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



No. AC-2024-LON-000714

NCN: [2024] EWHC 1773 (Admin)

Royal Courts of Justice

Tuesday, 21 May 2024

Before:

MR JUSTICE HOLGATE

B E T W E E N :

RAZZA ALY

Applicant

- and -

ITALIAN JUDICIAL AUTHORITY

Respondent

MR G HEPBURN SCOTT (instructed by Bark & Co Solicitors) appeared on behalf of the Applicant.

MS J SWAIN (instructed by the CPS) appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE HOLGATE:

1 The Court of Modena, Italy seeks the extradition of the applicant, Razza Aly. The arrest warrant, an accusation warrant, was issued on 7 July 2023 and was certified by the NCA on 12 July 2023. The warrant contains two allegations.

2 First, it is alleged that, in conspiracy with Hadi Muhammad and Sheraz Ali (a minor), the applicant committed voluntary manslaughter in Modena on 31 March 2023. It is alleged that he caused the death of Wahid Muhammed Arham Abdul by using a knife to strike several blows, causing a deep wound in the left thoracic area, two penetrating wounds at the cervical level, a wound to the left arm and other wounds.

3 Secondly, it is alleged that at the same time the applicant attacked with a knife Useme Arshed and Zain Zaman, who had intervened in the defence of Mr Abdul with the aim of causing their death. This is charged as attempted voluntary manslaughter.

4 The arrest warrant states that the maximum sentence is 24 years' imprisonment.

5 The applicant was arrested in this country on 25 July 2023. On 25 October 2023, District Judge Rai made directions for the extradition hearing to which I refer below. That hearing took place on 2 February 2024, before District Judge Clarke. At the hearing, the applicant raised two bars to extradition. First, he contended that he should be discharged pursuant to section 21A of the Extradition Act 2003 because prison conditions in Italy would breach Art.3 of the ECHR. In her judgment, 29 February 2027, the judge rejected that argument and the applicant does not seek to appeal that part of her decision.

6 Second, the applicant contended that there are substantial grounds for believing that if he were to be extradited to Italy, he would be exposed to a real risk of being subjected to a trial involving a flagrant denial of justice in breach of Art.6 of the ECHR.

7 Article 6.3 provides:

“Everyone charged with a criminal offence has the following minimum rights:

“(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

“(b) to have adequate time and facilities for the preparation of his defence;

“(c) ...

“(d) ...

“(e) to have the free assistance of an interpreter if he cannot understand or cannot speak the language used in court.”

8 The applicant contended that the evidence before the Magistrates' Court showed a real risk that trial documents would not be translated from Italian, a language he does not understand, into Urdu, a language he does. The judge received evidence from Mr Simone Zancani, an Italian advocate. She decided that there was no evidence to show substantial grounds for believing that there would be a flagrant breach of natural justice in the event of extradition.

Accordingly, she decided that there was no bar to extradition and she made an extradition order.

- 9 In his application for leave to appeal the applicant challenges the judge's conclusion on the Art.6 issue. On 10 April 2024 Sir Peter Lane ordered that the application for permission be adjourned to a rolled-up hearing. That hearing took place before me this morning.
- 10 The applicant signed a proof of evidence dated 18 September 2023, which was before the judge. He was not called upon to give oral evidence at the hearing. He was said to be aged 18, though some documents put his age at 24. In his proof, he described the poor living conditions of his family in Pakistan. He started working at a young age to help support them. He decided to leave his home country for Italy to seek better opportunities.
- 11 He arrived in Italy by boat in August 2022 and claimed asylum. He was kept in a refugee camp. He said that he had been aware of a fight having taken place in a neighbouring camp, but he did not know the victim and he was not part of the fight. He says that he does not appear on a video of the incident. However, he became worried when the manager of his camp told him that the police were looking for him. He suspected that another person, whom he says was involved in the fight, gave the applicant's name to the police. He says that he would not have become involved in violence so as to jeopardise his claim for asylum.
- 12 The applicant says he left Italy as he felt scared. He did not know what to expect. He arrived in the UK in April or May 2023 and applied for asylum here. He was placed in government accommodation until he was arrested on the arrest warrant.
- 13 Mr Zancani produced two reports. He was asked to address two issues:
- (1) whether in the light of a judgment of the Supreme Court in Italy, the judicial authority would provide an Urdu interpreter throughout the proceedings;
 - (2) whether the applicant would have the evidence against him translated into Urdu in good time for his trial.
- 14 In his first report dated 13 November 2023 Mr Zancani made several declarations. He stated that he understood his duty was to help the court achieve the overriding objective by giving independent assistance by way of objective, unbiased opinion on matters within his expertise. He said also that he understood that this duty overrode any obligation to the party by whom he was engaged.
- 15 He said in para.14 that he knew of no conflict of interest of any kind other than any which was disclosed in his report. In para.15 he said that he did not consider that any interest which had been disclosed affected his suitability as an expert witness to deal with the issues on which he gave evidence.
- 16 In para.24 of his report Mr Zancani stated that Italian trials are generally conducted in the Italian language. In para.25, he referred to Directive 2010/64/EU. He said that in order to comply with that Directive, Italy had introduced Art.143 of its Code of Criminal Procedure, the text of which he set out translated into English. There is no issue in this case about whether Italy has adequately given effect to the Directive by means of Art.143. There is no suggestion of any failure on the part of that State to transpose the requirements of the directive adequately.

17 The last sentence of Art.143 states:

“The free translation of other documents or even parts of them, deemed essential to enable the defendant to know the charges against him, may be ordered by the judge, even at the request of a party by reasoned act which may be appealed together with the judgment.”

18 Article 2 of the Directive deals with the right to interpretation. It is not suggested that extradition in this case would give rise to a real risk of any breach of Art.2. In para.27 of his report. Mr Zancani made it clear that there was no issue in this case in relation to the provision by the Italian State of an interpreter for the applicant for his trial, should he be extradited.

19 Article 3 deals with the translation of *essential* documents:

“Right to translation of essential documents

“1. Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.

“2. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

“3. The competent authorities shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect.

“4 There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.

“5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof and”

20 It is also relevant to refer to Recital 14:

“The right to interpretation and translation for those who do not speak or understand the language of the proceedings is enshrined in Article 6 of the ECHR, as interpreted in the case law of the European Court of Human Rights. This directive facilitates the application of that right in practice....”

21 Mr Zancani suggested in his first report that there had been a reluctance on the part of the courts in Italy to accord to accused persons the rights ensured by the Directive and by Art.6.

He gave, by way of example in para.31, the response of the courts to the entitlement to a translation of an arrest order. He pointed out, rightly, that this is a document which is required to be translated by Art.3(2) Directive.

- 22 In paragraph 33 of his report, he suggests that the neither the Directive nor Art.143 of the Italian Code provide for exceptions to this obligation in cases where a defendant has voluntarily evaded capture. He refers to a decision of the Supreme Court in Italy where that court has introduced an exception to the right to translation in respect of a fugitive defendant or an accused person who is “unavailable” He has not produced a copy of the judgment in any form, including a translation, and the court has not been shown any passage from a decision of the Supreme Court in Italy in which that approach has been applied to the obligation under Art.3(2) of the Directive. That is significant because in this case, as Mr Zancani’s second report made clear, the prosecution in Italy accepted that the arrest order should be translated, and a translation has been ordered by the court. The concern, which was expressed in the first report turns out not to apply in this case.
- 23 The material which the District Judge was given, and which is available to this court in the present application, is consistent with the Italian courts taking the view that there is no need for documents falling within the scope of Art.3 of the Directive to be translated for the benefit of somebody who is not present in some form for the purposes of a trial in Italy – for example, a person who is absent from the trial, or a person who is a fugitive. Mr Zancani did not suggest that that approach is objectionable in terms of either the Directive or Art.6 of the ECHR. Mr Hepburn Scott, who appears today on behalf of the applicant, did not make any submissions to the contrary.
- 24 Turning to defendants generally, at para.35 of his report Mr Zancani refers to two situations in which domestic courts have sought to limit the right to have documents translated. The first is a situation where legislation imposes a time limit for raising an objection. In fact this is not related specifically to Italy. It is a decision of the CJEU, the reference for which is case C-242/22 PPU, a decision handed down on 1 August 2022. That was a clear cut case where the court criticised a time limit for raising an objection in circumstances where there had been a fundamental failure to notify a defendant even of his right to interpretation. As I say, there is no suggestion that that first criticism is applicable in the present case so far as extradition to Italy is concerned.
- 25 Secondly, it appears to be suggested that in Italy, the courts have decided at a high level that a defendant who complains about a failure to translate material must identify the prejudice he is thereby caused. Assuming that that is an approach which has been taken in Italy, I have been shown no material upon which it could be said that that it fails to comply with Art.6 of the ECHR or the Directive.
- 26 Mr Zancani then went on to suggest that the applicant's own case illustrated the points or concerns that he was seeking to raise. At this stage in para.39 of his report, Mr Zancani referred to the applicant’s entitlement to a translation of the arrest warrant, relying upon Art.3(2). He referred to the appeal process in which that complaint had been rejected, but as I have said, it is apparent from his second report dated 20 December 2023, that this complaint has been resolved. Both the public prosecutor and the judge in Modena have agreed that the arrest order should be translated. It appears that that has been done and a copy was received by Mr Zancani on 18 December 2023.
- 27 Going back to his first report at para.53, Mr Zancani raised a different point. He explained that a defendant in Italy may agree to the matter being dealt with by summary judgment on the basis of the prosecution's evidence. Where this occurs the procedure results in a

reduction of the sentence that would otherwise be imposed by one-third. However, the decision to choose the summary judgment procedure must be that of the defendant himself, unless he gives his advocate a special power of attorney. Mr Zancani says that to be able to choose between these options, a non-Italian speaking defendant needs to be able to have access to a translation of the relevant documents, otherwise the trial process discriminates improperly against a defendant who does not speak Italian.

- 28 Finally, at para.57, Mr Zancani raised a different form of discrimination. He said that a defendant who does not speak Italian and who does not have access to translations of relevant material will not be able to answer questions by the prosecutor completely and effectively during an interrogation carried out at the end of the investigation process and before he is charged.
- 29 Mr Zancani's second report was in fact a letter dated 20 December 2023 to the applicant's solicitor in London, enclosing a translation of an application he had made in Modena for a number of prosecution documents to be translated. As a result of that application, it appears that as at the time when he prepared the letter of 20 December 2023, the only document that had been ordered to be translated was the arrest order. Mr Zancani said that that implies that the judge in Italy had refused to order the translation of any other documents. In my judgment, that is not an inference that can fairly be drawn from the material before the District Judge and this court.
- 30 Mr Zancani includes a response dated 21 November 202 from the public prosecutor to his application. But surprisingly, neither he nor the claimant's lawyers in England have provided a translation of that document for the benefit of the court below or this court.
- 31 I also note that his letter refers to a handwritten note by the judge on his application in Italian for further translations to be made. There are in fact two handwritten notes on the document. One is on the first page and the other is on the last page. It appears that one of the two notes has not yet been translated for the benefit of this court.
- 32 In her judgment, the District Judge summarised Mr Zancani's evidence-in-chief at paras.15 to 22. At para.21, he dealt with the subject of his independence as an expert and explained that he had acted for the applicant in the Italian courts. He explained the extent to which he had done so. The cross-examination of Mr Zancani was summarised by the judge at para.23 and following.
- 33 The judge's findings regarding the evidence before her appear at paras.32 to 34. At para.34, she said this:

“Turning to the evidence of Mr Zancani. Mr Swain submits that he is not an independent expert as he acts for the RP. What is of concern to this court is the fact that it is not clear from the reports prepared, that he acts for the RP, however, it became clear in oral evidence that the

RP has signed a power of attorney appointing Mr Zancani as his defence lawyer. That is not clear from the first report, and is only implicit in the second report. This is of particular concern given Mr Zancani said that the power of attorney was signed by the RP before the first report was produced. I do not doubt Mr Zancani's genuine motives in having himself appointed in this way as it is clear to me that he was trying to assist this court. However, in so doing he has

naturally compromised his independence. Mr Zancani accepted in evidence that

as the RP's lawyer, he has a duty – as one would expect and as is the case of a lawyer in England and Wales – to act in the best interests of his client, the RP. That naturally means that the independence of Mr Zancani is diminished. Furthermore, it is of concern that when dealt with in cross examination, Mr Zancani would not accept that this could affect his independence. Further, he sought to demonstrate this by explaining the two things that he has done and nothing further, on behalf of the RP. However, he accepted that the public defender could have made the application for translation that he did and provided him the response.

Further, it is not clear to me how adding to the Supreme Court appeal, as he did, would assist this court in the extradition proceedings, and seemed to demonstrate Mr Zancani acting on behalf of the RP and in the best interests of the RP. As a result, I cannot treat Mr Zancani as an independent expert in this case. I accept as an Italian lawyer he has expert knowledge that this court does not, and I will therefore give weight to the factual legal matters he gives evidence about, but cannot attach weight to the opinions he provides.”

34 The judge dealt with the Ar.t6 issue at paras.44 to 57 of her judgment. At paras.45 to 47, she summarised the relevant legal principles which she should apply. Mr Hepburn Scott makes no criticism of that summary. Indeed, the principles set out by the judge align with the analysis of the law in his skeleton.

35 At paras.50 to 56 of her judgment, the judge said:

“50. In this case it appears that Article 143 of the Italian Code of Criminal Procedure provides for an interpreter. It also provides for the written translation such as to enable to exercise of the rights and facilities of the defence of various documents and that there shall be free translation of other documents or even parts of them deemed essential to enable to defendant to know the charges against him.

51. It seems that the Italian Court of Cassation in its decision (Para 28 of Mr Zanconi's report) sets out that an “allagotta defendant” need not have written translation of the testimonial depositions taken at trial as they fall outside the scope of Article 143. It is inferred that this relates to a fugitive. However, what the court appears to be saying is that where a defendant was deliberately absent, they will not have the right to the free written translation of the evidence given at trial.

52. Further it appears from the factual evidence I take from Mr Zanconi, that the RP has a right to apply for translation of documents and a right to appeal a decision not to provide those documents.

53. Put shortly, the defendant will have a right to an interpreter, he has the right to have the translation of documents felt necessary and in compliance with article 6 ECHR. What is not guaranteed is the unfettered right to free written translation of all documents.

54. At an earlier hearing in this case, District Judge Rai made direction for assurances to be provided that a) the relevant documents at the RP's trial in Italy will be translated into Urdu and b) the RP will have the assistance of an Urdu interpreter at his trial in Italy.

55. It is submitted that the JA has not responded to this, and this heightens the concerns regarding a risk of an unfair trial if returned. This adds little in my view. With respect to Judge Rai, she was dealing with a case management decision, not having heard this case, and without the relevant reports or underlying full submissions that I have heard. What is clear is that the RP will be entitled to an interpreter, and so the fact that that part of the query has not been answered, adds nothing. Indeed, the absence of a response, in light of the information I have heard, and consideration of article 143, does not concern me.

56. Upon the evidence before me, there is not evidenced to conclude that there are substantial grounds to believe that there will be a flagrant denial of justice or nullification of rights.”

36 Mr Hepburn Scott accepts that there is a rebuttable presumption that a State such as Italy, designated as a Part 1 territory for the purposes of the 2003 Act, will fulfil its obligations under the ECHR. That presumption may only be rebutted by clear and cogent evidence (see *Agius v Malta* [2011] EWHC 759 (Admin)). The relevant threshold under section 21A(1)(a) of the 2003 Act is a flagrant denial of justice. I refer to the decision of the European Court of Human Rights in *Ahorugeze v Sweden* [2011] ECHR 1829, and in particular, paras.114 to 116:

“114. The term ‘flagrant denial of justice’ has been considered synonymous with a trial which is manifestly contrary to the provisions of Article 6 or the principles embodied therein (see, among other authorities, *Sejdovic v Italy* [GC]. No. 56581/00, § 84, ECHR 2006-II).

“115 It should be noted that, in the twenty-two years since the *Soering* judgment, the Court has never found that an extradition or expulsion would be in violation of Article 6. This indicates that the ‘flagrant denial of justice’ test is a stringent one. A flagrant denial of justice goes beyond mere irregularities or lack of safeguards in the trial procedures such as might result in a breach of Article 6 if occurring within the Contracting State itself. What is required is a breach of the principles of fair trial guaranteed by Article 6 which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article.

“116. In executing this test, the Court considers that the same standard and burden of proof should apply as in the examination of extraditions and expulsions under Article 3. Accordingly, it is for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if removed from a Contracting State, he would be exposed to a real risk of being subjected to a

flagrant denial of justice. Where such evidence is adduced, it is for the Government to dispel any doubts about it...”

37 I have also had regard to the decision of the European Court of Human Rights in *Kamasinski v Austria* [1991] 13 EHRR 36, in particular paras.72 to 75.

38 In this court, as indeed before the District Judge, Mr Hepburn Scott has placed some reliance upon the absence of assurances by the judicial authority in response to what is described as a direction by District Judge Rai on 25 October 2023. I have not been shown a formal order of the Magistrates’ Court. Instead there is a handwritten record of various directions given. The relevant one simply reads:

“Assurance sought from JA that RP will have an Urdu interpreter throughout proceedings and will have any documents translated into Urdu by 15 November.”

39 However, during the hearing before me, Mr Hepburn Scott readily and rightly accepted that it is not appropriate for a court in this country to seek assurances to deal with an alleged risk of exposure to a trial process not compliant with Art.6 unless the applicant produces clear and cogent evidence capable of rebutting the presumption. I am told that the hearing before District Judge Rai on 25 October was a case management hearing for directions only in a busy list with a large number of other cases and, in those circumstances, only a short period of time was devoted to the matter. There is no explanation as to why the District Judge should have thought it appropriate to request or direct the giving of assurances of this nature. There appears to have been no judicial consideration as to whether the applicant had produced clear and cogent evidence capable of rebutting the presumption that Italy is compliant with the Directive. It would be unexpected for a contested issue of this nature to be considered during the course of a short hearing concerned only with directions.

40 But the point really does not go anywhere. The District Judge’s direction related in part to the provision of an interpreter for the trial. There has been no response by the JA to the direction, and yet in the extradition hearing and before this court, the applicant has not raised any issue about that aspect.

41 With regard to translation of documents, the note shown to this court simply says, “... will have *any* documents translated into Urdu”. If that is an accurate note of what was said by the District Judge, the direction was far too wide. There is no right under Art.6 or under the directive to have *any* documents translated. Indeed, it would not be surprising if a judicial authority were to disregard such a request expressed in such an inappropriate way. The language used bears no relationship to the jurisprudence on Art.6 or to the terms of the Directive. But putting that point to one side, it is difficult to see how, as a matter of principle, District Judge Rai could have thought that the direction was justified as a requirement to be satisfied before an extradition order could be made in this case.

42 Certainly, if the judge conducting the subsequent extradition hearing found the applicant’s case on the Art.6 issue not to be clear and cogent, he or she ought to disregard the fact that no assurance had been provided in response to the direction.

43 Standing back from all this, I think the proper way to read the direction is that the judicial authority was being told that if it was going to volunteer an assurance it should do so by the date stipulated – 15 November 2023. Understood in that way, the direction was no more than a sensible exercise of case management powers. Ultimately, District Judge Clarke had

to decide for herself whether the applicant's case was clear and cogent in rebutting the presumption applicable to compliance with Art.6. So the question for this court is whether she was wrong, irrespective of the direction given by District Judge Rai on 25 October.

- 44 On the subject of the expert's independence, I do accept that the District Judge was entitled to conclude that Mr Zancani had been involved in representing the applicant, and in so doing he had come under a duty to act in the applicant's best interests. To a degree, therefore, it can be said that that did compromise his independence. But for the purposes of dealing with this application, I prefer to assume that it did not, and to treat his evidence and opinion for the purposes of these proceedings as untainted. The question still remains, however, whether his written and oral evidence provided a clear and cogent basis for rebutting the presumption that the judicial authority would comply with Art.6.
- 45 I have reached the clear conclusion that it did not, not even arguably so.
- 46 First, there is no general right to have *any* document produced by the prosecution translated into a language which the accused person understands. Article 3 focuses on "essential documents". That includes the documents referred to in Art.3(2), but no point is now taken on behalf of the applicant as regards non-compliance with that provision.
- 47 Article 3(3) requires the competent authorities to decide in any particular case whether any other document is "essential". That provision also enables a party's legal representatives to submit a reasoned request to show that other documents are essential. Even so, Art.3(4) makes it clear that there is no requirement to translate those passages of a document considered to be essential which are not relevant for the purposes of enabling an accused to know the case against him or her.
- 48 Article 3(5) provides for a right to challenge a decision that there is no need for translation to be ordered.
- 49 In her judgment at para.52 the judge noted that the applicant has a right both to apply for translation of documents and a right to appeal a decision not to provide documents for which a translation has been requested. In other words, she proceeded on the basis that the Italian State has a procedure compliant with Art.3(5) of the Directive. That conclusion is not challenged in this court.
- 50 In para.24 of her judgment, referring to the evidence which she received, the judge noted that in making the application in November 2023 for prosecution documents to be translated, Mr Zancani had "considered the index and decided what the important documents were". Mr Hepburn Scott accepts that Mr Zancani did not suggest he had considered anything other than the index of documents. He did not suggest, for example, that he had read the documents in Italian himself. That may be understandable because he was not the publicly appointed defence lawyer expected to conduct the trial in due course should the applicant be extradited.
- 51 So, on that basis, it was not demonstrated by him, with reasons, why the entirety of each of those documents needed to be translated. The letter of 20 December 2023 from Mr Zancani says that he explained to the court in Modena why the translation was necessary for the defence. True enough, the documents are listed from the index and a generic explanation is given at the end as to why collectively they are needed. But there was no attempt made to explain the nature of individual documents and why each of them or parts of them needed to be translated.

- 52 This court cannot know what stance has been taken by the Italian prosecutor to the application for documents to be translated because his response has not been translated. All we know, from other information, is that when the request was made that the arrest order be translated, he agreed. In addition this court does not know, on the material which the applicant has chosen to produce, the full extent of the representations to which the judge was allegedly responding in the two handwritten notes to which Mr Zancani has referred. Furthermore, as I have said, he has translated only one of those notes. We also do not know, for example, whether those handwritten notes represent the final response of the Court of First Instance in Modena to the application for translation.
- 53 We do know that Mr Zancani must have received the document he produced with the handwritten notes before his letter to the applicant's solicitors dated 20 December 2023. But importantly, Mr Zancani did not say whether, *since then* and prior to the hearing before the District Judge, there had been any challenge to any decision in Italy, assuming that it was a formal decision capable of challenge. If it was not a formal decision capable of challenge, Mr Zancani did not explain what steps had been taken to obtain a formal decision, and if that decision was adverse to the applicant, what steps had been or could be taken to challenge it on appeal. This is important because, I repeat, there is no suggestion that Italy's laws fail to comply with Art.3(5) of the Directive.
- 54 For these reasons, the material produced by the applicant in this case, in order to rebut the presumption that his trial in Italy, if extradited, would comply with Art.6 is far from clear and cogent. The applicant does not have an arguable case.
- 55 However, the matter goes further. Paragraph 51 of the District Judge's judgment, referring to Mr Zancani's report and a decision of the Italian Court of Cassation, inferred that the JA treats an accused as not being entitled to the translation of documents under Art.143 of the Code if they are a fugitive or absent. In other words, there is no requirement to translate documents for a person who is not going to take part in a trial. Mr Hepburn Scott suggested that what Mr Zancani was really saying was that even if the applicant were to be extradited, he would still be denied translations by the Italian courts simply on the basis of his having been a fugitive in the past or absented himself from Italian justice. But counsel did accept that Mr Zancani did not make any express statement to that effect. But he suggested that such a statement was implicit in his report. However, I cannot find anything in the text which could support that suggestion.
- 56 Indeed, this is such an important point not only in this case, but also more generally, that I have no doubt that if Mr Zancani had intended to make it, he would have done so expressly. In any event, if the point was to be taken, he ought to have made the point explicitly, partly as a matter of elementary fairness so that the judicial authority could know what was being alleged against the extradition and they could respond. He did not do so. I think it would be wholly inappropriate to draw any such adverse inference against the respondent on the material upon which the applicant is relying in these proceedings.
- 57 For all these reasons, I have come to the firm conclusion that the proposed ground of appeal is unarguable. The application for permission to appeal must be dismissed.
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CERTIFICATE

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This transcript has been approved by the Judge.