Neutral Citation Number: [2014] EWHC 2372 (Admin)

Case No: CO/653/2012

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/07/2014

Before :

LADY JUSTICE RAFFERTY DBE

and

LORD JUSTICE UNDERHILL

- -

Between :

ANTONIA ILIA — **Appellant**

- and -

APPEAL COURT IN ATHENS (GREECE) — **Respondents**

APPEAL COURT IN PIRAEUS (GREECE)

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Mr Joe Middleton (instructed by **Christian Khan**) (at the hearing of 26.3.13); **Ms Rachel Kapila** (written submissions); and **Mr Ben Cooper** (both the latter instructed by **Faradays**) for the **Appellant**
Mr James Stansfeld (instructed by **the Crown Prosecution Service**) for the **Respondents**

Hearing dates: 26 March 2013 and 4 June 2014

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Judgment

Lord Justice Underhill :

INTRODUCTION

1. This appeal was initially concerned with five European Arrest Warrants issued by the Greek judicial authorities (being the public prosecutors in Athens and Piraeus) seeking the arrest of Antonia Ilia. The Appellant was until her dismissal for misconduct in July 2005 a Judge of the First Instance Court in Athens. A few days before her dismissal she came to this country and settled under a false identity. She

was arrested at her home in Sussex on 15 May 2011. The extradition proceedings at first instance were protracted, partly though not only because the Appellant initially lied about her identity, a circumstance which led to her being denied bail until 6 December 2012, meaning that she was held on remand for no less than nineteen months. They have also, regrettably, been very protracted on appeal; but I will come back to that.

2. I annex a formal description of the five warrants, but I will refer to them in the judgment simply as EAW 1-5. EAW 1-4 are conviction warrants. All the convictions concern misconduct related to the Appellant's role as a judge, for which she was sentenced in her absence to varying terms of imprisonment. For reasons which will appear I need not give any details about them. The position about EAW 5, which was issued by the public prosecutor at the Appeal Court in Athens, is complicated. I will not attempt to summarise it at this stage beyond saying that it seeks the Appellant's extradition partly in order to serve a sentence already imposed, in her absence, but partly in order to stand trial on a number of other charges. Again (with one apparent exception) both the convictions and the outstanding charges relate to the Appellant's conduct as a judge.

3. The application for extradition on the basis of the five warrants was heard by District Judge Purdy in the City of Westminster Magistrates Court on 5 December 2011. I need not at this stage set out the issues argued before him; but the Appellant's overarching case was that the charges against her were trumped up and that she was being persecuted because of her left-wing political opinions and because during her judicial career she had stood up against corruption and pro-establishment bias among her colleagues. The District Judge reserved his decision. On 16 January 2012 he made an extradition order on the basis of all five warrants.

4. The Appellant appealed. Among other grounds she sought to rely on evidence which had not been before the District Judge, including expert reports (dated 8 October and 2 November 2012) from a Greek lawyer, Mr George Pyromallis.

5. The appeal was initially due to come before the Court on 7 November 2012 but it was adjourned without a hearing at the Appellant's request. It came before Hallett LJ and Collins J on 13 December 2012, but they adjourned it further. The adjournments reflected two developments. First, the Appellant produced an e-mail, and subsequently a report, from Mr Pyromallis taking two further points, namely:

   (a) that it was apparent from a recent decision of the Court of Appeal in Athens involving a co-defendant of the Appellant (of which the text was not yet available) that the offences to which the "accusation" element in EAW 5 relate were time-barred; and

   (b) that the nineteen months which the Appellant had served on remand meant that she would have to serve only a minimal period if she were extradited on the conviction warrants.

   Secondly, it was said by counsel that the Appellant was as a result of recent legislation in Greece entitled to commute the terms of imprisonment imposed on her into financial penalties, which would mean – if she were also granted time to pay – that she would no longer, in relation to the conviction matters, face a prison sentence

for which she could be extradited. The adjournment by Hallett LJ and Collins J was in order to allow the Crown Prosecution Service to obtain further information from the judicial authorities in Greece on those points.

6. The case came before us on 26 March 2013. We heard submissions from Mr Joe Middleton for the Appellant and Mr James Stansfeld for the CPS. Most of the issues argued before the District Judge remained live but Mr Middleton also relied on two of the matters identified at para. 5 above. First, he said that the commutation process had now commenced and that extradition should not proceed in the meantime. Secondly, the written decision of the Court of Appeal in Athens was now available and he submitted that it was necessary that he should have the opportunity to adduce further evidence from Mr Pyromallis about its implications. We granted the latter request – albeit with some reluctance in view of the previous adjournments – and set a timetable for the lodging of the evidence in question and for further written submissions. We made it clear that we expected to be able to determine the appeal without the need for a further hearing.

7. The sequence of submissions thereafter was as follows:

(1) Mr Pyromallis provided a further report dated 18 April 2013, which was lodged together with a witness statement from Ms Vogiatzi, the Appellant's lawyer in Greece. Mr Middleton lodged written submissions addressing this material on 3 May. The submissions exhibited a short e-mail from Mr Pyromallis dated 29 April.

(2) The Appellant's solicitors asked Mr Pyromallis some questions arising out of his report. He gave his answers in a supplementary report dated 13 May. This was lodged under cover of a further note from Mr Middleton dated 15 May.

(3) Mr Stansfeld lodged a response dated 19 May. He also lodged a further note dated 3 June dealing with a query from the Court.

(4) As the process of commutation of sentence proceeded in Greece, the Court was updated from time to time by the Appellant, including by a Note from Mr Middleton dated 26 June. On 31 July we directed that all information on this aspect must be lodged by 23 August, with leave to the CPS to respond by 6 September; and that the Court intended to proceed to a decision as soon as possible thereafter.

(5) On 7 August Mr Stansfeld lodged a note with the Court notifying it that warrants EAW 1 and EAW 2 had been withdrawn because the sentences in question had been commuted and giving the CPS's position as regards the potential commutation of the sentences underlying EAW 3 and EAW 4.

(6) On 21 August new solicitors instructed by the Appellant, Messrs Faradays, applied for an extension of the deadline of 23 August, which was granted. On 23 September they lodged submissions from fresh counsel, Ms Rachel Kapila. As regards EAW 5 these (a) notified the Court (though the fact had been mentioned already) that an appeal against the Appellant's conviction would be heard by the Court of Appeal in Athens on 25 September and (b) sought a renewed oral

hearing on the accusation matters at which Mr Pyromallis could give oral evidence.

(7) Mr Stansfeld responded on 27 September, exhibiting further information dated 3 July from Ms Zairi of the Public Prosecutor's Office at the Court of Appeal in Athens.

(8) On 8 October permission was given to the parties to make submissions about the hearing in Athens which had been due to take place on 25 September. Ms Kapila provided submissions accordingly, which attached a report to the Appellant from Ms Vogiatzi.

(9) Shortly afterwards Faradays lodged a witness statement from a Mr Nicolapoulos, dated 12 October: Mr Nicolapoulos is a lawyer instructed by the Appellant, alongside Ms Vogiatzi, to act for her in Greece. He was also one of her co-defendants in the proceedings underlying EAW 5, though he was acquitted. His statement goes considerably beyond recounting what had happened at the hearing on 25 September.

(10) Mr Stansfeld responded to Ms Kapila's submissions on 17 October.

8. So long a series of written submissions was not ideal and meant that, even without the further delay to which I refer below, the interval since the original hearing was much longer than we originally intended. But it was occasioned by developments in the Greek courts which could not fairly be ignored and which, as will appear, have considerably narrowed the issues and had the potential to do so still more.

9. On 20 November 2013 we circulated draft judgments, in accordance with the usual procedure, in which we decided that the Appellant should be extradited on the accusation, but not the conviction, elements of EAW 5. In his comments on the draft Mr Stansfeld submitted that an order expressed in that way was not open to the Court, but he also drew our attention to the then very recent decision of this Court in *Brodziak v Circuit Court of Poland* [2013] EWHC 3394 (Admin), which he submitted addressed the difficulty which had led us to decide against extradition on the conviction element: I explain this at para. 36 below. This required further written submissions, which were delayed as a result of problems in both camps (see para. 37 below).

10. In the course of this further round of submissions the Appellant sought to raise issues going beyond those raised by the "*Brodziak* point". We decided that it was not possible fairly to deal with matters in the state which they had then reached without a further hearing. We identified four specific issues on which we would be prepared to hear further submissions: I identify them as I come to them below.

11. The further hearing took place on 4 June 2014. Since shortly after the circulation of the draft judgment the Appellant had been represented by Mr Ben Cooper of counsel, and he appeared for her on that occasion. The further delay since November is equally regrettable, but again it has been necessary in the interests of justice and was contributed to by both parties.

12. Most of the present judgment is substantially identical to the draft circulated in November 2013, but some passages relate to developments since that date, and I hope it will be clear which are which.

13. As appears above, one of the matters covered by the submissions following the first hearing was the process of commutation of the sentences (including the granting of time to pay) to which EAW 1-4 relate. At the time of the draft judgment in November the CPS had acknowledged that that process had been completed as regards EAW1-3, and that the Appellant had been granted time to pay by the courts in Greece. It is now accepted that that is also the case as regards EAW 4. The relevant judicial authorities have accordingly now formally withdrawn all four warrants and it is common ground that, as regards them, the extradition order made by District Judge Purdy should be quashed, and the Appellant discharged, pursuant to section 42 (3) (b) of the Extradition Act 2003. Accordingly the only warrant with which we are substantively concerned is EAW 5.

THE PROCEEDINGS UNDERLYING EAW 5

14. Both the conviction and the accusation elements in EAW 5 arise out of the same prosecution in Athens. The Appellant was charged in 2007 with a series of offences over the period 2000-2004 in which she is said to have corruptly abused her position as a judge and otherwise acted improperly. There were a number of co-defendants. The charges were of different categories of seriousness, translated for us as "felonies" and "misdemeanours". Although the trial proceeded against her co-defendants on all charges it was decided that it should only proceed against the Appellant, in her absence, on the misdemeanour charges: the trial of the felony charges was suspended as against her until her attendance could be secured.

15. The felonies charged in EAW 5 are under three categories, designated (a)-(c). In the summary provided to us (a) is given the shorthand "swindling", which reflects the language of the "European framework list" (though "fraud" might be a better label) and (b) is described as "money laundering". The third has no label but it covers corruption and associated offences. Categories (a) and (b) arise out of the same alleged facts and are closely related. The offences alleged are as follows:

- (a) and (b): Fraud and Money Laundering: These resolve into two groups of offences. First, the Appellant is alleged on two occasions in January 2003 to have accepted money – €20,000 and €30,000 – from a Mr and Mrs Kalamiotis on the (false) basis that she could procure the release of members of their family detained on drugs charges; and to have laundered the proceeds. Mr Nicolapoulos, another lawyer called Mr Kehagioglou, a Mr (or possibly Bishop) Giosakis and a Mr Athanasopoulos are said to have also been involved. Secondly, in December 2004 she is said to have induced a clergyman, Bishop Koumarianos, to give her €4,991 on the false basis that she was facing "severe personal and family problems with her sister"; and to have laundered the proceeds (this is the one offence which does not appear to be connected with her position as a judge).

- (c): Corruption: The charges in this category are more complicated and require fuller exposition:

(1) On five occasions in 2000 the Appellant is said to have received varying sums totalling 1,760,000 drachmas from Mr Nicolapoulos "demanded" by her "in order to judge in favour of [him] and his clients in their cases pending before her". (This is described as "passive corruption of a court official": I am not sure what "passive" means in this context, but it does not matter.) She is said to have had the money paid into specified bank accounts "in order to lend quasi-legal status to the above mentioned criminal activity through the banking system". This latter element is evidently what in English law would be money laundering, and on one reading it is only this, and not the corrupt receipt of the moneys itself, which constitutes the offence charged; but that seems unlikely, and again it ultimately does not matter, since both are "framework offences".

(2) This alleges, in substantially identical terms, the receipt and laundering of a further four corrupt payments from Mr Nicolapoulos in 2000 and 2001, totalling 4,400,000 drachmas.

(3) This alleges the further laundering, in 2003, of the above sums, involving a Mr Koudas, said to be acting on behalf of Mr Nicolapoulos, and Mr Giosakis.

(4) This alleges the receipt and laundering of a further five corrupt payments between 2000 and 2002, four from Mr Nicolapoulos and the fifth from another lawyer, a Mr Ioannidis, totalling 2,310,000 drachmas and €600.

(5) This charge is particularly complicated (at least as translated); but the gist is that in November 2001 a client of Mr Nicolapoulos called Dr Lymberis, who was accused of drug offences, paid him and Mr Kehagioglou 5,000,000 drachmas in order corruptly to procure his release, and that part of that sum was paid to the Appellant, and laundered by her jointly with Messrs Nicolapoulos and Kehagioglou.

(6) This charge is substantially similar to (5), but involves the sum of 66,000,000 drachmas.

(7)-(8) and (10)-(12) These allege the further laundering, at various dates in 2003 and 2004, of the proceeds of the above offences (though it is difficult to make the figures tally) with the assistance of (variously) Mr Nicolapoulos, Mr Kehagioglou, another lawyer called Mr Emmanoulidis, and Mr Giosakis.

(9) This alleges the corrupt receipt in 2001, and the laundering, of 200,000 drachmas from a Ms Molpeta "in order to undertake the hearing of her cases pending before the Court of First Instance in Athens and thereafter to issue decisions favourably for her".

16. The misdemeanours fall under two heads, given the shorthands before us of "breach of duty" and "concealment of grounds for exclusion". In summary:

(1) *Breach of duty*. Twelve particular offences are identified under this head. Two are of the procuring by the Appellant of the replacement of a colleague in order to ensure that she was the judge hearing a particular case. The remainder allege that she "acted with prejudice in favour of" various criminal defendants in cases where she was the interrogating judge. I give more details below.

(2) *Concealment of grounds for exclusion*. There are two charges of failing to disclose a close relationship with a lawyer and/or a party in cases proceeding before the Appellant.

17. On 10 July 2008 the Court of Appeal in Athens (sitting at first instance) gave its judgment (designated 4898/10). The Appellant was convicted, in her absence, of the misdemeanours identified above and sentenced to an undifferentiated term of 80 months imprisonment. Those are the convictions to which the conviction element in 4898/10 relates. Five co-defendants were convicted on charges which included some of the felonies with which the Appellant was charged: these include Mr Kehagioglou, but Mr Nicolapoulos was acquitted.

18. Those co-defendants who were convicted in judgment 4898/10 appealed. By a judgment designated 1487/12, formally handed down on 25 February 2013 (though the substance was apparently known earlier), the Court of Appeal in Athens allowed their appeals. This is the judgment referred to at paras. 5 (a) and 6 above.

19. The Appellant did not originally appeal against her conviction on the misdemeanour charges in 4898/10. But she did so in August 2011. Her case is that the conviction was unlawful because she was never served with the originating summons. I return to this below, but it is convenient to note at this stage that because of the pending appeal no attempt has been made to commute the sentence in respect of this conviction. (Mr Middleton, basing himself on something said by Mr Pyromallis, initially suggested otherwise, but the point was subsequently clarified.)

THE ISSUES

20. The Appellant's broad case, as I have said, has always been that the charges against her have been brought in bad faith in order to punish her for her left-wing opinions and for the independence of her conduct as a judge; and also that, for those reasons, she would not have a fair trial if she were returned. On that basis, at least in so far as the charges were motivated by her political opinions, her extradition would be contrary to the "extraneous considerations" bar in section 13 of the 2003 Act, which reads as follows:

> "A person's extradition to a category 1 territory is barred by reason of extraneous considerations if (and only if) it appears that—
>
> (a) the Part 1 warrant issued in respect of him (though purporting to be issued on account of the extradition offence) is in fact issued for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or

(b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions."

It would also be contrary to article 6 of the European Convention of Human Rights and thus section 21 of the Act, which I need not set out in full but which precludes extradition in such a case. As a result of the recent developments in relation to the underlying proceedings she now also says that the continuing pursuit of the warrant is an abuse of the process of the Court. In short, she says (a) that her pending appeal against the misdemeanours conviction (para. 19 above) is bound to succeed and (b) that the outcome of her co-defendants' appeal (para. 18) means that the felony charges against her will necessarily fail; since that must be apparent to the prosecutor it is an abuse to continue to seek her extradition. If that submission were well-founded it would also reinforce the case that the prosecution is politically motivated. I will refer to these points compendiously as "the broad case".

21. In addition to the broad case, the Appellant maintains three particular challenges which can be summarised as follows:

(A) *Extradition offences*. It was argued at the first hearing in November 2013 that the District Judge was wrong to hold that "breach of duty" – one of the two misdemeanours of which the Appellant was convicted (see para. 16 (1) above) – was an extradition offence within the meaning of section 65 of the 2003 Act. To anticipate, we upheld that challenge in our draft judgment: see paras. 24-32 below, which are unchanged from that draft. But that conclusion then gave rise to two further issues:

(1) Mr Cooper sought to advance the same argument in relation to the other two misdemeanours – "concealment of grounds for exclusion". This is the first of the four specified issues on which we were addressed at the June hearing.

(2) If that submission is unsuccessful, a question arises whether the Appellant's extradition to serve a "composite" sentence passed only partly in connection with extraditable offences would breach the "specialty" rule. The Prosecutor has given an assurance that the sentence would be adjusted appropriately, but the extent to which we should rely on that assurance is the second of the issues considered at the June hearing.

(B) *Section 20*. By section 20 of the Act, where a person has been convicted in his or her absence the court determining an application for extradition must decide whether they deliberately absented themselves. If not, they can only be extradited if they would be granted a retrial. The District Judge decided that the Appellant had deliberately absented herself from her trial on the misdemeanour charges; but he also decided that if he was wrong about that she would be granted a retrial if returned. It is contended that he was wrong on both points.

(C) *Prison conditions*. The Appellant contended that prison conditions in Greece were so poor that her incarceration there would involve a breach of her rights under article 3 of the Convention. This was the third area on which we allowed further submissions at the hearing in June.

(I should mention for completeness that the issue raised by Mr Pyromallis about the term served by the Appellant on remand extinguishing, or all but extinguishing, the term that she would have to serve if returned to Greece – see para. 5 (b) above – was acknowledged in the subsequent written exchanges to be ill-founded: see paras. 26-28 of Mr Middleton's note of 3 May 2013. In fact, however, the commutation of EAW 1-4 has raised a similar point: see the following paragraph.)

22. Finally, the particular effect on the Appellant of the decision on issue (A) in our draft judgment of November 2013 gave rise to a further issue based on the short time remaining to serve on the conviction element in EAW 5 and the that the Appellant had spent on tag. This is the fourth of the issues on which we were addressed in June.

23. I will deal first with issues (A) and (B) and then with the broad case before returning to issue (C) – that is, prison conditions.

ISSUE (A): EXTRADITION OFFENCE

THE ORIGINAL ISSUE: "BREACH OF DUTY" AND DUAL CRIMINALITY

24. The full description given in EAW 5 of the offence of "breach of duty" begins:

> "The defendant intentionally violated her duties as a court official (first instance court judge in Athens) in the following instances".

There follow twelve particular alleged acts, identified as (A)-(L). (A) and (B) allege that the Appellant procured her own appointment as a judge to sit in two particular cases, one criminal and one civil. They read as follows:

> "A) From 31.10.2003 to 15.10.2003, she manipulated her participation at the session of 13.10.2003 in the 11th 3-paneled magistrate court of Athens, which was due to hear a criminal case against Xenophon PAPACHARALAMBOUS for malicious prosecution, usage of forged documents and defamatory calumny. The injured party was Iakovos-Pavlos GIOSAKIS, Bishop. She manipulated the replacement of First Instance Judge Eleftherios Georgilis, who had been originally selected as a panel judge for this case.
>
> B) On 20.05.2004, she strongly pursued and finally got through to undertake, as a judge of the one-paneled first instance court of Athens, the hearing of 20.05.2004 of different car disputes, including action that had been filed on 24/2/2004 by reverend Ingor Illoponin against Haralambos KALLIS et al. Under an act issued by the President of the 3-paneled Administration Council of the Court, she replaced First Instance Judge Stefanos STEFANOPOULSO [*sic*], who had been originally selected as a panel judge for this case."

(C)-(L) allege that she "acted with prejudice in favour of the defendant" in a number of cases. The descriptions are in substantially identical form, and I need only give (C) by way of example:

> "C) On 03.08.2003, as an interrogator judge of the 29th regular division of the first instance court of Athens, she acted with prejudice in favour of the defendant Alexandros POUTOLIDIS (father's name: Christos) who had been accused at felony degree for the purchase, sale and possession of 45 methadone tablets, 56 gr of cannabis and 3.5 gr of heroin."

Although the prosecutor subsequently provided further information as regards some of the other warrants there is no such information as regards EAW 5 or these offences in particular.

25. It was common ground before us that the conduct so described does not fall within any of the categories identified in the "European framework list" set out at Schedule 2 to the 2003 Act. Although the warrant contains a statement (by means of an X against the relevant heads) that the conduct alleged in it constitutes the framework offences of money laundering and "swindling", those heads would only appear to be apt to the accusation elements in the warrant and Mr Stansfeld did not contend that we were bound by the statement. It was also, accordingly, common ground that the conduct in question would only constitute an extradition offence, or offences, if it would constitute an offence under English law: see section 65 (3) of the Act. We were referred to *Norris v United States of America* [2008] AC 920, which confirms that the correct approach to the so-called "dual criminality test" is whether the actual conduct alleged would constitute an offence under English law, irrespective of whether the components of the offence would be identically analysed under the law of the requesting country.

26. Mr Stansfeld submitted that the conduct alleged in the warrant would if committed in England constitute the offence of misconduct in public office. He referred to the judgment of Pill LJ in *Attorney General's Reference (no. 3 of 2003)* [2005] QB 73, which sets out the elements of that offence as follows (para. 61):

> "The circumstances in which the offence may be committed are broad and the conduct which may give rise to it is diverse. A summary of its elements must be considered on the basis of the contents of the preceding paragraphs. The elements of the offence of misconduct in a public office are: (1) a public officer acting as such ...; (2) wilfully neglects to perform his duty and/or wilfully misconducts himself ...; (3) to such a degree as to amount to an abuse of the public's trust in the office holder ...; (4) without reasonable excuse or justification … ."

The elements are further discussed elsewhere in the judgment, but that is enough for present purposes. He submitted that all those elements could be found in the description of the offences listed in the warrant.

27. Mr Middleton's submission was that the dual criminality test was not satisfied. He focused on the absence of any explicit allegation of dishonest intent. As to (A) and

(B), it would no doubt constitute misconduct in public office if a judge procured her appointment to hear a particular case with a view to being able to decide the case in a particular way in pursuit of a personal interest – and *a fortiori* if she had been bribed to do so – but no such allegation is made. As to (C)-(L), the term "prejudice" was unclear. In its broadest sense it was innocuous: every time a judge makes a decision on a contested issue it prejudices one party or the other. But even if it means that the judge demonstrated partiality towards the defendants – which I am bound to say I think is clearly what is meant here – that would not in English law constitute an offence unless, again, she was motivated by a personal interest or had been bribed. He drew a contrast with the position in regard to the felonies, where partiality and corruption were specifically averred: see para. 15 above.

28. Mr Stansfeld acknowledged in his oral submissions that there was in the warrant no explicit imputation of what he called (not quite aptly) a "malign motive". But he referred us to the decisions of Richards LJ and Swift J in *Zak v Regional Court of Bydgozcz* [2008] EWHC 470 (Admin) and of Lloyd Jones J in *Sitek v Circuit Court in Swidnica* [2011] EWHC 1378 (Admin), which make clear that the presence of an essential element in an English offence (typically *mens rea*) can in an appropriate case be inferred from the material in the warrant or any further information supplied by the requesting authority. He also referred us to the observations of Stanley Burnton J in *Holmes v Governor of Brixton Prison* [2005] 1 WLR 1857, at para. 28 (p. 1866), to the effect that:

> "… [I]t is scarcely surprising that information provided by foreign courts and prosecution authorities, which establishes an offence or offences under their own law, does not address specifically the technical requirements of English law … [It is necessary] for the court to consider the information provided for the purposes of extradition proceedings realistically rather than over-critically."

He pointed out that in the trial to which the Appellant is alleged under head (A) to have sought to have herself appointed the defendant was Mr Giosakis, who was implicated in the accusation element of EAW 5 as a co-defendant in her alleged money laundering (see para. 15 above). He also pointed out that under the other conviction heading in EAW 5 one of the matters which the Appellant is said to have concealed is her association with Mr Giosakis. In those circumstances, he submits, it can realistically be inferred that the convictions are for conduct in which the Appellant was motivated by a personal interest of such a kind as would satisfy the requirements of the offence of misconduct in public office.

29. The District Judge addressed the issue of dual criminality in para. 7 of his judgment but his reasoning is brief and refers only to the accusation elements in the warrant.

30. I have not found this issue easy. It is clear that the offences of which the Appellant was convicted involved intentional misconduct on her part. On the other hand, there are questions of degree involved. It is an essential element in the offence of misconduct in public office that the conduct in question be of sufficient seriousness to constitute an abuse of the public's trust. In *Attorney General's Reference (no 3 of 2003)* Pill LJ referred, at para. 59 of his judgment (p. 90), to established authority which emphasises that that represents a high threshold; and it is also clear from the

passage read as a whole that whether that threshold was crossed would depend very much on the particular circumstances of the case. The summary description of the Greek offence is simply "breach/violation of duty", albeit that the breach is said to have been intentional. In English law not every breach of duty by a public official, even if intentional, would cross the necessary threshold so as to be treated as a criminal offence; but it looks as though the position may be otherwise in Greek law. Of course, the approach prescribed in *Norris* means that that is not fatal if the matters actually alleged in the particular case would constitute an offence in this country. But at that stage I am troubled by two points. First, there is no indication of what the Appellant is actually said to have done wrong in the cases in question – beyond, in (A)-(B), procuring that she presided: nothing is said about any substantive decisions taken by her. Second, there is, as Mr Middleton submitted, no allegation as to her motivation – and certainly no allegation that she took any bribe. I see the force of Mr Stansfeld's submission about drawing common sense inferences; and it seems pretty clear, looking at the warrant as a whole, and indeed the other warrants, that the prosecuting authorities (assuming, at this point, their good faith) believed that the Appellant had a personal interest of some kind in the cases to which this part of the warrant relates. But the fact remains that no such interest is alleged, whereas explicit allegations of corruption are made in the case of the outstanding felony charges – and indeed it may well be that it was that very distinction which led to them being regarded as misdemeanours. It is impossible to know, at least on the materials presented to us, what precisely was proved against the Appellant so as to form the basis of the conviction. The case is a good deal less clear-cut than those considered in either *Zak* or *Sitek.*

31. At the end of the day it is for the requesting authorities to satisfy the Court that the convictions were indeed for extradition offences – and thus, in the present case, that the dual criminality test is satisfied; and the Appellant must have the benefit of the doubt. With some hesitation, I have come to the conclusion that the uncertainties discussed above mean that I cannot be so satisfied.

32. I would accordingly hold that the matters of which the Appellant was convicted under the heading of "breach of duty" did not constitute extradition offences.

SUB-ISSUE (1): THE "CONCEALMENT" ISSUES AND DUAL CRIMINALITY

33. Mr Cooper argues that the reasoning which I have set out above applies with equal force to the two offences of "concealment of grounds for exclusion" and that he should be permitted now to rely on it in support of a submission that they too are not extradition offences. He accepts that that point was not taken by Mr Middleton, either before the District Judge or at the first hearing, but he says that he should nevertheless be allowed to do so now. He refers to the decisions in *Hoholm v Norway* [2009] EWHC 1513 (Admin), and *Soltysiak v Poland* [2011] EWHC 1347 (Admin), which he says establish that an appellant in an extradition appeal case is entitled to raise any point that is available on the existing evidence, notwithstanding that it was not taken at first instance. He also relies on the fact that the significance of the point only became clear in the light of our draft judgment and the specialty issue that then arose.

34. I would not be prepared to allow this point to be taken now. The situation is not, as it was in *Hoholm* and *Soltysiak*, that the Appellant wishes to raise a point which she did not take at first instance. Rather, she wishes to raise, following the circulation of the

draft judgment, a point which was not advanced at the hearing of the appeal itself. It is only in the rarest of cases that such a course will be permitted. It is an essential principle of the effective management of litigation that parties advance their full case before the Court considers its decision. There is nothing about extradition cases as a class which would justify a more relaxed approach. In the present case it would be particularly hard to justify in view of the indulgence afforded to the Appellant over an extraordinarily prolonged appellate process.

35. Although in those circumstances I need not consider whether our reasoning in relation to the "breach of duty" offences applies to the concealment offences, I think it right to add that it is by no means clear that it does. I must acknowledge that it was the Court itself, in the course of the exchanges following the circulation of the draft judgment, which hinted that it might; but in fact the particulars in EAW 5 contain an express averment that the alleged concealments were "for the purpose of personal benefit of herself and of third parties which would in parallel lead to the advantage of other parties". It may not surprising be that in the light of that language Mr Middleton did not think it worthwhile to argue that the facts alleged could not constitute the offence of misconduct in public office.

SUB-ISSUE (2): SPECIALTY

36. On that basis the difficulty remains that the sentence of 80 months which was imposed in judgment 4898/10 was a composite covering both the "breach of duty" matters, which I have found not to be extradition offences, and the "concealment" matters, which were. In the draft of this judgment circulated in November we took the view that this precluded the Appellant's extradition in respect of any part of the conviction element in EAW 5. However, as mentioned above, Mr Stansfeld drew our attention to the decision in *Brodziak.* In that case the Court was concerned with a number of cases in which Polish courts were seeking extradition on conviction warrants where the sentence had been for a single term in respect of multiple offences at least one of which was (or was arguably) not an extradition offence. It was argued that if an extradition order were sought on the basis of such a warrant, so that the convicted person would or might be required to serve the entire term, the bar to extradition based on the "specialty" rule provided for by sections 11 (1) (f) and 17 of the 2003 Act would apply. I need not set out the statutory provisions in full: in short, and ignoring some qualifications, a person may not be extradited unless there are "specialty arrangements" in place in the receiving country preventing him being imprisoned or proceeded against otherwise than for the offences on the basis of which he has been extradited (or associated offences). Richards LJ and Silber J held that the bar did not operate in that case because there was evidence before the Court that the Polish Criminal Code enabled the court to ensure that a person extradited on a warrant in respect of a "composite" sentence would serve only a term appropriate to the extradition offence.

37. In the light of the *Brodziak* decision Mr Stansfeld proposed, and Mr Cooper agreed, a timetable for the service of further evidence relating to the specialty arrangements which apply in Greece. That timetable was not adhered to by either party. So far as the CPS is concerned, there was apparently some administrative error in referring the issue to the judicial authorities in Greece. As for the Appellant, we are told by her solicitors that a conference was arranged with Mr Cooper but that she was unable to attend as a result of a severe toothache: it was only on 9 January 2014, the day before

evidence was due to be lodged, that a request was sent by her solicitors to the Court for funding to instruct a Greek lawyer to provide evidence on the specialty issue.

38. On 12 February 2014 the CPS served further information in the form of a document dated 5 February from the Public Prosecutor of the Athens Court of Appeal explaining how the sentence of 80 months to which the conviction element in EAW 5 relates was arrived at and how it would be revisited in the light of a decision that part of the offences were not extraditable. The Prosecutor says:

> "The case will come back to the Court only for the calculation of the total sentence for the two (2) additional acts of concealment due to exception. The Court will deduct from its sentence a total of twelve (12) actions (A-L), which are not offences pursuant to English Law and for which she cannot be extradited. The Court will then recalculate the total sentence, only for the two remaining actions (A + B), that is to say, fifteen (15) months for action A and five (5) months for action B, and a total of twenty (20) months. The twenty months will be reduced by the penalty of seventeen (17) months and twenty-one (21) days for which she has already been held in England, i.e. from 15.05.2011 until and including 6.12.2012, and she will serve the remainder thereof. Of course, the aforementioned are only applicable for serving the sentence."

Mr Stansfeld relies on that statement as a clear indication that the specialty rule will be respected by the Greek court and that extradition can proceed on the conviction element in the warrant.

39. Mr Cooper acknowledges that normally formal statements of this character made by the judicial authority, whether as part of the EAW itself or by way of further information, will be taken at face value and presumed to be correct: see *Zakrzewski v Regional Court in Lodz* [2013] UKSC 2, [2013] 1 WLR 324, at para. 8. But he says that they can in an appropriate case be questioned. He refers to an observation of Lord Bingham in *Caldarelli v Court of Naples*, [2005] UKHL 51, [2008] 1 WLR 1724, at para. 24 (p. 1732 E-F) and cites a number of decisions in which it has been applied (*Criminal Court at the National High Court, 1st Division v Murua* [2010] EWHC 2609 (Admin); *Bulla v Albania* [2010] EWHC 3506 (Admin); *Assange v Swedish Prosecution Authority* [2011] EWHC 2849 (Admin) at paras 18-19; *Echimov v Romania* [2011] EWHC 864 (Admin) at para. 21; *Binnington v Cyprus* [2009] EWHC 1579 (Admin) at para. 22; *Sabramowicz v Poland* [2012] EWHC 3878; and *Powierza v Poland* [2013] EWHC 36 (Admin)). He submits that this is such a case. He relies on a witness statement from Mr Nicolapoulos (as to whom see para. 7 (9) above) in which it is asserted that as a matter of Greek law and procedure it is not open to the Court of Appeal to disaggregate sentences in the way explained by the Prosecutor here. Mr Cooper acknowledges that Mr Nicolapoulos cannot be regarded as an independent witness, but he says that his evidence suffices to raise a serious question about the reliability of the Prosecutor's statement. He says that the further information from the Prosecutor does not give chapter and verse about the source of the powers asserted, contrasting it in that respect with the cases of *Cokaj v Secretary of State for the Home Department* [2007] EWHC 238 (Admin) and *Kucera v District Court of Karvina, Czech Republic* [2009] 1 WLR 806. He also points out that since this is a case where the judicial authority is a prosecutor rather than the court itself its

statement as to the course that the court will take is less authoritative (referring to a dictum of this Court in the *Assange* case, at para. 50). He asks that the appeal be adjourned and that the Appellant be granted public funding in order to obtain independent expert evidence.

40. I would not be prepared to take this course. I accept that as a matter of principle we are entitled to question the correctness of the further information provided by the Prosecutor; but I do not believe that Mr Nicolapoulos's evidence constitutes sufficient ground for doing so. I start by reminding myself of the strong presumption that member states will act in accordance with their obligations as regards specialty (see para. 46 of the judgment in *Brodziak*). But that is only the start. This is not a case, like those relied on by Mr Cooper, where there has been a demonstrable error or inaccuracy in the warrant. Here we have a particularised assurance, from the judicial authority, given in direct response to a concern expressed by this Court, about how the court will act in the present case. It would be an extraordinary thing to say that the judicial authority had misunderstood the powers of the Court and would be unable to deliver on its own solemn assurance. That is so whether the authority is the prosecutor or a court (though as to this aspect see para. 54 below). Mr Nicolapoulos's opinion is based on his interpretation of article 94 of the Greek Penal Code. Para. 3 of the article allows the Prosecutor to conduct a re-sentencing exercise of precisely the kind referred to in the further information in circumstances which are described in his translation as follows:

> "… if pardon or amnesty has been granted to the … defendant for some of the offences which are included in the aggregate sentence or if the prosecution has been suspended for some of these offences or if the … defendant has been released on a temporary licence or if the penalty of some offences included in the aggregate sentence of the … defendant has been freely given away or if some of the related offences became time barred …"

Mr Nicolapoulos's point is that none of those circumstances precisely corresponds to the present case. That may be so (though some of the language is pretty opaque); but they are very closely analogous, and it would not be in the least surprising if under Greek law the same principle was treated as applying, all the more so since the Framework Decision requires member states to have specialty arrangements in place. Mr Nicolapoulos's opinion is unsupported by reference to academic authority or judicial decision; and it cannot carry significant weight against the Prosecutor's assurance.

41. I accordingly accept that the extradition of the Appellant to serve a sentence in respect of two out of the twelve matters covered by the conviction element in EAW 5 would not involve a breach of the specialty condition.

ISSUE (B): SECTION 20

42. The Appellant was convicted of the offences underlying EAW 5 in her absence. In those circumstances the Judge was required by section 20 (3) of the 2003 Act to decide "whether [she] deliberately absented [herself] from [her] trial". If he decided that she did not she did not so absent herself, he was obliged by section 20 (5) to decide "whether [she] would be entitled to a retrial or (on appeal) to a review

amounting to a retrial". If she was not so entitled, he was obliged to order her discharge. It is common ground that the burden on both points is on the judicial authorities. I will consider the two questions in turn.

Section 20 (3)

43. The authorities recognise that a person may be regarded as deliberately absenting himself or herself from a trial if they are aware of the proceedings, and their essential nature, and the circumstances clearly show that they have no intention in taking part in those proceedings – see in particular para. 99 of the judgment of the ECHR in in *Sejdovic v Italy* (2006) 42 ECHR 360, cited in the context of the 2003 Act in *Atkinson v Supreme Court of Cyprus* [2009] EWHC 1579 (Admin), [2010] 1 WLR 570, *per* Collins J at para. 29 (pp. 585-6). The Appellant had left Greece before the proceedings in question were commenced, but the judicial authorities' case before the District Judge was that the Appellant was aware of them because they had been served on her sister and it could safely be presumed that she had informed her of them. The Appellant, however, asserted in her witness statement that she had cut off all communications with her family, and her lawyer, in Greece after coming to this country and that she had no knowledge of the proceedings until her arrest in 2011. It appears from the District Judge's recitation of Mr Middleton's submissions before him that she also gave oral evidence to that effect, though we have no details.

44. The way in which the District Judge dealt with this issue is unsatisfactory. He found the Appellant to be cunning and manipulative and an unreliable witness; and he made an explicit finding at para. 12 of his judgment that "she did flee Greece in full knowledge of pending proceedings and determinedly … set about concealing her identity". But the obvious reading of that is that it is a reference to the proceedings underlying EAW 1, which had already commenced. Those underlying EAW 5 were not started until 2007, and the Judge's generalised finding cannot fairly be read as applying to them. Mr Stansfeld attempted to get round that difficulty in two ways, which I will take in turn.

45. First, he submitted that "whilst unfortunately DJ Purdy did not provide separate reasons for his finding for each … EAW, it is plain that he rejected the veracity of the Appellant's evidence, which included [her] assertion that she did not have contact with her mother, sister or lawyer after leaving Greece". I do not think that that is good enough. On a point of this importance it was necessary that there be an explicit finding directed to the question of her knowledge of the relevant proceedings.

46. Secondly, he contended that:

> "… if an individual facing criminal proceedings, with an obligation to notify the court of her whereabouts, flees the jurisdiction and adopts a new identity, that individual can properly be held to have expressed an intention not to take part in any criminal proceedings that might be subsequently brought against them. It is a clear and stark attempt to completely change ones life and implicit in that must be acceptance of any consequences that might flow from that decision."

I cannot accept that submission either. The authorities are clear that the putative fugitive must know at least of "the existence of the criminal proceedings against him

and of the nature and the cause of the accusation" – see, again, *Sejdovic, loc. cit,* and *R (Czekala) v District Court in Bydgoszcz* [2010] EWHC 1895 (Admin).

47. Subject to the second question, I would hold that the District Judge's findings on the question of the Appellant's knowledge of EAW 5 were inadequate.

Section 20 (5)

48. Further information from the judicial authorities in Greece which was before the District Judge referred to the Appellant having the right to "file a request for cancellation of procedure which, *if admitted by the competent court* [my emphasis], may lead to the appeal being re-heard, in which case she will be entitled to represent herself or be represented by an attorney, submit evidence and examine witnesses". (That wording comes from information directed to EAW 1, but similar wording was used in relation to EAW 1-4, and it must in principle be equally applicable to EAW 5.) It is well established that for the purpose of section 20 (5) the right to a retrial or appeal must be absolute: see *Bohm v Romanian Judicial Authority* [2011] EWHC 2671 (Admin) and *Mucelli v Secretary of State for the Home Department* [2012] EWHC 95 (Admin)). It was submitted to the District Judge that the reference to the request having to be "admitted" suggested that the right to an appeal would only be available at the discretion of the court. In his judgment he recorded a concession by Mr Stansfeld that "the retrial guarantees are not (perhaps) 'not of the clearest'". However he went on to hold, without further discussion, that "that which is provided by the Greek judicial authority does provide … s. 20 (5) retrial/appeal protection".

49. As part of the preparation for the appeal the judicial authorities were asked to provide further information on the appeal/retrial question. We were not shown the terms of the request, but the inevitable inference is that, in one form or another, it was conveyed to them that the terms of the previous "further information" had been unsatisfactory. Mr Stansfeld's only recollection was that the request raised the question whether Greece had ratified the 2009 Framework Decision, which reinforces the protection for persons tried *in absentia.* A letter from Ms Zairi dated 17 October 2012 reads (so far as material) as follows:

> "… Greece has not yet ratified the 2009 Framework Decision on the European Arrest Warrant. However, in accordance with Article 5 par. 3 of the 2002 Framework Decision and consequently in accordance with the 2009 Framework Decision, we confirm that Ms. Ilia, if returned to Greece, will be entitled to a retrial or appeal in which she will be permitted to examine witness [*sic*] and the merits and evidence of the case. Furthermore we confirm that these rights are guaranteed from the Greek law."

(The underlining appears to be in the original.) Mr Stansfeld submits that this puts the issue under section 20 (5) beyond doubt: the letter gives an unqualified assurance that the Appellant will, if returned, be entitled to a retrial or an appeal equivalent to a retrial.

50. Mr Pyromallis submitted a report on this issue dated 8 October 2012. This referred to the provisions of the Greek Civil Code relating to the right of appeal and to the right to have judgments reached in the absence of a party, which normally require proof of

force majeure, set aside. He makes the point that in both cases there are applicable time limits. He summarises his opinion as follows:

> "(a) A retrial or an appeal in the Greek law is permitted only if deemed admissible
>
> (b) The deadline for lodging an appeal or an annulment against the decisions in question has passed.
>
> (c) A force majeure submission (for a delayed filing of a legal remedy) in the present case could only be based on the lack of legal knowledge of the relevant proceedings (due to lack of legal summoning, i.e. service of the decision)
>
> (d) The appellant is already treated as having deliberately absented herself from the trials."

That opinion is of course consistent with the wording used in the further information that was before the District Judge.

51. That report predated the letter of 17 October 2012 which I have set out above. But Mr Pyromallis submitted an addendum report in which he made it clear that the further assurance did not affect his view. He said that the letter amounted to no more than a statement that the Appellant would be entitled to a retrial "in accordance with Greek law" – but the effect of Greek law was as he had already summarised it. I cannot read the letter in that way. Even in isolation, it plainly constitutes an unequivocal assurance that if the Appellant is returned to Greece she will have a right to a retrial or appeal with the required characteristics; and that is reinforced by the context, namely that the letter had patently been sought in response to concerns about this issue. Mr Pyromallis may be right that that can only be achieved by the exercise of a judicial discretion; but if so the judicial authorities have committed themselves to exercise that discretion in her favour.

52. Mr Middleton in his skeleton argument relied on both Mr Pyromallis's reports, but he made a number of particular points about the letter of 17 October 2012, namely – (a) that it did not constitute a diplomatic assurance; (b) that there was no indication that the Office of the Public Prosecutor had the power to tie the hands of the judges; (c) that the reference to art. 5 (3) of the Framework Decision made no sense but that if the intention was to refer to article 5 (1) it added nothing; and (d) that the generalised reference to the 2009 Framework Decision added nothing. I take those points in turn.

53. As to (a), Mr Middleton offered no authority for the implicit submission that only a diplomatic assurance would be good enough, and I have no doubt that this Court is entitled to rely on an assurance by the judicial authority responsible for an extradition request unless clear reason to the contrary is shown. (I had reached this conclusion in the original draft of this judgment without having been referred to the authorities now cited by Mr Cooper in relation to the similar question raised about the "specialty assurance" (see para. 39 above); but my view remains the same.)

54. As to (b), if there were anything in this point it would need to be supported by evidence of Greek law, and I note that it is not a point made by Mr Pyromallis. I

repeat that the Office of the Public Prosecutor is the requesting judicial authority. (I would add that I find nothing surprising in a public prosecutor being able to give an assurance of this kind: we know from *Assange v Swedish Prosecution Authority* [2012] UKSC 22, [2012] 2 AC 471, that in many EU countries public prosecutors are "part of the 'judicial corps'" (see *per* Lord Phillips at p. 500C), and the Public Prosecutor's Office in the present case is described in its correspondence as part of the Athens Court of Appeal.)

55. As to (c) and (d), these are no more than niggles about the drafting: the substance of the assurance given is clear.

56. For those reasons I would hold that the requirements of section 20 (5) are satisfied.

THE BROAD CASE

57. It is convenient to start by considering first the two particular points identified at para. 20 above as the basis of the Appellant's abuse case – namely, to repeat, (1) that her pending appeal against the misdemeanours conviction is bound to succeed and (2) that the outcome of her co-defendants' appeal means that the remaining charges against her will necessarily fail. I take them in turn.

(1) THE PENDING APPEAL

58. The basis of the Appellant's pending appeal is that the original summons in the proceedings which eventually led to the misdemeanours judgment against her (4898/10) was never properly served and that it was accordingly wrong for her to be tried in her absence. Her case has to be that that appeal is so obviously well founded that the conduct of the prosecutor in seeking her return to serve her sentence cannot be in good faith. Mr Pyromallis says that it is clear from the prosecutor's own documents that the summons was served at the Appellant's mother's address in Galatsi, where she herself has never lived (though there is also reference to service on her sister). He says that such service is ineffective in Greek law and that the conviction would accordingly have to be set aside. It would then be too late to re-serve the summons, since the offences in question, being misdemeanours, are subject to a (maximum) time limit of eight years and they are alleged to have been committed in 2002. Similar evidence is given in the recent witness statement of Mr Nicolapoulos; but Mr Stansfeld has objected to the admissibility of this evidence and since (on this aspect) it takes matters no further I need not rely on it (though see para. 61 below).

59. The appeal was originally listed for determination on 25 September 2013, but it appears from Ms Kapila's note and the report from Ms Vogiatzi attached to it that although the Court did sit on that date and was addressed, at least to some degree, by Ms Vogiatzi it declined to determine the appeal because of industrial action by court staff, and it was adjourned to 26 March 2014. If it had proceeded as originally listed (and if judgment had been given promptly) we would at least know authoritatively whether Mr Pyromallis's argument was correct (though in principle there might have remained an issue, if the appeal had been allowed, whether it was always obvious that that would be so). But regrettably that did not occur. It has not been suggested that we should defer our decision any further (and I would not myself have acceded to any

such submission if it had been made); and that means that we have to reach a decision on the evidence that we have.

60. I do not believe that the evidence before us establishes that the Appellant's appeal is bound to succeed (and in fact I note that even Ms Kapila only submits that it is "very likely" to do so). Of course I see that *prima facie* service at an address where (it is said) the Appellant has never resided should not constitute service on her, even if the address is that of her mother or her sister. But that must depend on whether it is accepted that the Appellant never resided with her mother and also on the relevant Greek rules about service. EAW 5 itself gives the Appellant's "former residence" as Galatsi. The prosecutor in further information dated 31 August 2011, which concerns (*inter alia*) the service of EAW 2 and 4, appears to proceed on the basis that the service of EAW 4 on the Appellant's mother constituted good service. As Mr Stansfeld has submitted, the judicial authority has plainly adopted a considered position that service was duly effected.

61. In those circumstances I do not believe that this Court can become involved in deciding who is right on this question, which must be for the Greek courts. The Supreme Court has recently emphasised in *Zakrzewski* (above) that the power of the Court to prevent abuse is not to be used as an indirect way of mounting a challenge to the factual or evidential basis of the warrant: see para. 13 of the judgment of Lord Sumption, at p. 331 D-E. I would also observe that even on the basis of the Appellant's evidence the position is not entirely clear. Mr Pyromallis says (see p. 4 of his report) that "if the defendant's whereabouts are unknown and cannot be found" the documents can be served on "a competent clerk of the town hall of the defendant's last known residence". Although Mr Pyromallis does not say so, it appears from the statement of Mr Nicolapoulos referred to at para. 7 (9) above that the authorities did attempt to make use of this provision, though Mr Nicolapoulos says that they got it wrong because they served the clerk in Galatsi, rather than in the area in which she herself had last resided.

62. In this connection I should also mention a matter raised in Ms Kapila's more recent note to which the Appellant evidently attaches importance. Ms Kapila quotes a contemporary note made by Ms Vogiatzi at the abortive appeal hearing in October, in which she says:

> "At the day of the hearing, I mentioned to the Court, that if the hearing went ahead and the court was ruling on the admissibility of your appeal, all the offences would be time barred, due to the lapse of time (misdemeanour offences committed between 2002-2004), which it was, also, mentioned, by the Prosecutor. However, the Five Member Appeal Court of Athens, taking in consideration all the above, refrained from ruling on your case, due to the strike of the court's clerk. As a result, your case was postponed for that reason for the above date."

But even if the concession attributed to the prosecutor is correctly recorded it does not get the Appellant home. The fact that fresh proceedings would be time-barred only matters if the appeal itself succeeds – that is, if the Appellant satisfies the court that the original summons was not properly served.

63. I should also for completeness mention that there appears to be a potential issue about whether the appeal is in time. This depends, again, on a question about service, since time for appealing would run from when notice of the judgment 4898/10 was properly served on the Appellant. In his original report Mr Pyromallis addressed the question of whether the Appellant would have a right to a retrial in relation to the misdemeanour convictions. He said that that could only be done by the mechanism of an appeal, but that an appeal would be out of time: see para. 2.2. He was later asked to "comment on the service of judgment 4898/10 on Ms Ilia" and on how that might impact on her appeal. In his supplementary report of 13 May 2013 he refers back to his original report but appears to be saying that because the purported service of the judgment was – as with the original summons – at the Appellant's mother's address time had not started to run. Although I accept that they may not be irreconcilable, there appears to be some tension between the two reports. Mr Middleton in the note accompanying the supplemental report says that "such appeal lies at the discretion of the court". It is, however, unnecessary to reach a conclusion on this question, since we are only concerned with whether the position is so clear that the prosecutor's stance cannot be in good faith. For the reasons already given I do not believe that that is a conclusion which we can reach.

(2) IMPACT OF JUDGMENT 1487/12 ON THE OUTSTANDING CHARGES

64. The Appellant's case on this aspect is based on the further report from Mr Pyromallis, dated 18 April 2013, for which we gave permission, and his short supplementary report dated 13 May, together with written submissions from Mr Middleton dated 3 May and 15 May. Unhelpfully, Mr Pyromallis's report is not cross-referred to the particular charges to which EAW 5 relates, but it is nevertheless possible to identify what he is saying, particularly with the help of Mr Middleton's notes. I will take in turn the three heads analysed at para. 15 above.

(a) Fraud

65. Mr Pyromallis's first point is that the relevant threshold distinguishing a misdemeanour from a felony has recently been raised to €30,000; but that none of the three frauds alleged exceeds that limit; and accordingly that they are time-barred. He says that in 1487/12 the conviction of Mr Giosakis was quashed on that very basis. But Ms Zairi in her note dated 3 July (see para. 8 (7) above) rebuts that argument, saying that since the Appellant was charged with fraud "by profession and habit" it was legitimate to aggregate the sums involved in each of the frauds, thus taking the case above the threshold. It is not for us to decide whether that answer is good as a matter of Greek law. What matters is that it precludes us from taking the view that the charge is manifestly ill-founded.

66. Mr Pyromallis's second point, as helpfully explained by Mr Middleton, can be summarised as follows. He says that it emerged in the co-defendants' appeal that Mr and Mrs Kalamiotis had been repaid in full the sums of which they had been allegedly swindled. He says that under a recently-introduced provision of Greek law (art. 406A of the Penal Code), a charge of swindling will not lie where the victim has been repaid in full. That leaves the offence against Bishop Koumarionos. But in his case the sum allegedly lost was only €4,991. That sum is below the threshold distinguishing misdemeanours from felonies, and accordingly the charge is now time-barred. But, again, Ms Zairi provides an answer – in short, that "in this case … it has

not been proven that the victims were indemnified prior to any examination of the case". Again, it is not for us to decide whether that answer is good as a matter of Greek law, as long as it is not manifestly ill-founded.

(b) Money Laundering

67. As explained at para. 15, the charges under this head are parasitic on those under head (a) and I need say no more about them. Mr Pyromallis does deal at some length with "money laundering"; but, as Mr Middleton points out, he appears in fact to be dealing primarily with the offences under head (c).

(c) Corruption

68. Mr Pyromallis focuses on the money laundering element in these charges. The essential point that he makes is that the Appellant's co-defendants have all been acquitted of "the principal acts" and that accordingly no charge of money laundering can lie. The principle makes sense, but I am unable to see how it applies to this case. The Appellant was not alleged to have been a "mere" launderer but to have been a party to the principal acts of corruption: it is she who is alleged to have demanded and received the original bribes (whether or not that forms a component in the actual charges): see para. 15 above.

69. It may be that Mr Pyromallis is really intending to make a different point, namely that it is hard to see how the Appellant can be convicted of receiving bribes in circumstances where the lawyers and other persons from whom she is said to have received them have been acquitted. That is more compelling. But Ms Zairi says in her note of 3 July that Messrs Kehagioglou and Emmanoulidis were acquitted "for evidence substantiating reasons which are irrelevant to the requested person". There is no basis on which we could go behind that statement. Ms Zairi does not refer to all the other co-defendants, including in particular Mr Nicolapoulos. I suspect that that is because she is focusing on the appeal judgment (1487/12), in which Mr Nicolapoulos was not involved, rather than the first-instance trial (4898/10); but what she says is plainly sufficient to undercut the case that the acquittal of a co-defendant must automatically preclude the conviction of the Appellant.

Conclusion on 1487/12

70. It is not established that the judgment in 1487/12 means that the charges underlying the accusation element in EAW 5 are bound to fail. I turn to consider the original elements in the Appellant's broad case.

71. Before I do so, however, I should note that following the hearing in June the Appellant wrote personally to the Court complaining that we had not entertained submissions from Mr Cooper on this issue and referring to materials lodged by her which, she says, demonstrates that the charges against her are groundless. We did not do so because this was not one of the matters on which we had directed that further submissions would be heard, and that in turn was because there had been no developments which were not fully covered by the oral and written submissions that we had already received. The truth is that the Appellant apparently still does not appreciate that it is not for this Court to enter into the merits of the case against her.

THE BROAD CASE MORE GENERALLY

72. The Appellant made a witness statement dated 20 October 2011 setting out with some circumstantialness what she says is the background to the charges against her – her history of political activism; her avowedly pro-defendant approach, contrasting, she says, with "the natural bias of the judiciary in consistently favouring large (often government-affiliated) corporations and interest groups"; and an occasion when she "blew the whistle" on a colleague whom she believed to be corrupt. She describes in particular her involvement in the case of Dr Lymberis (see para. 13 (c) (5)-(6) above), in which she says she stood up against pressure from powerful interest groups who wished to secure his unjust conviction and incarceration. She says that this led to increased media exposure and public criticism of her decisions, to which she ultimately responded by giving a televised interview, which went down very badly with the judicial authorities. She says that it was on this account that the series of prosecutions to which the warrants relate were commenced. She says that she received a warning from a person who she did not know but who seemed to be well-informed that "legal and political interest groups had decided to ensure that false charges be brought against me and that I would be convicted and sent to prison where I would be killed in such a manner as to appear to be an accident or suicide." Shortly afterwards she was advised by a prominent businessman to leave Greece immediately because she was in danger. It was that which precipitated her decision to flee. She denies the charges and puts forward a number of reasons why they are implausible.

73. Since the hearing before the Judge the Appellant has also lodged a number of well-written and detailed statements from a number of members of her family and from friends and associates supporting different aspects of her own statement. I am prepared to consider this material notwithstanding its late admission. I need not attempt to summarise the statements here, though I have read them with care. They paint a vivid picture of the degree of controversy in Greece, not only in legal circles but in the media generally, surrounding the Appellant's conduct, actual and alleged, in the period leading up to her dismissal. I should, however, refer specifically to Mr Pyromallis's second report, dated 2 November 2012, which addresses the question of whether the Appellant's original convictions were fair and – which is what ultimately matters – whether she could expect fair treatment on any outstanding issues if she were returned. He acknowledges that "judges in Greece are supposed to be perfectly capable of ignoring prejudicial media coverage and dealing with cases strictly in accordance with the law and evidence"; but he says that the way in which the Appellant herself has been treated demonstrates that that has not happened in her case and is not likely to happen if she is returned. She had been treated as a scapegoat for what he describes as "the para-judicial scandal": he does not give any detail of this beyond saying that it originated in intercepted telephone conversations between various people including the Appellant. He says that the evidence for unfair treatment lies partly in the weight of the sentences passed on her following the convictions with which these warrants are concerned; partly on the irregularities about service to which I have already referred; and partly on the failure of the authorities promptly to recognise the effect of the commutation of at least one of the sentences in question. He makes it clear that he has not seen the evidence in any of the cases on which the Appellant was convicted. He does not exhibit any objective material evidencing systemic bias in the Greek judiciary.

74. Mr Middleton in his skeleton argument drew attention to the statements in question and submitted, as I have said, that they demonstrated that all five prosecutions were motivated by extraneous considerations and/or that the Appellant could not count on receiving a fair trial if extradited. That submission was not developed orally at the hearing before us, save that Mr Middleton made it clear that the particular abuse submissions which I have already reviewed reinforced his case on this point. Mr Stansfeld followed Mr Middleton's lead in not addressing the point in his oral submissions but in his skeleton argument he had contended that the material relied on was of little weight.

75. It was held by this Court in *Hilali v National Court of Madrid* [2006] EWHC 1239 (Admin) that the appropriate test in considering whether the "extraneous considerations" bar in section 13 of the 2003 Act applies is lower than the balance of probabilities, and that the Court should take the approach prescribed by Lord Diplock in *Fernandez v Government of Singapore* [1971] 1 WLR 987 at pp. 993-4; and I think I should take the same approach to section 21. Applying that approach, I do not believe that the evidence shows substantial grounds for thinking that EAW 5 was issued in order to punish the Appellant for her political opinions so that the case falls under head (a) of section 13 or that if she is extradited any of the consequences under head (b) may occur.

76. I start by reminding myself of the strong presumption, recently restated in *Krolik v Several Judicial Authorities of Poland* [2012] EWHC 2357 (Admin), [2013] 1 WLR 490, (see para. 4 of the judgment of the Court, at p. 493), that a member state of the Council of Europe will be able and willing to fulfil its Convention obligations. Cogent and compelling evidence would be needed to establish that there was a real risk that the courts of a member state might either allow their processes to be used to punish the Appellant for her political opinions or that she would not receive a fair trial. Similar statements are to be found in *Hilali* itself (see per Scott Baker LJ at para. 77) and in *Dabas v High Court of Justice in Madrid* [2007] 2 AC 31, per Lord Bingham at para. 4 (p. 40 A-B): "member states, sharing common values and recognising common rights, can and should trust the integrity and fairness of each other's judicial institutions". I do not believe that the Appellant's evidence to which I have referred above establishes a real risk that those standards have not been, or will not be, observed. My reasons are as follows.

77. I take first the question of what has motivated the Appellant's prosecution and thus also the issue of the warrant. I have no difficulty in believing that her behaviour, actual or alleged, may have aroused antagonism – directly or in response to press criticism – among her judicial colleagues, including the prosecution authorities. She is on her own evidence an outspoken person: and I note her sister's frank evidence that her choice of a judicial career may not have been a good one. But it does not follow that such antagonism, justified or otherwise, will have influenced the decision to bring the charges with which we are concerned or to issue the warrant. Nor would it be right to assume that the fact that the Appellant was at the centre of a media furore disabled the authorities from taking a balanced decision. Nor does the fact that the Appellant took a public stand against corruption necessarily make it implausible that she acted corruptly herself. There is nothing about the terms of the charges themselves, or the subsequent history of the proceedings, that suggests a political motivation on the part of the prosecutor or that the charges have been fabricated: the

details quoted in the warrant are circumstantial, so far as they go, and the charge of corruption is not alas incredible – the Appellant herself says that corruption is not unknown in the Greek courts. A large number of other persons were prosecuted in the proceedings that led to 4898/10, and, notwithstanding the eventual acquittals of some or all of them, that is not easy to reconcile with the pursuit of trumped up charges designed to punish the Appellant for her political opinions.

78. The only specific evidence to the contrary is the Appellant's own account of an anonymous tip-off that a plan had been made to prosecute her on false charges and have her imprisoned and killed. The District Judge heard the Appellant cross-examined and, although he does not refer to this particular part of her account, it is clear that he was not impressed by her evidence. He said that it displayed "a high degree of manipulation" and that she "protests too much". He did not accept that she had "a rational fear of reprisal from Greek Government, judicial or business interests". I cannot in those circumstances give significant weight to her account of an anonymous warning, in lurid terms, from a person whose reliability there is no means of judging.

79. I do not therefore believe that any of the material relied on by the Appellant constitutes substantial grounds for believing that the decision to prosecute her, or the attempt now to bring her to trial, on the accusation elements in EAW 5, were based on antagonism from her colleagues or submission to media pressure. (I would add that, even if that were the case to any extent, the picture which emerges from her evidence is that any such antagonism or pressure would be more likely to be based not so much on her political opinions as such as on her actual conduct, culminating in the television interview which she herself describes. But I would be chary about basing my decision on distinctions of this kind, which may not be straightforward.)

80. I turn to the alleged risk that the Appellant may not receive a fair trial. This is still more difficult for her to establish. Even if, contrary to my finding, there was a risk that the prosecution might have been initiated for tainted reasons, it would not follow that the trial, by independent judges and nine years down the road from the events of 2005, would be tainted in the same way. There is no reliable evidence that the Court of Appeal in Athens will not hear the Appellant's case fairly and impartially. The only evidence which we have from a professional source is that of Mr Pyromallis which I have summarised at para. 73 above. But the reasons which he gives for his opinion do not seem to me to be compelling.

81. I have so far dealt with the issue by reference to sections 13 and 21 of the 2003 Act. But I do not think that any different result is reached if the Appellant's case is treated as one of abuse of process – unsurprisingly, since the matters relied on are essentially the same. The approach to allegations of abuse prescribed by Lord Phillips CJ in *R (Government of the USA) v Bow Street Magistrates Court* [2007] 1 WLR 1157 (commonly referred to as *Tollman*), at para. 84 (p. 1181) is as follows:

> "The judge should be alert to the possibility of allegations of abuse of process being made by way of delaying tactics. No steps should be taken to investigate an alleged abuse of process unless the judge is satisfied that there is reason to believe that an abuse may have taken place. Where an allegation of abuse of process is made, the first step must be to insist on the conduct alleged to constitute the abuse being identified with

> particularity. The judge must then consider whether the conduct, if established, is capable of amounting to an abuse of process. If it is, he must next consider whether there are reasonable grounds for believing that such conduct may have occurred. If there are, then the judge should not accede to the request for extradition unless he has satisfied himself that such abuse has not occurred."

I do not detect any material difference from the approach prescribed in *Hilali.* I do not believe that the Appellant has shown reasonable grounds for believing that the alleged abuse has occurred.

ISSUE (C): PRISON CONDITIONS IN GREECE

82. In the original draft of this judgment we considered and rejected a submission that the Appellant's return to Greece was liable to involve a breach of her rights under article 3 of the European Convention of Human Rights and was thus barred under section 21 of the 2003 Act. For the purpose of the June hearing the Appellant sought to introduce further evidence. I think it will be best, if somewhat clumsy, if I reproduce first my conclusions and reasoning from the November draft and then turn separately to the Appellant's more recent submissions.

(1) OUR CONCLUSION AND REASONING AS AT NOVEMBER 2013

83. The evidence relied on in this regard is contained in Mr Pyromallis's report of 8 October 2012. That report was not before the District Judge and Mr Stansfeld submitted that the Appellant ought not to be permitted to rely on it. He refers to *Hungary v Fenyvesi* [2009] EWHC 231 (Admin) and *Krolik* (above), which emphasise that the High Court will be reluctant to admit fresh evidence which was available at the time of the original hearing, even where Convention rights are in play, and that the applicant will need to explain why any such evidence was not adduced first time round. The Appellant has lodged a witness statement from her then solicitor, Ms Gordon of Christian Khan, seeking to explain the late introduction of not only Mr Pyromallis's evidence but a raft of further evidence. It refers to several difficulties which she encountered, but representation was transferred to her firm only on the eve of the hearing before the District Judge and she does not deal with why the evidence in question could not have been assembled in the six months or so prior to the hearing. There is a good deal of force in Mr Stansfeld's objection, but I would be inclined in the particular circumstances of this case to err on the side of generosity and consider the evidence.

84. Mr Middleton addressed the prison conditions issue in a single short paragraph of his original skeleton argument, acknowledging that the equivalent submission had recently been rejected in a different case (the reference was evidently to *Achmant* – see below); and he made it clear that he did not wish to advance any oral submissions on this aspect.

85. I do not believe that Mr Pyromallis's report establishes that if the Appellant were in due course to be convicted and sentenced to a term of imprisonment in respect of the accusation matters in EAW 5 (or indeed were remanded in custody on return) there was a substantial risk that the conditions which she would experience in prison would be such as to represent a breach of her rights under article 3 of the Convention. The

issue whether the undoubted problems of the Greek prison system are such as to amount to a systemic failure such that an extradited person may suffer a breach of their article 3 rights has been considered on at least three occasions in this Court – see *Symeou v Public Prosecutor, Patras Greece* [2009] 1 WLR 2384, *Herdman v City of Westminster Magistrates Court* [2010] EWHC 1533 (Admin) and *Achmant v A Judicial Authority in Thessaloniki* [2012] EWHC 3470 (Admin). On each of those occasions the Court had reports from Mr Pyromallis and was referred to the relevant international materials but was not prepared to hold that the evidence was sufficient to rebut the strong presumption, recently restated in *Krolik* (see para. 4 of the judgment of the Court, at p. 493), that a member state of the Council of Europe will be able and willing to fulfil its Convention obligations. I should have required cogent submissions to persuade me that Mr Pyromallis's evidence in the present case, which is in fact on this issue quite short and in general terms, justified this Court in taking a different view. We had, as I have said, no such submissions: I suspect that Mr Middleton, though he made no concessions, took the realistic view that the decision in *Achmant*, handed down on 1 November 2012, i.e. after the date of Mr Pyromallis's report, made it unprofitable to pursue this point further.

(2) MR COOPER'S SUBMISSIONS IN JUNE

86. Mr Cooper relied on a number of developments since March 2013 which if taken together required, so he submitted, a reconsideration of our previous conclusion. They are as follows.

87. First, he sought permission to put in a report, served on 2 May 2014, from Professor Konstantinos Tsitselikis, a legal academic and human rights activist with extensive experience of prison conditions in Greece. The report was nominally addressed to conditions in what Professor Tsitselikis describes as the "female section" of Korydallos prison in Athens (though it seems in fact that the men's and women's prisons at Korydallos are on separate sites, albeit adjacent), which is where female prisoners are held on remand. It is common ground that the Appellant would be held at Korydallos if returned on the accusation element in the warrant (I appreciate that a few weeks remain to be served on the conviction element, but neither party took a point on that in this context). Much of the report is in fact about the deficiencies in the Greek prison system generally, relying on a range of published national and international materials which Professor Tsitselikis collates and explains: these include a report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") dated 10 January 2012 which was not referred to in *Achmant* (the hearing in the Magistrates Court in *Achmant* was in fact in March 2012, but the Judge seems to have been referred only to a CPT report from 2010; and that remained the case on appeal to this Court). The report identifies severe problems of over-crowding, under-staffing and very poor living conditions generally. Professor Tsitselikis emphasises that these problems had been drawn repeatedly to the attention of the Greek government but that no serious attempt had been made to redress them: a scheme had been devised to release large numbers of prisoners on tag but its implementation was uncertain. Specifically as regards Korydallos, and the women's section, he asserts that there is severe over-crowding, with inmates enjoying (on average) only 2-2.5 m^2 of personal space and also that as a result of under-staffing parts of the prison have in effect been ceded to the control of the prisoners, allowing "stronger groups of inmates to impose their will upon other prisoners". Mr Cooper

acknowledged that the judicial authority would have to be given the opportunity to answer this evidence, which would necessarily involve further delay; but what he was seeking at this stage was permission to admit it.

88. Secondly, Mr Cooper relied on the decision of the City of Westminster Magistrates Court (Deputy Senior District Judge Arbuthnot) dated 10 July 2013 in *Court of Appeal, Thrace v Bosma*, refusing an application for extradition to Greece on the basis of evidence that conditions in the prison at which the defendant would be held if returned (which was not Korydallos prison) were such as to give rise to a breach of article 3. The District Judge relied primarily on evidence (both written and oral) from Professor Tsitselikis, which seems to have been broadly in line with the report put before us. She was impressed by the fact that although conditions in Greek prisons had been a matter of concern for some time the materials before her suggested that no effective steps had been taken to improve matters and the severe austerity measures taken in Greece over the last two years had made the prospect of improvement in the near future very unlikely.

89. Third, he relied on the decisions of the European Court of Human Rights in *Nieciecki v Greece* (11677/2011), and, very recently, *Tsokas v Greece* (41513/12), [2014] ECHR 526, both of which found breaches of article 3 in relation to prison conditions in Greece (though again neither concerned Korydallos).

90. Fourth, he referred to a bundle containing a quantity of miscellaneous reports and materials evidencing the poor standard of prison conditions in Greece (and a recent news report available online), including the 2012 CPT report, though in truth most of this material advanced his case a good deal less than the evidence of Professor Tsitselikis.

91. Mr Cooper acknowledged that these materials were being put in at a very late stage; but he submitted that at the first hearing the article 3 issue had been effectively, if not formally, closed off by the decision in *Achmant*, whereas there had since then been what he described as a sea-change in the attitude of the Courts both here and in Strasbourg – no doubt partly reflecting an actual deterioration in conditions in Greek prisons. He submitted that we had a duty, even as an appellate court, where necessary to admit and consider up-to-date evidence tending to show a risk of a breach of article 3. He referred us to *R v Secretary of State for the Home Department, ex p. Turgut* [2000] EWCA Civ 22, [2001] 1 All ER 719.

92. Mr Stansfeld submitted that none of the judicial decisions referred to advanced matters. They were concerned with the position in other prisons, based on the evidence peculiar to those prisons; and it would be quite illegitimate to assume without evidence that all Greek prisons suffered from the same problems. The only evidence that related to Korydallos women's prison was the report of Professor Tsitselikis. He was unable to deal with that since it had been lodged so late. He made it clear that (as Mr Cooper had accepted) if it was admitted the judicial authority would need to consider whether to adduce evidence of its own and/or to seek to cross-examine the witness. But his primary submission was that the evidence should not be admitted at this remarkably late stage, three years after the start of the proceedings and as a second attempt after the circulation of our draft judgment rejecting the case based on the evidence of Mr Pyromallis. He acknowledged that in a case involving human rights it might be necessary for an appellate court to entertain further evidence,

but that could only be in exceptional cases: he referred to *Fenyvesi* and *Krolik* (above). There had been no such sea-change as Mr Cooper asserted: the evidence of Professor Tsitselikis in fact showed that the problems in Greek prisons were of long standing, and the Appellant had always been aware of them.

93. It is tempting to have regard to the already extraordinarily long history of these proceedings and to dismiss out of hand the application to adduce the evidence of Professor Tsitselikis. But I think it would be wrong to do so. If there is a justification for the evidence being sought to be introduced now, i.e. in mid-2014 rather than at an earlier stage, the fact that, for quite other reasons, the case has already been delayed is immaterial: it is the Appellant's good fortune that the case is still live, so that she has the opportunity to adduce the evidence, but that cannot be held against her. The real question is whether there is indeed such a justification. Not without considerable hesitation, I have concluded that there is. In my view it is legitimate that the recent acceptance by the City of Westminster Magistrates Court of a submission that conditions in a major Greek prison, albeit a different one, constituted a breach of article 3 – distinguishing *Achmant* partly on the basis of the 2012 CPT report and the evidence of further deterioration – coupled with the decisions in Strasbourg should have caused the Appellant's advisers to seek fresh evidence. While there are certainly points to be made about Professor Tsitselikis's report, including about the source of some of the statements in it, it is sufficiently substantial to require a response of a kind which Mr Stansfeld was not in a position to give at the hearing.

94. The upshot is that I believe that we are obliged to admit the evidence of Professor Tsitselikis and to give the judicial authority in Greece the opportunity to answer it. That gives rise to certain case-management questions, which I would propose that we deal with as follows.

95. First, by e-mail dated 6 June 2014, i.e. two days after the hearing, Mr Cooper copied to the Court a short supplementary report from Professor Tsitselikis. The Appellant and her advisers must appreciate that the Court will not accept a drip-feed of further materials in this way, and we have paid no regard to the further report in reaching the conclusion set out above. However, having reached the conclusion that I have without reference to the supplementary report, it seems to me that it would be disproportionately disciplinarian for us to forbid the Appellant from relying on it at the next stage.

96. Subject to one complication, it seems to me that the sensible approach to a timetable, recognising that this Court cannot sit again before the Michaelmas term, is to direct that the judicial authorities lodge such material as they wish in response to the evidence of Professor Tsitselikis by the end of September and to fix a further hearing, with an estimate of one day, as early as possible in that term, with a direction that Professor Tsitselikis be available at the hearing for cross-examination (in person or by video-link). I would however be sympathetic to a somewhat more extended timetable if the judicial authorities preferred: it is not for the Appellant, even if she wished to do so, to complain of any delay in the particular circumstances of this case. Mr Stansfeld has undertaken to inform the Court by 4 p.m. on 15th July if more time is sought. It will make listing easier if the adjourned hearing does not have to be before the present constitution of the Court, and since the remaining issue is entirely self-contained it does not seem to me necessary that that should be the case.

97. The complication is that we were told at the hearing that Professor Tsitselikis is due to be giving evidence about conditions in Korydallos women's prison in other proceedings in the Magistrates Court "in the next few weeks". Very recently we have been told that that will in fact be in the week beginning 15 July. It was initially suggested that it might make sense for Professor Tsitselikis to give evidence to this Court on the same visit. That is not now practicable; but even if it had been I would not myself have acceded to that invitation: it would be very undesirable that both we and the Magistrates Court should be reaching a decision, as primary fact-finders, on the same point, based on essentially the same evidence, at the same time. There may in fact be a positive advantage in our deferring the adjourned hearing before this Court until the decision of the Magistrates Court in that case is known; indeed in the event of either party appealing on this particular issue it may make sense for that appeal to be heard with the deferred hearing in this case. We do not, however, know when the decision in that case will be promulgated or whether either party will seek to appeal. The prudent course in my view is to proceed on the basis of the timetable outlined at para. 96 above for the time being, while giving the parties liberty to apply if the course of the other proceedings in the Magistrates Court suggests that it should be adjusted.

98. I should mention for completeness that while this judgment was in the final stage of preparation we were told that on 7 July 2014 in the City of Westminster of Magistrates Court District Judge Purdy, having heard evidence from Professor Tsitselekis, refused extradition to Greece on article 3 grounds in a case concerning prison conditions in Crete. I had already formed the views expressed above before receiving this information and I have not taken it into account.

ARTICLE 8

99. I should briefly refer to the fourth of the issues which we permitted to be raised at the June hearing. It was common ground that the adjustment to which I have referred at para. 38 above means that the term of imprisonment which the Appellant still has to serve in respect of the "concealment" convictions is, after taking into account time served on remand in this country, only 24 days; and that she had in addition had to wear a tag (initially enforcing an nine-hour curfew, though now only eight) from 6 December 2012 to date. It was submitted that it would be a disproportionate interference with her rights under article 8 of the European Convention of Human Rights for her to be returned to Greece to serve so short a sentence, and particularly when she had undergone the further interference with her liberty represented by so long a period on tag. We were referred to two recent decisions concerning the relevance of time on tag in an extradition context – *Marzurkiewicz v District Court in Rzeszow, Poland* [2013] EWHC 1332 (Admin) and *Goman v District Court in Lublin, Poland* [2013] EWHC 3606 (Admin). It should be understood that it has not been argued before us that there is any rule of English law that time on tag should be deducted on some arithmetical basis from the sentence in the receiving country (though if by the law of that country it would in a particular case mean that there was no time left to serve it would of course be wrong to extradite – those were the facts of *Marzurkiewicz*): its asserted relevance is only to proportionality in the context of article 8.

100. I do not believe that we should rule on this matter. It would fall to be decided only once the prison conditions issue has been determined, and consideration of it is bound

to be conditioned by that decision. If the Appellant fails on that issue there may be formal difficulties about refusing to extradite on one element of the warrant while doing so on the other; and in any event it is hard to see a proportionality argument succeeding in circumstances where the Appellant was being returned in any event. Conversely, if the Appellant is not being returned otherwise the article 8 argument would seem to have considerable force. (At first sight it might seem that it could not arise anyway because if prison conditions precluded the Appellant's return on the accusation element in the warrant that would equally be the case as regards the conviction element; but in fact Professor Tsitselikis's evidence was that female prisoners are incarcerated following conviction at a different prison, Thiva, to which his evidence was not specifically directed.)

CONCLUSION

101. I would make the following orders:

(1) As regards EAW 1-4, following the withdrawal of the warrants, the order of the District Judge should be quashed and the Appellant should be discharged.

(2) As regards EAW 5, the appeal is adjourned to a further hearing on the prison conditions issue only, to be fixed in accordance with para. 96 above, on the basis that all other grounds of appeal are dismissed.

Lady Justice Rafferty:

102. I agree.

ANNEX: THE WARRANTS

EAW 1 – Issued by Georgios Pantelis, Public Prosecutor, Court of Appeal, Athens on 1 March 2007

EAW 2 – Issued by Christos Bardakis, Deputy Public Prosecutor, Court of Appeal, Athens on 18 April 2011

EAW 3 – Issued by Panagiotis Brakoumatsos, Deputy Public Prosecutor, Court of Appeal, Piraeus on 18 April 2011

EAW 4 – Issued by Chrysoula Papataxiarchi, Deputy Public Prosecutor, Court of Appeal, Athens on 18 April 2011

EAW 5 – Issued by Evangelos Pantioras, Public Prosecutor, Court of Appeal, Athens on 18 April 2011