to allow it to come to a decision in relation to whether such an offence may have been committed using the circumstances (including the statement) as are alleged to have occurred in San Sebastian on that day.
- [26] I have considered this matter carefully and taking into account the matters and decisions on the meanings that may be attributed to terms in the letter, the context of the meeting and the context of the ETA campaign, I have decided that given the meanings attributed to the statements such words could properly fall to be considered as an offence under Section 1 of the 2006 Act, and that therefore the alleged offence is an extraditable offence for the purposes of the 2003 Act.
- [27] In these circumstances the Kingdom of Spain has satisfied all of the preliminary matters in relation to this Warrant, and it is now the responsibility of the court to turn to any Bar that might be exercised in favour of the Requested Person under the provisions of the 2003 Act. Unless such a Bar is available to the Requested Person the 2003 Act requires me to extradite him to Spain in respect of the alleged offence.

APPENDIX

THE TERRORISM ACT 2006

"1 Encouragement of terrorism

- (1) This section applies to a statement that is likely to be understood by some or all of the members of the public to

whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences.

- (2) A person commits an offence if –
 - (a) he publishes it or causes it to be published, he –
 - (i) intends members of the public to be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate acts of terrorism or Convention offences; or
 - (ii) is reckless as to whether members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate such acts or offences.

- (3) For the purposes of this section, the statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism or Convention offences include every statement which –
 - (a) glorifies the commission of preparation (whether in the past, in the future or generally) of such acts of offences; and
 - (b) is a statement from which those members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances.

- (4) For the purposes of this section the questions how a statement is likely to be understood and what members of the public could reasonably be expected to infer from it must be determined having regard both –
 - (a) to the contents of the statement as a whole; and
 - (b) to the circumstances and manner of its publication.

- (5) It is irrelevant for the purposes of subsections (1) to (3) –
 - (a) whether anything mentioned in those subsections relates to the commission, preparation or instigation of one or more particular acts of terrorism or Convention offences, of acts of terrorism or Convention offences of a particular

description or of acts of terrorism or Convention offences generally; and

- (b) whether any person is in fact encouraged or induced by the statement to commit, prepare or instigate any such act or offence.

.....

(7) A person guilty of an offence under this section shall be liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both;

.....

- (c) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.

.....

Interpretation of Part 1

20 Interpretation of Part 1

(1) Expression used in this Part and in the Terrorism Act 2000 (c. 11) have the same meanings in this Part as in that Act.

(2) In this Part -

“act of terrorism” includes anything constituting an action taken for the purposes of terrorism, within the meaning of the Terrorism Act 2000 (see section 1(5) of that Act);

.....

“Convention offence” means an offence listed in Schedule 1 or an equivalent offence under the law of a county or territory outside the United Kingdom;

.....

“glorification” includes any form of praise or celebration, and cognate expressions are to be construed accordingly;

.....”

THE TERRORISM ACT 2000

“1 Terrorism: interpretation

- where -
- (1) In this Act “terrorism” means the use or threat of action
 - (a) the action falls within subsection (2);
 - (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and
 - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
 - (2) Action falls within this subsection if it -
 - (a) involves serious violence against a person,
 - (b) involves serious damage to property,
 - (c) endangers a person’s life, other than that of the person committing the action,
 - (d) creates a serious risk to the health or safety of the public or a section of the public, or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.
 - (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.
 - (4) In this section -
 - (a) “action” includes action outside the United Kingdom,
 - (b) a reference to any person or to property is a reference to any person, or to property, wherever situated,
 - (c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and
 - (d) “the government” means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.
 - (5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation”.