Brief to Counsel – Habeas Corpus Writ by Mogens Hauschildt

I, Mogens Hauschildt, defendant, wish to serve a writ of habeas corpus against the governor of the prison (HMP Pentonville), based on an abuse of executive power by the British authorities in getting me extradited to London prisons from Germany on May 2013.

I am a Danish national, in my 75th year, resident of Switzerland, residing before arrest in the South of France and Monaco. In 2008, I was subjected to an in-absentia trial at Wood Green Crown Court, at a time when I was unfit to plead, under treatment by doctors in my home in South of France (Villa les Anges) a place I had been bailed to by HHJ Mitting in December 2007.

I was arrested in Germany on the 4 January 2013 and held for nearly 5 months incarcerated there. The German authorities were misled and lied to, in 2013, when dealing with an EAW request from the UK to extradite the defendant. Without lying about essential facts, behind the extradition and an in-absentia trial in 2008, the defendant would not have been extradited from Germany. The highest court in Germany was told a direct lie by the British authorities.

Prior to an in-absentia trial in 2008, the court-appointed counsel, amicus (Edward Jenkins QC and Dominic Lewis, colleagues in the same chamber to the Crown's prosecuting barrister), submitted to the Court, that the in-absentia trial would be in breach of Art.6 of ECHR and therefore, the EAW could not be used if the in-absentia trial resulted in a conviction of the defendant.

In a submission dated the 30th November 2008 (Exhibit A), a week into the trial, the Crown sets out a response to some of the issues raised by amicus, as to then-recent EAW Protocol dated the 30th September 2008. An EAW could clearly not be used to extradite the defendant, although, this was not stated in the Crown's submission. Nonetheless, the Protocol clearly states: *"that the defendant will be served without delay, after surrender, and thereupon be informed of his right to a retrial or appeal."*

The defendant had never been served with such information, either in Germany or arriving in the UK in May 2013. The

defendant has already brought this to the attention of the Appeal Court, in his application, dated the 11th June 2015.

These notes should be seen together with the above mentioned, the defendant's application for an appeal of conviction and sentence made in June 2015, and the exhibits submitted to the court (1-155 and A1-A31). Including the two medical reports submitted before sentencing in 2013.

The EAW was incorporated in the UK through the Extradition Act 2003 and UK signed the 30th September 2008 Protocol.

As of writing, (24th May 2016), the defendant, has not received any reply from the Court of Appeal after waiting near eleven months for such reply. The defendant has been incarcerated 41 months under the most restrictive conditions, in effect, having served already a sentence of 6 years and 10 months.

I. Summary of the main issues:

The Protocol, the obligations in the EAW according to the EU Framework Decision (Crown's submission) see Exhibit A.

The breach of Article 6 ECHR (Amicus submission, dated the 17.11.08) see Exhibit B.

The lies and unfactual information supplied to the German authorities in 2012-13 by CPS and the British police. (Two emails from David William CPS dated the 12.04.13 and DC Loftus dated the 10.04.13 both addressed to the German chief prosecutor Mrs Beyse). See Exhibits C.

A. The British authorities deliberate abused their executive power in the extradition, by lying and providing non-factual information. Later the British Authorities did not comply with the EAW Protocol of providing a re-trial.

Prior to the in-absentia trial in November 2008, the court-appointed legal counsel, amicus, Edward Jenkins QC and his assistant Dominic Lewis, specific submitted to the Court that, the British authorities could not use the EAW, in the event of a conviction, because the defendant had no legal representation at the in-absentia trial, in addition to questions as to other serious issues, all raised in the latest EAW protocol dated the 30 September 2008.

On the 30 November 2008, a week into the in-absentia trial, the Crown made a submission to the Court as to the issue of EAW.

The Crown with Amanda Pinto QC and Denis Barry submitted to the Court, a two page response, including setting out (para 4.) that the Member State may refuse to execute the EAW drafted for the purpose of executing a custodial sentence if the person did not appear at the trial resulting in the decision, unless the EAW states that:

> (a) the person can be shown unequivocally to have known of the date of the trial resulting in the decision, and was informed that a decision may be made handed down if he failed to appear; or
>
> (b) knowing of the date of the trial, he had given a mandate to his counsel to defend him at the trial and he had indeed been so defended; or
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> (c) after being served with the decision and informed of the right to a retrial or appeal in which he has the right to participate and which allows the merits of the case to be re-examined, and which may lead to reversal of the decision, he neither contests the decision nor requests an appeal or re-trial, with the time limits: or
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> he was not personally served with the decision but will be, without delay, after the surrender, and thereupon be informed of his right to a re-trial or appeal as above. The conditions are disjunctive.

The facts:

(a) The defendant did not know about the trial taking place, as he was ill and being treated in his home, by two doctors, suffering from severe depression and grief. Further, the documentation from Interpol clearly showed that the British did not attempt to contact him. Further, the French police did not go to the villa before more than one year after the in-absentia trial. See the defendant's submission to the Appeal Court, the documentation from Interpol Ex. 118.

(b) Considering that the defendant did not know about the trial, he could hardly give a mandate to his defence lawyers to be at the trial without him.

(c) Considering that the defendant was never served with such decision, the defendant did not know of this.

As to the requirement of

(d) The defendant was not served or informed without delay, after his arrival in the UK, his right to a re-trial or appeal as above.

The defendant was never informed as to these obligations by the British authorities, the requirement under the international agreement and based on Framework Decision, signed later by the UK, submitted with comments to the Court in 2008, by the prosecution.

The defendant maintain that the British authorities had an obligation to bring the above, without delay, to the defendant's attention arriving in May 2013 to London.

The British authorities had an obligation to make sure that the Protocol and Framework Decision under which the defendant had been extradited from Germany was based on proper and factual grounds.

See additional below paragraph IX. "The EAW used was based on lies and non-factual information as to the most important issues concerning the extradition"

B. The in-absentia trial - a breach of Article 6 ECHR

The amicus, Edward Jenkins QC, made submissions on the 17 November 2008 [Ex. 92] as to the question of whether or not the trial should proceed in the absence of the defendant. He developed the arguments which he and Dominic Lewis had summarised in a skeleton argument. They concluded:

> "The Court is therefore invited to say that the Defendant cannot have a fair trial in his absence, and adjourn the matter until such times he can be in attendance."

1. HHJ Guggenheim's draft Proposed Direction re Absent Defendant, [Ex. 100] appears to be altered, in longhand, by amicus objections, and various text had been removed including: "One of the matters I have had to consider is whether the defendant can have a fair trial even though he is not here. I have decided that he can." Further "everyone in ensuring that Mr Hauschildt has a fair trial." instead the amicus had the Judge to say: "in protecting the Defendant's interests a.f.a. they are able".

It is clear that amicus has a considerable reservation as to the fairness of the proceedings before the trial and made this clear to HHJ Guggenheim in his submissions.

2. According to printed out notes from the amicus, made on the 2nd December 2008, the ten-day into the trial, he wrote: "Invitation for the Crown to call various witness rather than lead them" he continues with various notes and wrote: *"We would be grateful for a final list. Invite the Court to indicate what our peculiar duties are, but we are now going beyond that."*

That Amicus found his role and duties to be peculiar, must have been extremely difficult for an experienced barrister, more so when his recommendation more or less had been ignored by the Court. The amicus had in longhand, on other pages of his typed notes and submission, noted that he considers the Judge acting as the second prosecutor and that he, amicus has just been an observer at the trial.

The defendant has spoken to Dominic Lewis, who acted as assistant to Edward Jenkins QC, as amicus. It appears that many of the prosecution witnesses had been lead, including Mrs Schutzmann.

The defendant should like to bring to attention the consideration to "*the fairness to the defendant was of prime importance*." (R. v. Smith (2006) EWCA Crim 2307, R. v. O'Hare (2006) EWCA Crim 471, Crim LR 950)

3. The fact, that the defendant was unrepresented at the trial, is a clear breach of the ECHR Art. 6 (3) (c), and the minimal requirement for holding an in absentia trial in accordance with EU Framework Decision. The EU Framework. Art. 6 (3) (c) iii "the right to legal assistance of one's choosing". The right to be provided with legal representation means the right to be... with genuine and effective representation, not the mere presence of a lawyer. The decision has relevance since the defendant was extradited from Germany based on an EAW. The condition as to the German Extradition Rules (International Rechshilfeverkehr Strafsachen (IRG)), art.83, makes legal representation for the defendant at an in-absentia trial a fundamental obligation by the Contracting State.

4. The Amicus set out a list of objections in his submission [Ex. 95] to the Court as to the use of this defence statement and stated that:

"the prosecution's application must be opposed because it would seriously prejudice the fairness of the defendants trial." and continued "Rather, in a case in which the defendant does not appear and is not represented, it exacerbates it: we cannot of course call any evidence on this point;" The amicus conclusion:

"A trial of this defendant in his absence and unrepresented would be substantially prejudiced by the admission of the defence statement and thus this court should exclude it."

5. In the Amicus submission to the Court, dated the 17 November 2008, as to holding a Trial in Absence [Ex. 92] the amicus argued various issues as to the "checklist" set out in R. v. Jones (2002) UKHL, in addition, to point out that it was a complex case and in contrast to R. v. Jones, which was an ID armed robbery case. The amicus also brought to the Court's attention the evidential inconsistencies and possible need for further disclosure in the case. Further, that: "the risk of the jury reaching an improper conclusion about the defendant's absence - it is submitted there is a real risk of such prejudice in a case such as the present one"

Amicus conclusion (para. 7):

> "The court is therefore invited to say that the defendant cannot have a fair trial in his absence, and adjourn the matter until such time as he can be in attendance."

C. The German Authorities and their request for information as to the EAW from the United Kingdom.

Initially, the German did not believe the defendant, as to an in-absentia trial had been held in London, as the EAW had been based on "criminal investigation" and allegation. Even Germany's highest court, with six judges had decided the EAW on this basis. This was in itself a breach of Protocol. It is clear that this court would not have accepted such extradition if they had known the truth.

Nonetheless, the defendant has maintained, that an in-absentia trial had been held in London, resulting in the comprehensive request from the German authorities to the British. Considering the British did not reply and nothing came to support the defendant's claim, ultimately Mrs Beyse wrote urgent fax to London.

The fax dated the 11.02.13 [Ex. 112] from Chief Prosecutor S. Beyse sent to the City of London Magistrates Court, London, requesting various information:

".....In view of the fact, that the accused claims that he was not sent a summons to the court hearing the 24 November 2008 and that he was not notified of it in any other way, while on the other hand, it was perfectly possible for the English authorities to reach him at his known address at any time, I would ask you please to answer the following questions:

Did the accused have notice of the court hearing set for 24th November 2008? If affirmative, how and by whom was the notification communicated?

Did the accused receive a personal summons to the above-mentioned hearing? If affirmative, when, how and by whom was it sent.

Was the accused notified of the hearing in any other way? If affirmative, when, how and by whom?

Was the accused informed of the charges against him? If affirmative, when, how and by whom?

Was the accused informed that the case against him could be heard even if he were to fail to appear?

Was the defence counsel of the accused obliged to cease representing him because the accused had failed to appear for the court hearing on the 26 September 2008?

Was the accused notified of the fact that the defence counsel had been appointed for him by the court? Was he informed of the identity of his defence counsel? If affirmative, when by whom and how?

After the issue of the arrest warrant on 26 September 2008, what steps were taken with the view to taking the accused into custody?

Was the verdict of the jury of 9 January 2009 communicated to the accused?

Did the accused have any legal recourse open to him against the above-mentioned verdict, and was he informed of it?

Has the accused, or the legal counsel of the accused, submitted any appeal or taken any legal steps against the verdict of 9 January 2009?

Has the penalty imposed already been determined? If affirmative, in what amount?

Will, the accused be given the right, after having been handed over, to call for a new court proceeding in which the accusation against him will be comprehensively reviewed and where he will be granted the right to be present at the court hearing?

All these questions was never answered and the German prosecution did not receive any reply at all from the Court.

After further communications, fax and emails, in early April 2013, DC Loftus and David Williams sent answers to some of the questions, but in piecemeal, obviously reluctant to answer all the questions.

Since the German's believed the most important issue was if the defendant was represented at the in-absentia trial, the Article. 6 of the ECHR and as set out in the EAW Protocol, this representation was not clear from the documentation submitted to the Germans.

This resulted in a specific request from Ms Beyse to David Williams and DC Loftus on the 10th April 2013 (Ex. C.), asking if the defendant was represented by a defence lawyer in the trial against him in his absence.

DC Loftus replied on the 10th April 2008 saying: "David Williams has just sent you a fax as much information as he can. Mogens Hauschildt had Queens Counsel Edward Jenkins and Dominic Lewis as his junior."

David Williams replied on the 12th April 2013 (Ex. C), as to this question stating: "The counsel appointed by the Wood Green Crown Court to represent Mogens Hauschildt at his trial in absence was Edward Jenkins QC and Dominic Lewis. The prosecution was also represented by a QC and a junior counsel....." This was a blatant lie, as Edward Jenkins QC and Dominic Lewis did not represent Mogens Hauschildt, as they pointed out in their many submissions to the Court before and during the in-absentia trial. The defendant was not represented at the trial in absentia.

II. Further:

The EAW Protocol and EU Framework Decision were blatantly abused by the British authorities. The CPS deliberate lied and mislead the German authorities, on main issues which already

had been brought to their attention, by amicus, prior to the in absentia trial, if the trial ended in a conviction.

The Council of the European Union, the Council Framework Decision governing Article 5. (1) as to decision rendered in absentia.

The extradition was in contravention of the German extraditions rules, 'International Rechshilfeverkehr in Strafsachen (IRG)', art.83

The in absentia trial was a breach of Art.6 of ECHR, as set out by amicus (Submission dated the 17 November 2008).[Findlay v. UK 24. E.H.R.R. 221] "entitled to a first instance tribunal which fully met the requirement of Art 6 (1)]"

The in absentia trial was not adversarial as stated by amicus to their submission dated the 13 December 2008 [Ex. 107] to the Court.

The defendant had been incarcerated for more than 3 years and 5 months, in conditions which the Chief Inspector for prisons has stated is "inhuman, squalor and filth, conditions not even fit for a dog" (The Times, 9th January 2016 pages 8 and 9)

The defendant has been denied legal aid for an appeal. Not been offered a lawyer to assist him for a new trial or his appeal Art. 6 (1) of ECHR. His rights to have legal advice to an appeal: "equality of arms" (égalité des armes) has been totally ignored. It took the defendant 21 months to get access to an old laptop without spellcheck.

Until now, the defendant has been denied a re-trial. Art 6 ECHR (3) (c) or have not been proper capable of applying re-trial, further, since the absence of legal representation at this stage could in certain circumstances affect the fairness of the proceedings as a whole

Protocol 7 Art.2." everyone convicted of a criminal offence to have his or her conviction or sentence review by a higher tribunal". It is at least arguable that the words of the text do not achieve this as to "application for leave as a form of review under this provision" Protocol No.7 to the Convention as amended by Protocol 11. Article 2. Right to appeal in criminal matters.

The defendant had been denied his rights under Art 6 (3) (6) "requires the accused to have "at his disposal for the purposes of exonerating himself, or of obtaining a reduction in his sentence,

all relevant elements that have been or could be collected by the competent authorities"

Further, as to EHRR Art 6 (3)(c) as to representation and "....that representation must be effective" [Ebanks v. UK (2010) 51 EHRR 2 and Art 6 (3)(d) as to hearsay evidence.

III. Timeline in Germany

- 20th September 2012, after the defendant's suicide attempt, the German police became aware that a European Arrest Warrant had been issued on September 2008 by HHJ Lyons at Wood Green Crown Court.

- Without informing the defendant, the German police contacted the German prosecution who decided to take the issue to the Braunschweig City Court to have the EAW confirmed. The EAW had been based on that the defendant was subject to "criminal investigation" in London. The City Court agreed with the extradition, thereafter

- The State Supreme (Highest) Court of Saxon, in Braunschweig, decided to go ahead with the EAW, based on that the defendant was subject to criminal investigations in London.

- 4th December 2012, the highest court in Germany, the Bundesgerichtshof, with six judges decided to issue the arrest of the defendant, based "on criminal investigation" in London. The court had not been informed about the in-absentia trial.

- The German police waited for one month, to after Christmas and New Year to arrest the defendant on Friday the 4th January 2013.

- The defendant was taken to Goslar police station on the 4th January 2013.

- The same evening, late at 19:30, the defendant was brought to Goslar City Court, where the defendant informed the court that an in-absentia trial had taken place in London and that the defendant was not informed as to such trial and also unfit to plea at the time.

- Next day the defendant was transported to Wolfenbüttel prison, to the hospital department.

- 11th January 2013 the German state prosecutor submitted to the court the arguments of extradition based on the defendant is subject to criminal investigation in London.

- 22nd January, the defendant was brought to Braunschweig prison after being in the prison hospital since his arrest.

- 11th February the state prosecutor wrote 13 detailed questions to London, which the British authorities should normally answer within 60 days, as to the EAW Protocol procedure.

- 21st March, the German state prosecutor wrote again to London, pointing out the 60 days maximum response time, in accordance with the Protocol, otherwise the defendant would be released.

- 14th May the State Court in Braunschweig decided that, after the information received from London (CPS with David Williams and the police with DC Loftus) on the 10th and 12th April 2013, all confirmed by the German chief state prosecutor Mrs Beyse, that the extradition should go ahead as:

- the defendant had two barristers representing him at the in-absentia trial;

- the French police had been several times to the defendant's villa in 2008, prior to the in-absentia trial;

- the trial had already commenced on at the pre-trial hearings on 23rd January and continued the 28th February 2008 (which was bail hearings) and the defendant, therefore, had absconded;

- that the defendant, previously had absconded on the 10.11.2006;

- that the defendant had seen and accepted the final indictment used at the in-absentia trial;

- finally, the defendant had the right to a re-trial, by a normal procedure of appeal as set out in the Protocol of EAW.

- A Court order was issued dated the 23rd May 2013, that the extradition should go ahead.

- 23rd May, the defendant was transported to Hanover prison, staying one night, on the way to Frankfurt.

- 24th May, the defendant was transported to Kassel prison staying one night.

- 25th May, the defendant arrived in Frankfurt prison and stayed 4 nights.

- 29th May the defendant is taken to Frankfurt airport and travelled to London with three British police officers (all having a huge hangover to deal with). Arriving in London at 11.15.

- 30th the defendant stayed overnight in Heathrow Police Station, subjected to a terrible treatment, aggravated by the confiscation of his nine prescribed and issued medication from Germany. Without the defendant knew it, DC Loftus carried out most of the inspection of belongings standing next to the defendant. Although, the defendant had met DC Loftus twice before, and spend even hours with him in the same room, the defendant was in so much distress that he did not recognise or noticed that it was Mark Loftus.

- 31st the defendant was taken to Wandsworth prison.

The defendant only attended one court hearing in Germany, on the 4th January 2013, the day of the arrest. The defendant never went to any further court hearing, during the near five months in German prisons, nor attended any meeting with the prosecution in Germany. The defendant had an extensive correspondence with the German chief prosecutor and his lawyer (funded by the defendant's son) from a Berlin lawyer, Frau Dr. Grãfin Margarette von Galen from G.M.B.S. Rechtanwãlte (proper titles is most important in Germany Mrs, Doctor and Duchess)

IV. German Law on International Legal Assistance in Criminal Matters, paragraph 83, section 3

In accordance with paragraph 83, section 3 of the German Law on International Legal Assistance in Criminal Matters, extradition is not legal:

when the judgement on which the request for extradition is based has been pronounced in the absence of the accused and

when the accused has not been issued with a personal summons to the court hearing and

has not been notified by any other means of the hearing which has led to the verdict in absentia,

unless it be the case that the accused, having knowledge of the proceedings directed against him,

in which he had the support of legal counsel, has avoided receiving a personal summons by resorting to flight,

or if, after having been handed over, he has been granted the right of new court proceedings in which the accusation against him is to be comprehensively reviewed coupled with the defendant's right to be present at the court hearing.

V. The judgement for extradition by the State Supreme (Highest) Court of Saxon, Braunschweig, dated the 14th May 2013.

This decision was based on the submission by the chief prosecutor and the latest replies from London. The court entirely acted according to the information received from London during early April, including the above-mentioned fax and emails from DC Loftus and David Williams.

Considering this judgement has not been translated to English, attention should be brought to the following. (in parts, translated by the defendant)

- The judgement states that through the proceedings after the 26.09.08 the defendant has been represented by lawyers appointed by the Crown.

- That the Court specific appointed in November 2008, after the defence team stepped down, a new defence lawyer to represent the defendant thereafter.

- That in November the prosecution had sent the Skeleton Arguments and summon the defendant, by a courier service

- From November 2008 that the French police attempted to meet the defendant at his address in France and arrest him according to the issued arrest warrant – however without success.

- That the defendant had legal representation at the in absentia trial, and thereby an opportunity to defend his case in accordance with ECHR judgement dated the 12.02.1985

- That the defendant had been personally summoned as to the trial and the date by the French police

- The Supreme Court has no doubt as to the truth submitted by the British prosecution in the detailed communication on the 10th April 2013

- That the pre-trial hearing on the 21.02.2008, the defendant was represented by the appointed lawyers (the same as later appointed to represent the defendant in November) and told the trial will continue the 24.11.08.

- That the hearings in January and February 2008, was considered pre-trial hearings, where the defendant spoke to the court and judge leading up to the trial, and there the defendant was also represented by his appointed by his defence lawyers.

- The defendant was represented throughout the proceedings by defence lawyers and therefore his rights was secured in accordance to (Judgement 12.08.2010 journal number: 6 Ausl 28/10, refer to IRG-K)

- The fact that the defendant did not himself select his defence lawyers, and that these defence lawyers had been appointed by the Court in November 2008, still allowed the defendant to present his case to the court.

- That the defendant will have the right to a re-trial in accordance to the Protocol of EAW.

There are several non-factual statements in this judgement, all taken from the Skeleton Arguments made by the prosecution.

The most important is that the Court did not have any doubt as to the submission by the British authorities (CPS and police) in April 2013 to Mrs Beyse. Therefore, the court believed that the defendant was represented by two barristers at the in-absentia trial.

Further, the court believed that the trial itself started already on the 23rd of January, continued on the 28th February 2008 and that the defendant was questioned by the court as to the allegations. This is a central issue, because what were just a "rubber-stamping" of a bail hearing taking a few minutes, with only the defendant saying his name. The German judgment concluded that the trial had started in January 2008 and that therefore, the defendant had absconded, as the defendant had done previously in 2006. The defendant did not abscond in 2006.

VI. What recourse has the defendant?

What recourse have the defendant, when an Issuing Member State, abuse the process, by the abuse of executive power?

The defendant being extradited have no legal recourse against the Executing Member State, after the extradition?

It was clear that the German authorities had been mislead and the defendant would not have been otherwise extradited.

Lord Dyson (Warren v. Att-Gen for Jersey (2012) A.C. 22. Stated that the court had to strike a balance between the public interest in ensuring that those who are accused of serious crimes should be tried and the competing public interest.

The defendant believes that the in-absentia trial was an affront to the public conscience.

The defendant believes that the police and prosecution exploited the defendant's illness and grief.

The defendant believes that the Crown deliberately planned to deceive the German authorities.

The defendant believes that the Home Office and Prison Service has assisted the Crown and the police, to attempt in every way to make the defendant's incarceration unbearable in order to break down the defendant during his 36 months of incarceration in London prisons. This should be seen in relation to the defendant age, illness and grief.

Considering that the defendant is a Danish National, the Executing State of the European arrest warrant had an additional obligation to make sure that the EAW had been based on a proper legal basis in accordance with the Framework Decision. There should be some responsibility when an Issuing State abuse the executive power and lied and mislead.

The question, when the Issuing member abuse the process and deliberate lie or hide the facts to the Executing Member State, where the defendant is not a national of either the Issuing or the Executing states, there should be some obligation on the defendant's Member State to at least, make sure that a proper ground exist for the use of the EAW.

Therefore, if a Danish National is subject to an EAW, which specific have been issued and related to an in absentia trial, there should be some obligation to get proper records from such in absentia trial. Such records could have been obtained, both from the Crown and the amicus.

Although, the Protocol provides the Issuing and the Executing States, to proceed in accordance with the relevant procedure. The defendant maintain, that the Issuing state's of the EAW and it's possible executive abused of process, should be considered. Specifically when it concerns an in absentia trial, where, the Issuing member, may be tempted, to mislead the Executing member.

Procedural rights in criminal proceedings are a crucial element for ensuring mutual confidence among the Member States in judicial cooperation. Nonetheless, members states do from time to time get tempted to cheat and abuse the process.

In a case, where the Issuing State deliberately abuse it's power and use an EAW, by lying as to the non-existence of grounds for non-recognition and non-enforcement, as set out in the Framework Decision, the defendant believes that some protection against such abuse should be given to the defendant.

Legal references:

In accordance to para 10 of the Council Framework Decision (13 June 2012) "The mechanism of the European arrest warrant is based on a high level of confidence between the Member States. Its implementation may be suspended only in the event of serious and persistent breach by one Member States of the principles set out in Article 6(1). ....."

Chapter 1, Article 1 (3) specific set out "This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental principles as enshrined in Article 6 of the Treaty on European Union."

Article 5 (1) decision rendered in absentia, "the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case of the issuing Member State and to be present at the judgement;"

VII. The Defendant's health and medical status

The defendant has since the 1980s and the events in Denmark, ending at the European Court of Human Rights in 1989, suffered from PTSD due to his long 309 days incarceration in solitary confinement in 1980, ending with 55 days hunger strike on the 5th October 1980.

In addition, it is a fact, that the defendant suffered from severe depression and grief after the death of his soul mate and living-in-partner for near 19 years, in March 2008, and therefore, total unable to deal with anything in London and the case. It is also clear, that from the death of his partner-in-life until his arrest in Germany, he suffered years of severe depression and grief and isolated himself from his family and friends.

The depression and grief resulted in a failed suicide attempt in September 2012 in Germany. After this failed suicide attempt, the defendant decided to expose himself to arrest, in order to get a new trial in London.

When he original had chosen to stay in Germany, it had been based on that the German extraditions laws and that Germany did not extradite unless certain condition had been in place when trials in-absentia had been held. Moreover, Germany would request a re-trial with allowing the extraditions to take place.

The British authorities knew all about the defendant depression and PTSD from the seized laptop in Portman Square, at the defendant's initial arrest in August 2006.

At the arrest in August 2006, the defendant had a heart attack admitted to University Hospital and the day after was admitted to the special coronary unit at St. Mary Hospital Paddington for 8 days.

Further, reference to the two Psychiatric Reports, by Dr Andrew Forrester and Dr David Baird dated the 29th July 2013 and 17th September 2013, where I was diagnosed with severe depressive disorder and both doctors recommended that I should be admitted to hospital according to section 38 of the Mental Health Act 1983. They also confirmed that I was then unfit to plead in 2013.

IX. The EAW used was based on lies and non-factual information as to the most important issues concerning the extradition

There is three specific non-factual information, as to the extradition, supplied to the German authorities, by the British authorities, with representation by the CPS, with David Williams and the Metropolitan Police with DC Mark Loftus.

These non-factual, but crucial information, were direct lies. In view of the importance of these non-factual information as to the German's courts allowing the extradition, they should be seen in relation to the following laws and protocols:

The German extraditions rules, International Rechshilfeverkehr in Strafsachen (IRG), art.83

The Council of the European Union, the Council Framework Decision governing Article 5. (1) as to decision rendered in absentia.

The European Convention of Human Rights Art. 6

Treaty of European Union Article 6

The three main questions:

1. Was the defendant informed as to the in-absentia trial? (The defendant was unfit to plead.)

2. Did the defendant have defence lawyers representing him at the trial

3. Have the defendant been given a re-trial

Add 1. Although the defendant was not informed, he would not have been able to plea, as he was unfit and ill at the time. The defendant was taking a large amount of medication and since the death of his partner in life, a medication which did make a considerable impact on his perception of reality, such as psilocybin. After the defendant visit to London in late August 2008, for a bail hearing which was cancelled, the defendant had a total mental break down, falling completely apart, in addition to daily abuse of alcohol.

As to being informed, about the in-absentia trial, it is clear from the documentation submitted by Interpol, that the defendant was not contacted before a year after the trial in late 2009.

Considering that the defendant had staff in the villa, so even if the defendant was ill, staff would always receive letters and deliveries to the villa, moreover, if anyone had come to the villa, they would know that the defendant was there.

Friends came regularly to see to the defendant and to comfort him, Dr Scemama and Dr von Langsdorff came regularly to check on the defendant. Even Alexander, the defendant adopted son came in November from China and stayed with the defendant in the villa.

The defendant had not been informed or summoned to the trial, which is a requirement under German rules. No attempt was even made to contact the defendant according to the records of Interpol and the French police. The British police and prosecution had all the defendant's contact numbers and addresses from the laptop seized at the defendant's arrest on August 2006. Further, the telephone and emails of all the defendant's friends advisers and doctors.

The defendant was totally unfit at the time to the plea, never mind comprehending that any trial could take place, when the defence team had stepped down in October 2008.

There was clear evidence that the defendant had grief and severe depression and his absence and involvement with the case was entirely attributable to involuntary illness. The defendant defence wrote already in June and August both to the court and the CPS, as to his pathological grief disorder and depression. It is also clear that the prosecution did not in reality attempt to make any contact with the defendant.

The police and prosecution had the seized laptops of the defendant, with all my addresses, emails and telephone number. Moreover, they knew the contact numbers of the defendant doctors, including Dr Scemama and Daniel von Langsdorf, who attended the defendant several times a week.

Obtain affidavits from:

Miriam (working in the villa)

Graham Goodbody, (visiting friend)

Bernadette Keraudren (secretary)

Dr Daniel von Langsdorff

Dr. Philippe Scemama

and others – all to be obtained.

Re: R. v. Hayward, R. v. Jones, R. v. Purvis (2001) QB 862, Court of Appeal

- The defendant did not know about the trial, he was indifferent, due to involuntary illness
- The defendant was afflicted by involuntary illness
- The defendant had no way chosen to abscond
- The defendant did not waive his right to be present

It is important to know that the defendant until September 2008, had attended every bail hearing, never absconded and indeed been prepared to see close to £100,000 being spend on the defence.

Although he suffered severe depression, received strong medication, the defendant had several times travel to London to be at the few minute bail hearing in court. He travelled each time, against his doctors' advice and had Romana Labunski's condition to consider, as she was dying at any moment in 2008.

The defendant may not have participated in working on his defence, as he afterwards realised, but this was due to his pre-grief and severe depressions during 2007 and 2008. In addition, to focusing on Romana and giving her all his attention.

The defendant had in no way chosen to abscond if he had a clear moment after he saw an email from his defence team stepping down, a moment without strong medication and intoxication of alcohol, the defendant would have reasoned that no trial could be held without his defence team.

The defendant had at the time a high esteem for the British justice system, and certainly could never imagine that an in absentia trial could be held in the U.K. He recall researching the subject back in 2001, when more than 100 MPs expressed contempt for "such kangaroo trials", during a debate in the House of Commons. The defendant had also seen the debate among the high judiciary and their reference to the Magna Carta. So he would never have considered that a trial could take place without him and his defence team.

When the defendant heard from Bernard Gentle in late January, early February 2009, he thought it must have been pre-trial hearings as Mr Gentle did not see any jury and only barristers in the courtroom. Further, no trial was listed, according to him, as it took him three days to find out if anything was taking place related to the defendant in Wood Green Crown Court.

The defendant's first knowledge as to the in absentia trial was in early February 2009, when his son Mark told him about Alexander's status and that a trial had been held in his case with twelve jury members. Since the defendant still was ill with lots of medication and most likely intoxicated. He just did not believe it, as he still considered what Bernard Gentle had told him, possibly a pre-trial hearing, because of Pamela's testimony. However, it was first in July 2009, after his son Mark had a meeting with Morag Rea, who did not work as a lawyer than, that the defendant was informed that an in absentia trial had been held.

Then in late September 2009, the defendant received at the Villa a notification from Wood Green Crown Court, just stating his convictions and sent by normal mail. There was no other information than the listing of the nine convictions.

Since the defendant still resided in the villa, except when his relative came to stay with friends September 2009, his cousin Inge Linna Schou and her husband Lars Schou, both working for

the Danish police in senior positions. Also, some of Romana's relative came from Poland in August 2009. However, first in October/November 2009, the defendant left the villa for treatment in Switzerland, one year after the in-absentia trial. He can produce many witnesses to these facts.

Add 2. The defendant was not represented at the in absentia trial, this is confirmed by the amicus submission to the Court, and in the Ruling by HHJ Guggenheim, at the commencement of the Trial in the Absence Of the Defendant, made on the 24th November 2008.

"Mr Jenkins and Mr Lewis should be referred to as the "Court-appointed Counsel", to try and avoid confusion between their role and that of defence counsel. They are not, after all, the defendant's representatives: they have not received, and can obtain, no instructions from the Defendant: and they have no access to any instructions or evidence obtained by the solicitors formerly instructed on behalf of the Defendant."

In addition to this, the amicus refers many times in their various submission to the Court, that they can not act as defence lawyers or representative. In their submission as to closing speeches the amicus concluded in many submissions (13 December 2008) to the Court:

"That is had been a trial in which the defendant has:

not been present;

not been represented;

not given evidence;

not called any witnesses;

not advanced a positive case."

A somewhat important observation, although later, the CPS with prosecutor David Williams informed the German authorities by fax dated the 8th April 2013 to the German Chief Prosecutor Ms Beyse, that:

"The defendant had two defence barristers, Edward Jenkins QC and Dominic Lewis defending him at the in absentia trial."

This was confirmed by DC Loftus in a fax to the chief German prosecutor Ms Beyse, the same date – a direct lie, as Germany would not have extradited me to London, if they knew I did not have any defence at the six week in absentia trial.

Add 3. As of writing, the defendant has been incarcerated for more than 41 months, therefore, served a prison sentence of over six years and ten months. Although, the defendant has done everything possible since arriving in London prisons to get a new trial. So many obstacles and impediment have been put in his way, in addition to suffering from his severe depression and grief.

After being extradited from Germany, the defendant was subject to being moved the first 13 months six times to different prisons and 19 different cells. Since arriving in London, the defendant has been mostly incarcerated 24 hours a day, due to the current conditions in London prisons. It took the defendant nearly 3 months to see a doctor, at one stage, 4 months to see a dentist and 22 months to see an eye doctor to attend to his retinal detachment.

Whereas the German prison doctors recommended in 2013, two urgent surgical operation, a hernia and hip replacement, moreover had made arrangement to have these done, if the defendant had not been extradited in May 2013. The British healthcare system in the prison has ignored such need.

As of writing the defendant has been waiting to see urgently a doctor and dentist since early February 2016, when his first request was made, so 3½ months. This is the factual conditions in HMP Pentonville 2016.

Further, see submission to the Court of Appeal, by the defendant.

X. Exhibits:

The Crown's submission as to EAW, 30 November 2008 (Ex. A)

Council Framework Decision of 13 June 2002

The Bundesgerichtshof decision 4 December 2012

Amicus submission dated the 17 November 2008 (Ex. B)

The EAW Protocol dated the 30 September 2008

The Braunschweig State Court decision on the 14 May 2013

Communication between S. Beyse and DC Loftus (Ex. C)

Communication between S. Beyse and David William (Ex. C)

Various submission by Amicus to the Court during November/December 2008

HHJ Mitting decision dated the 13 December 2007

The defendant's submission as to the delay in making the application to the Court of Appeal, 11 June 2015

The defendant's application for an appeal of conviction and sentence dated the 11th June 2015

Exhibits 1-155 and A1-A31, Court of Appeal June 2015

The defence lawyer: Frau Dr. Grãfin Margarette von Galen, G.M.B.S. Rechtanwalte, submissions to the court and the German prosecution. (only in German)

The state prosecutor Susanne Beyse request (fax) to London dated the 11th February 2013. Translated to English

The Judgement, Oberlandesgericht Braunschweig dated 14 May 2013. In German

Letters from the defendant to his defence lawyers

Documentation required:

The submission by amicus as to the EAW in November 2008, must ask Dominic Lewis

Documentation: Judgement, Oberlandesgericht Braunschweig dated 14 May 2013. No English translation

NOTES

The defendant apologise to the fact, that he works without spellcheck on his laptop and work with very old application software and indeed, unable to properly format the documents and submissions.

A considerable amount of text has been copied from other files, all text written by the defendant. Some of the opinions and statement has been repeated several times as a result that this brief could do with more work.

Mogens Hauschildt

24th May 2016